



# Federal Register

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**Monday**

**June 24, 2002**



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# Presidential Documents

**Title 3—****Executive Order 13266 of June 20, 2002****The President****Activities To Promote Personal Fitness**

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to improve the efficiency and coordination of Federal policies related to personal fitness of the general public, it is hereby ordered as follows:

**Section 1. Policy.** This order is issued consistent with the following findings and principles:

(a) Growing scientific evidence indicates that an increasing number of Americans are suffering from negligible physical activity, poor dietary habits, insufficient utilization of preventive health screenings, and engaging in risky behaviors such as abuse of alcohol, tobacco, and drugs.

(b) Existing information on the importance of appropriate physical activity, diet, preventive health screenings, and avoiding harmful substances is often not received by the public, or, if received, is not acted on sufficiently.

(c) Individuals of all ages, locations, and levels of personal fitness can benefit from some level of appropriate physical activity, dietary guidance, preventive health screening, and making healthy choices.

(d) While personal fitness is an individual responsibility, the Federal Government may, within the authority and funds otherwise available, expand the opportunities for individuals to empower themselves to improve their general health. Such opportunities may include improving the flow of information about personal fitness, assisting in the utilization of that information, increasing the accessibility of resources for physical activity, and reducing barriers to achieving good personal fitness.

**Sec. 2. Agency Responsibilities in Promoting Personal Fitness.**

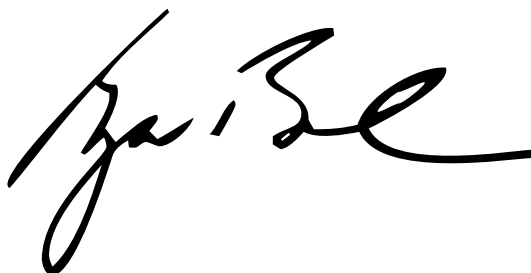
(a) The Secretaries of Agriculture, Education, Health and Human Services (HHS), Housing and Urban Development, Interior, Labor, Transportation, and Veterans Affairs, and the Director of the Office of National Drug Policy shall review and evaluate the policies, programs, and regulations of their respective departments and offices that in any way relate to the personal fitness of the general public. Based on that review, the Secretaries and the Director shall determine whether existing policies, programs, and regulations of their respective departments and offices should be modified or whether new policies or programs could be implemented. These new policies and programs shall be consistent with otherwise available authority and appropriated funds, and shall improve the Federal Government's assistance of individuals, private organizations, and State and local governments to (i) increase physical activity; (ii) promote responsible dietary habits; (iii) increase utilization of preventive health screenings; and (iv) encourage healthy choices concerning alcohol, tobacco, drugs, and safety among the general public.

(b) Each department and office included in section 2(a) shall report to the President, through the Secretary of Health and Human Services, its proposed actions within 90 days of the date of this order.

(c) There shall be a Personal Fitness Interagency Working Group (Working Group), composed of the Secretaries or Director of the departments and office included in section 2(a) (or their designees) and chaired by the Secretary of HHS or his designee. In order to improve efficiency through information sharing and to eliminate waste and overlap, the Working Group shall

work to ensure the cooperation of Federal agencies in coordinating Federal personal fitness activities. The Working Group shall meet subject to the call of the Chair, but not less than twice a year. The Department of Health and Human Services shall provide such administrative support to the Working Group as the Secretary of HHS deems necessary. Each member of the Working Group shall be a full-time or permanent part-time officer or employee of the Federal Government.

**Sec. 3. General Provisions.** This order is intended only to improve the internal management of the executive branch and it is not intended to, and does not, create any right, benefit, trust, or responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies or entities, its officers or employees, or any person.

A handwritten signature in black ink, appearing to read "George W. Bush", is positioned above the typed name and date.

THE WHITE HOUSE,  
June 20, 2002.

## Presidential Documents

Executive Order 13267 of June 20, 2002

### Establishing a Transition Planning Office for the Department of Homeland Security Within the Office of Management and Budget

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

**Section 1. *Establishment.*** I hereby establish within the Office of Management and Budget (OMB) a Transition Planning Office for the Department of Homeland Security (the "Transition Planning Office"), to be headed by the Director of the Transition Planning Office for the Department of Homeland Security (the "Director for Transition Planning").

**Sec. 2. *Missions.*** The missions of the Transition Planning Office shall be to:

(a) coordinate, guide, and conduct transition and related planning throughout the executive branch of the United States Government in preparation for establishment of the proposed Department of Homeland Security; and

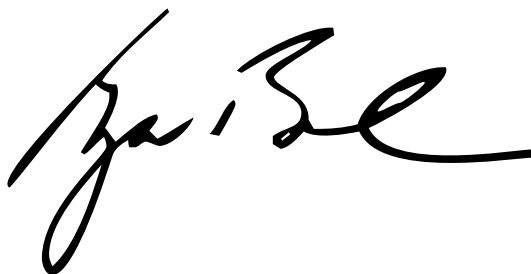
(b) consistent with Presidential guidance, work with the Congress as it considers legislation to establish that Department.

**Sec. 3. *Administration.*** (a) The Director of OMB shall ensure that the Transition Planning Office receives appropriate personnel (including detailees and assignees, as appropriate), funding, and administrative support for the Office, subject to the availability of appropriations. The Director of OMB is authorized to make expenditures under section 522 of title 31, United States Code, as may be appropriate to carry out this order.

(b) If an individual who is an Assistant to the President is appointed to serve simultaneously as Director for Transition Planning, the functioning, personnel, funds, records, and property of the office of the Assistant to the President and the office of the Director for Transition Planning shall be kept separate in the same manner as if the two offices were headed by two different individuals.

**Sec. 4. *Other Departments and Agencies.*** This order does not alter the existing authorities of United States Government departments and agencies. In carrying out the missions set forth in section 2 of this order, all executive departments and agencies are directed to assist the Director for Transition Planning and the Transition Planning Office to the extent permitted by law.

**Sec. 5. Termination.** The Transition Planning Office, and all the authorities of this order, shall terminate within 90 days after the date on which legislation creating the Department of Homeland Security is enacted, or within 1 year of the date of this order, whichever occurs first.

A handwritten signature in black ink, appearing to read "George W. Bush", written in a cursive style.

THE WHITE HOUSE,  
*June 20, 2002.*

[FR Doc. 02-16041

Filed 6-21-01; 8:45 am]

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# Rules and Regulations

Federal Register

Vol. 67, No. 121

Monday, June 24, 2002

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 989

[Docket No. FV02-989-5 IFR]

#### Raisins Produced From Grapes Grown in California; Additional Opportunity for Participation in 2002 Raisin Diversion Program

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule allows producers an additional opportunity to participate in the 2002 raisin diversion program (RDP). The RDP is authorized under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (RAC). This action is intended to help reduce the burdensome oversupply affecting the California raisin industry.

**DATES:** Effective June 25, 2002. Comments received by July 9, 2002, will be considered prior to issuance of a final rule.

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

can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

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

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

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

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

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing

on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

A 2002 RDP for Natural (sun-dried) Seedless (NS) raisins was established in November 2001. A total of 54,086 tons of 2001 crop reserve raisins was allocated to the program. This rule allows producers an additional opportunity to participate in the 2002 RDP. An additional 25,000 tons of 2001 crop reserve raisins has been allocated to the RDP. The additional program is applicable to producers who agree to remove vines from production, and is intended to help the industry reduce its burdensome oversupply. The action was recommended by the RAC at a meeting on May 30, 2002, by a vote of 45 in favor, 1 opposed (member opposed because the program did not provide for a moratorium on replanting), and 1 abstained.

#### Volume Regulation Provisions

The order provides authority for volume regulation designed to promote orderly marketing conditions, stabilize prices and supplies, and improve producer returns. When volume regulation is in effect, a certain percentage of the California raisin crop may be sold by handlers to any market (free tonnage) while the remaining percentage must be held by handlers in a reserve pool (reserve) for the account of the RAC. Reserve raisins are disposed of through various programs authorized under the order. For example, reserve raisins may be sold by the RAC to handlers for free use or to replace part of the free tonnage they exported; carried over as a hedge against a short crop the following year; or may be disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed. Net proceeds from sales of reserve raisins are ultimately distributed to producers.

#### Raisin Diversion Program

The RDP is another program concerning reserve raisins authorized under the order and may be used as a means for controlling overproduction.

Authority for the program is provided in § 989.56 of the order. Paragraph (e) of that section provides authority for the RAC to establish, with the approval of USDA, such rules and regulations as may be necessary for the implementation and operation of a RDP. Accordingly, additional procedures are specified in § 989.156.

Pursuant to these sections, the RAC must meet by November 30 each crop year to review raisin data, including information on production, supplies, market demand, and inventories. If the RAC determines that the available supply of raisins, including those in the reserve pool, exceeds projected market needs, it can decide to implement a diversion program, and announce the amount of tonnage eligible for diversion during the subsequent crop year. Producers who wish to participate in the RDP must submit an application to the RAC. The RAC conducts a lottery if the tonnage applied for exceeds what has been allotted. RAC staff then notifies producers whether they have been accepted into the program.

Approved producers curtail their production by vine removal or some other means established by the RAC. Such producers receive a certificate the following fall from the RAC which represents the quantity of raisins diverted. Producers sell these certificates to handlers who pay producers for the free tonnage applicable to the diversion certificate minus the established harvest cost for

the diverted tonnage. Handlers redeem the certificates by presenting them to the RAC by December 15 and paying an amount equal to the established harvest cost plus payment for receiving, storing, fumigating, handling, and inspecting the tonnage represented on the certificate. The RAC then gives the handler raisins from the prior year's reserve pool in an amount equal to the tonnage represented on the diversion certificate. The new crop year's volume regulation percentages are applied to the diversion tonnage acquired by the handler (as if the handler had bought raisins directly from a producer).

#### Initial 2002 NS Diversion Program

On November 28, 2001, the RAC met and reviewed data relating to the quantity of reserve raisins and anticipated market needs. With a 2001–02 NS crop estimated at 359,341 tons, and a computed trade demand (comparable to market needs) of 235,850 tons, the RAC projected a reserve pool of 123,491 tons of NS raisins. With such a large anticipated reserve, the RAC announced that 45,182 tons of NS raisins would be eligible for diversion under the initial 2002 RDP. The RAC increased this amount to 54,086 tons at a meeting on January 11, 2002.

Of the 54,086 tons, 49,086 tons were made available to approved producers who submitted applications to the RAC by December 20, 2001, with producers who planned to remove vines receiving priority over those who planned to

curtail (abort) production through spur pruning or other means. Section 989.156(d) requires the RAC to give priority to applicants who agree to remove vines. Another 5,000 tons were made available to approved producers who submitted applications to the RAC from December 21, 2001, through May 1, 2002, and planned to remove vines. Authority for this additional opportunity for vine removal is provided in § 989.156(s).

Harvest costs for the initial RDP were announced by the RAC at \$340 per ton, and a production cap of 2.0 tons per acre was established for the program. The production cap limits the yield per acre that a producer can claim. The 2.0-ton per acre production cap was established in an interim final rule that was published in the **Federal Register** on March 15, 2002 (67 FR 11555). A final rule was published on May 14, 2002 (67 FR 34383).

Under the initial RDP, the RAC received applications from producers accounting for 40,788 tons of raisins that would be removed from production by spur pruning vines, and 7,704 tons of raisins that would be removed from production by removing vines. Using the production cap of 2.0 tons per acre, about 3,850 acres should be removed from production through vine removal (7,704 tons divided by 2.0 acres per ton.) The following is a summary of the tonnage allocated and participation in the initial 2002 RDP:

#### INITIAL 2002 RDP

|                        | Allotted tonnage                                                           | Applications from producers                         |
|------------------------|----------------------------------------------------------------------------|-----------------------------------------------------|
| Dec. 20 deadline ..... | 49,086 tons (vine removal and spur prune, with priority for vine removal). | 40,788 tons (spur prune), 6,896 tons (vine removal) |
| May 1 deadline .....   | 5,000 tons (vine removal only) .....                                       | 808 tons (vine removal)                             |
| Total .....            | 54,086 tons .....                                                          | 40,788 tons (spur prune), 7,704 tons (vine removal) |

#### RAC Recommendation

The RAC met on May 30, 2002, and recommended adding an additional opportunity for producers to participate in the 2002 NS RDP in view of the oversupply situation affecting the California raisin industry. Specifically, the RAC allocated an additional 25,000 tons of 2001 NS reserve raisins to the program. The additional program applies to producers who agree to remove vines, and includes a bonus for participating producers. Producers will receive a diversion certificate from the RAC equal to 1.5 times the creditable fruit weight of the raisins produced on the production unit (up to a maximum of 3 tons per acre). For example, if an

applicant's verified production is 1.7 tons per acre, the applicant will receive credit for 2.55 tons per acre (1.7 tons times 1.5). If an applicant's verified production is 2.5 tons per acre, the applicant will receive credit for 3.0 tons per acre (2.0 tons times 1.5). Authority for the RAC to issue diversion certificates in an amount greater than the creditable fruit weight produced on the production unit is provided in § 989.56(c) of the order. The bonus is intended to encourage participation in the program.

The additional opportunity to participate in the 2002 RDP is available to producers who did not participate in the initial 2002 program ("new

participants"), and to approved participants in the initial 2002 RDP who curtailed their production by spur pruning their vines ("early season spur pruners"). Producers who wish to participate in the program must file an application with the RAC by July 8, 2002. Priority will be given to new participants. If the production applied for exceeds the 25,000 tons added to the program, a lottery will be held to allocate the tonnage among the applicants, pursuant to applicable procedures specified in § 989.156(d).

Harvest costs for the additional opportunity program for "early season spur pruners" will remain at \$340 per ton, while harvest costs for new

participants will be \$100 per ton. Because harvest costs are deducted from the payment producers receive from handlers for their diversion certificates, a reduction in harvest costs results in a larger payment to producers for the certificates. The reduction in harvest costs for new participants and resulting increased payment is intended to take into account the cultural costs incurred by such producers thus far in producing a 2002 crop.

Under the additional opportunity program, vines must either be removed, or chain sawed at the base by July 31, 2002. RAC staff will verify that the vines have been removed or adequately chain sawed. RAC staff will re-inspect vines that have been chain sawed to ensure that the remainder of the vine is removed at a later date.

Accordingly, a new paragraph (u) is added to § 989.156 that specifies the provisions of the additional opportunity program with applicable time frames. In addition, necessary conforming changes have been made to paragraphs (a), (q), and (s) of § 989.156.

#### Initial Regulatory Flexibility Analysis

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

Accordingly, AMS has prepared this initial regulatory flexibility analysis.

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

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

This rule revises § 989.156 of the order's rules and regulations regarding the RDP. Under a RDP, producers receive certificates from the RAC for curtailing their production to reduce burdensome supplies. The certificates represent diverted tonnage. Producers sell the certificates to handlers who, in turn, redeem the certificates with the RAC for raisins from the prior year's reserve pool. A 2002 RDP for NS raisins was established in November 2001, and 54,086 tons of 2001 crop reserve raisins were allocated to the program. This rule allows producers an additional opportunity to participate in the 2002 RDP in view of the oversupply situation affecting the California raisin industry. An additional 25,000 tons of 2001 crop reserve raisins has been allocated to the RDP. The additional program is applicable to producers who agree to remove vines from production, and is intended to help the industry reduce its burdensome oversupply. Authority for this action is provided in § 989.56(e) of the order.

Regarding the impact of this action on affected entities, the additional opportunity program is intended to help the industry as a whole reduce its burdensome oversupply. The California raisin industry has experienced successive crop years of high production. The 10-year average for deliveries of NS raisins to handlers is 344,303 tons. NS raisin deliveries for the 2000 crop year were 432,616 tons, and deliveries to-date for the 2001 crop year are about 375,000 tons. As previously stated, the initial RDP should remove about 3,850 acres from production. It is estimated that the additional opportunity program could remove another 8,350 acres from production, for a combined total of about 12,200 acres, which would help the industry reduce its oversupply.

Regarding the impact of this action on producers, the program will provide producers with an additional opportunity to earn some income for removing their vineyards from production. Participating producers will receive a bonus for removing their vines. They will receive a diversion certificate from the RAC equal to 1.5 times the creditable fruit weight of the raisins produced on the production unit (up to a maximum of 3 tons per acre). Producers will sell their certificates to handlers this fall and be paid for the free tonnage applicable to the diversion certificate minus the harvest cost for the diverted tonnage. Applicable harvest costs for the additional RDP were announced by the RAC at \$100 per ton for "new participants" (producers who did not participate in the initial 2002

RDP), and \$340 per ton for "early season spur pruners" (approved participants in the initial 2002 RDP who curtailed production by spur pruning their vines).

Regarding the impact on handlers, handlers will redeem certificates for 2001 crop NS raisins and pay the RAC the applicable harvest cost (\$100 per ton for new participants, and \$340 per ton for early season spur pruners) plus payment for bins (\$20 per ton) and for receiving, storing, fumigating, handling (\$46 per ton), and inspecting (\$9.00 per ton). The program will return \$175 per ton for new participant certificates, and \$415 per ton for remaining certificates to the 2001 NS reserve pool. Such income to the reserve pool could be used to pay remaining pool expenses or be distributed to 2001 NS reserve pool equity holders (producers). Thus, all such equity holders could potentially benefit from this action.

Several alternatives to the recommended action were considered by the RAC. There was discussion at the meeting regarding whether the program should include a moratorium on replanting. Some members expressed concern that growers may remove their vines and replant with new systems that produce higher yields, thereby contributing to more oversupply. However, there is no authority for a moratorium on replanting.

There was some discussion at the meeting about the impact of adding an additional 25,000 tons of 2001 crop NS reserve raisins to the 2002 supply. Through the order's mathematical formula for volume regulation, additional 2002 supply will reduce the 2002 free tonnage percentage. This could reduce returns for producers since producers are paid a field price for the free tonnage percentage of their crop. There was some consideration of allowing handlers to redeem a portion of their certificates for 2001 reserve raisins and a portion for 2002 crop reserve raisins. However, the current order only provides authority for handlers to redeem certificates for reserve raisins from the prior crop year.

There was also discussion at the meeting about giving smaller producers some priority in the program. For example, the program could allow 2 days for producers with production units of 80 acres to apply, and then the program could be opened up to other applicants. However, this was not recommended over a program providing the same opportunity to all eligible producers.

This rule imposes no additional reporting or recordkeeping requirements on either small or large raisin handlers. In accordance with the Paperwork

Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirement referred to in this rule (i.e., the RDP application) has been approved previously by the Office of Management and Budget (OMB) under OMB Control No. 0581-0178. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the RAC's meeting on May 30, 2002, where this action was deliberated was a public meeting widely publicized throughout the raisin industry. All interested persons were invited to attend the meeting and participate in the industry's deliberations. Finally, all interested persons are invited to submit information on the regulatory and information impact of this action on small businesses.

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

A 15-day comment period is provided to allow interested persons to comment on this rule. Fifteen days is deemed appropriate taking into account producers must submit applications to the RAC by July 8, 2002, to participate in the program.

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

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule needs to be in effect as soon as possible because producers must submit applications to participate in the program to the RAC by July 8, 2002; (2) this rule allows producers an additional opportunity to participate in the 2002 RDP and earn some income for removing their vines; (3) producers are aware of this action

which was recommended by the RAC at a public meeting; and (4) this interim final rule provides a 15-day comment period for written comments and all comments timely received will be considered prior to finalization of this rule.

#### List of Subjects in 7 CFR Part 989

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

For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

#### PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

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

**Authority:** 7 U.S.C. 601–674.

2. In § 989.156, paragraphs (a)(1), (q)(2), and (s) are revised, and paragraph (u) is added to read as follows:

#### § 989.156 Raisin diversion program.

(a)(1) *Quantity to be diverted.*

On or before November 30 of each crop year, the Committee shall announce the quantity of raisins eligible for a raisin diversion program. On or before January 15 of each crop year, the Committee may announce an increase in the tonnage eligible for a raisin diversion program: *Provided*, That, for the 2002 Natural (sun-dried) Seedless raisin diversion program, the Committee may announce an increase in the quantity of tonnage eligible for the program later than January 15. \* \* \*

(q) \* \* \*

(2) Each approved applicant shall, with respect to liquidated damages not paid by July 1, pay to the Committee interest on such unpaid liquidated damages at the rate of the prime rate of the bank in which the Committee has its reserve pool funds deposited, on the day the liquidated damages become delinquent, plus 2 percent, and further such rate of interest shall be added to the unpaid amount, monthly, until the liquidated damages plus applicable interest are paid: *Provided*, That for the program specified in paragraph (u) of this section, the applicable date concerning liquidated damages not paid, shall be September 1 instead of July 1 as referenced in this paragraph. \* \* \*

(s) *Additional opportunity for vine removal.* The Committee may announce a date later than that provided in § 989.156(b), by which producers, who agree to remove the vines on a

production unit may file an application to participate in a raisin diversion program.

(1) For the 2002 Natural (sun-dried) Seedless raisin diversion program, additional opportunity for vine removal shall be provided in accordance with paragraph (u) of this section.

(2) For raisin diversion programs applicable to the 2003 and subsequent crop years, the following provisions apply.

(i) The announced date shall be not later than May 1. The diversion certificates will be issued only for the production units from which vines are removed. The total tonnage available to such applicants shall not exceed the tonnage determined by deducting the tonnage approved for applications received on or before December 20 from the total tonnage announced as eligible by the Committee for diversion. Applications shall be considered and approved on a first-come, first-served, basis and shall not be given preference over the tonnage approved for applications received on or before December 20. The vines shall be removed from the production units for which such applications are approved not later than June 1.

(ii) Producers who agree to remove the vines pursuant to this paragraph shall notify the Committee in advance of the date when such vines will be removed in order to allow a representative of the Committee to observe and verify such vine removal.

\* \* \* \* \*

(u) *Additional opportunity for producers to participate in the 2002 raisin diversion program.* An additional opportunity for vine removal of 2002 crop Natural (sun-dried) Seedless raisins provided for 25,000 additional tons of raisins in accordance with the following provisions.

(1) The additional opportunity applies to production units on which producers agree to remove vines. The additional opportunity program applies to “new participants” (producers who are not approved participants in the initial 2002 diversion program), and to “early season spur pruners” (approved participants in the initial 2002 diversion program who curtailed production by spur pruning their vines). Grafting vines of one varietal type to another varietal type does not constitute removal under the program.

(2) Priority will be given to “new participants.” If the production volume in such applications exceeds 25,000 tons, a lottery will be held to allocate such diversion tonnage among applicants, pursuant to applicable procedures specified in § 989.156(d).

(3) Eligible producers who wish to participate in this program must file an application with the Committee by July 8, 2002, with appropriate documentation as specified in § 989.156(b). The Committee shall notify the applicant, in writing, as to whether or not the application has been approved. Vines must be removed or chain sawed at the base of the vine by July 31, 2002. Committee staff will verify that the vines have been removed or adequately chain sawed. Committee staff will re-inspect vines that have been chain sawed to ensure that the remainder of the vine is removed. Procedures specified §§ 989.156(e), (f), (g), and (i) through (r) are applicable to the additional opportunity program for vine removal of 2002 crop Natural (sun-dried) Seedless raisins.

Dated: June 20, 2002.

**A.J. Yates,**  
*Administrator, Agricultural Marketing Service.*

[FR Doc. 02-15961 Filed 6-20-02; 2:04 pm]

BILLING CODE 3410-02-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 25

[Docket No. NM223; Special Conditions No. 25-205-SC]

#### Special Conditions: Boeing Model 737-700 IGW Airplane (BBJ, S/N: 32807); Certification of Cooktops

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for the Boeing Model 737-700 IGW airplane (BBJ serial number 32807). This airplane, as modified by Piedmont Hawthorne—Associated Air Center, will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of an electrically heated surface, called a cooktop. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for addressing the potential hazards that may be introduced by cooktops. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to

that established by the existing airworthiness standards.

**DATES:** The effective date of these special conditions is June 13, 2002. Comments must be received on or before July 24, 2002.

**ADDRESSES:** Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM-113), Docket No. NM223, 1601 Lind Avenue SW., Renton, Washington, 98055-4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM223. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Connie Beane, FAA, Standardization Branch, ANM-113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (425) 227-2796; facsimile (425) 227-1149.

**SUPPLEMENTARY INFORMATION:** The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay certification of the airplane and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance; however, the FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so

without incurring expense or delay. We may change these special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

#### Background Information

On October 9, 2001, Piedmont Hawthorne—Associated Air Center, P.O. Box 540728 (8321 Lemmon Ave, Love Field), Dallas, Texas 75234, applied for a Supplemental Type Certificate (STC) to modify a Boeing Model 737-700 IGW airplane (BBJ serial number 32807). The Boeing Model 737-700 IGW airplane is one of the Boeing Business Jet (BBJ) variants of Model 737 airplanes. It is a large transport category airplane powered by two CFM 56 engines, with a maximum takeoff weight of 171,000 pounds. The modified Boeing Model 737-700 IGW airplane (BBJ serial number 32807) operates with a 2-pilot crew, up to 4 flight attendants, and can hold up to 18 passengers.

The modification incorporates the installation of an electrically heated surface, called a cooktop. Cooktops introduce high heat, smoke, and the possibility of fire into the passenger cabin environment. These potential hazards to the airplane and its occupants must be satisfactorily addressed. Since existing airworthiness regulations do not contain safety standards addressing cooktops, special conditions are therefore issued.

#### Type Certification Basis

Under the provisions of 14 CFR 21.101, Piedmont Hawthorne—Associated Air Center must show that the Boeing Model 737-700 IGW airplane (BBJ serial number 32807), as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate Data Sheet No. A16WE, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate Data Sheet No. A16WE are part 25, as amended by Amendments 25-1 through 25-77, with reversion to earlier Amendments, voluntary compliance to later Amendments, special conditions, equivalent safety findings, and exemptions listed in the type certificate data sheet.

If the Administrator finds that the applicable airworthiness regulations (that is, part 25 as amended) do not contain adequate or appropriate safety standards for the Boeing Model 737-700 IGW airplane (BBJ serial number 32807) modified by Piedmont Hawthorne—Associated Air Center, because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 737-700 IGW airplane (BBJ serial number 32807) must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of part 36.

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should Piedmont Hawthorne—Associated Air Center apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

#### **Novel or Unusual Design Features**

As noted earlier, the modification of the Boeing Model 737-700 IGW airplane (BBJ serial number 32807) will include installation of a cooktop in the passenger cabin. Cooktops introduce high heat, smoke, and the possibility of fire into the passenger cabin environment. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards to protect the airplane and its occupants from these potential hazards. Accordingly, this system is considered to be a novel or unusual design feature.

#### **Discussion**

Currently, ovens are the prevailing means of heating food on airplanes. Ovens are characterized by an enclosure that contains both the heat source and the food being heated. The hazards represented by ovens are thus inherently limited, and are well understood through years of service experience. Cooktops, on the other hand, are characterized by exposed heat sources and the presence of relatively unrestrained hot cookware and heated food, which may represent unprecedented hazards to both occupants and the airplane.

Cooktops could have serious passenger and airplane safety implications if appropriate requirements are not established for their installation and use. These special conditions apply to cooktops with electrically powered burners. The use of an open flame cooktop (for example natural gas) is beyond the scope of these special conditions and would require separate rulemaking action. The requirements identified in these special conditions are in addition to those considerations identified in Advisory Circular (AC) 25-10, "Guidance for Installation of Miscellaneous Non-required Electrical Equipment," and those in AC 25-17, "Transport Airplane Cabin Interiors Crashworthiness Handbook." The intent of these special conditions is to provide a level of safety that is consistent with that on similar airplanes without cooktops.

#### **Applicability**

As discussed above, these special conditions are applicable to the Boeing Model 737-700 IGW airplane (BBJ serial number 32807) modified by Piedmont Hawthorne—Associated Air Center. Should Piedmont Hawthorne—Associated Air Center apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

#### **Conclusion**

This action affects only certain novel or unusual design features on the Boeing Model 737-700 IGW airplane (BBJ serial number 32807) modified by Piedmont Hawthorne—Associated Air Center. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of the special conditions for this airplane has been subjected to notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. Because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior

opportunities for comment described above.

#### **List of Subjects in 14 CFR Part 25**

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

#### **The Special Conditions**

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Boeing Model 737-700 IGW airplane (BBJ serial number 32807) modified by Piedmont Hawthorne—Associated Air Center:

#### **Cooktop Installations With Electrically-Powered Burners**

1. Means, such as conspicuous burner-on indicators, physical barriers, or handholds, must be installed to minimize the potential for inadvertent personnel contact with hot surfaces of both the cooktop and cookware. Conditions of turbulence must be considered.

2. Sufficient design means must be included to restrain cookware while in place on the cooktop, as well as representative contents (soups or sauces, for example) from the effects of flight loads and turbulence.

(a) Restraints must be provided to preclude hazardous movement of cookware and contents. These restraints must accommodate any cookware that is identified for use with the cooktop.

(b) Restraints must be designed to be easily utilized and effective in service. The cookware restraint system should also be designed so that it will not be easily disabled, thus rendering it unusable.

(c) Placarding must be installed which prohibits the use of cookware that cannot be accommodated by the restraint system.

3. Placarding must be installed which prohibits the use of cooktops (that is, power on any burner) during taxi, takeoff, and landing (TTL).

4. Means must be provided to address the possibility of a fire occurring on or in the immediate vicinity of the cooktop caused by materials or grease inadvertently coming in contact with the burners.

**Note:** Two acceptable means of complying with this requirement are as follows:

- Placarding must be installed that prohibits any burner from being powered when the cooktop is unattended (this would

prohibit a single person from cooking on the cooktop and intermittently serving food to passengers while any burner is powered). In addition, a fire detector must be installed in the vicinity of the cooktop, which provides an audible warning in the passenger cabin; and a fire extinguisher of appropriate size and extinguishing agent must be installed in the immediate vicinity of the cooktop. A fire on or around the cooktop must not block access to the extinguisher. One of the fire extinguishers required by § 25.851 may be used to satisfy this requirement if the total complement of extinguishers can be evenly distributed throughout the cabin. If this is not possible, then the extinguisher in the galley area would be additional; OR

- An automatic, thermally-activated fire suppression system must be installed to extinguish a fire at the cooktop and immediately adjacent surfaces. The agent used in the system must be an approved total flooding agent suitable for use in an occupied area. The fire suppression system must have a manual override. The automatic activation of the fire suppression system must also automatically shut off power to the cooktop.

5. The surfaces of the galley surrounding the cooktop, which would be exposed to a fire on the cooktop surface or in cookware on the cooktop, must be constructed of materials that comply with the flammability requirements of Part III of Appendix F of part 25. This requirement is in addition to the flammability requirements typically required of the materials in these galley surfaces. During the selection of these materials, consideration must also be given to ensure that the flammability characteristics of the materials will not be adversely affected by the use of cleaning agents and utensils used to remove cooking stains.

6. The cooktop must be ventilated with a system independent of the airplane cabin and cargo ventilation system. Procedures and time intervals must be established to inspect and clean or replace the ventilation system to prevent a fire hazard from the accumulation of flammable oils. These procedures and time intervals must be included in the Instructions for Continued Airworthiness (ICA). The ventilation system ducting must be protected by a flame arrestor.

**Note:** The applicant may find additional useful information in "Air Conditioning Systems for Subsonic Airplanes," Society of Automotive Engineers, Aerospace Recommended Practice 85, Rev. E, dated August 1, 1991.

7. Means must be provided to contain spilled foods or fluids in a manner that will prevent the creation of a slipping hazard to occupants and will not lead to the loss of structural strength due to airplane corrosion.

8. Cooktop installations must provide adequate space for the user to immediately escape a hazardous cooktop condition.

9. A means to shut off power to the cooktop must be provided at the galley containing the cooktop and in the cockpit. If additional switches are introduced in the cockpit, revisions to smoke or fire emergency procedures of the AFM will be required.

10. A readily deployable cover must be provided to cover the cooktop during taxi, takeoff, and landing (TT&L) operation. The deployment of the cover must automatically shut off power to the cooktop.

Issued in Renton, Washington, on June 13, 2002.

**Ali Bahrami,**

*Acting Manager, ANM-100, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 02-15833 Filed 6-21-02; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Airspace Docket No. 02-ASO-5]

#### Amendment of Class D Airspace; Marietta Dobbins ARB (NAS Atlanta), GA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action amends Class D airspace at Marietta Dobbins ARB (NAS Atlanta), GA. It has been determined that the Marietta Dobbins ARB Class D airspace area be amended to provide containment of instrument approach procedures within controlled airspace. Adequate controlled airspace should be established for the Airport Surveillance Radar (ASR) Standard Instrument Approach Procedures (SIAPs) to Runways (RWYs) 11 and 29. This action would amend the lateral limits of the existing Class D airspace by adding Class D airspace extensions from the 5.5-mile radius to 6.9 miles to the east and west of Marietta Dobbins ARB.

**EFFECTIVE DATE:** 0901 UTC, October 3, 2002.

#### FOR FURTHER INFORMATION CONTACT:

Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305-5586.

**SUPPLEMENTARY INFORMATION:**

## History

On April 29, 2002, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending Class D airspace at Marietta Dobbins ARB (NAS Atlanta), GA, (67 FR 20919). Class D airspace designations for airspace areas extending upward from the surface of the earth are published in Paragraph 5000 of FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designations listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

## The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends Class D airspace at Marietta Dobbins ARB (NAS Atlanta), GA.

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

#### List of Subjects in CFR Part 71

Airspace, Incorporation by reference, navigation (air).

#### Adoption of the Amendment

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

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

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

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

*Paragraph 5000 Class D Airspace.*

\* \* \* \* \*

**ASO GA D Marietta Dobbins ARB (NAS Atlanta), GA [Revised]**

Dobbins ARB (NAS Atlanta), GA

(Lat. 33°54'55" N, long. 84°30'59" W)

Cobb County—McCormick Field

(Lat. 34°00'47" N, long. 84°35'55" W)

Fulton County—Brown Field

(Lat 33°46'45" N, long. 84°31'17" W)

That airspace extending upward from the surface to and including 3,600 feet MSL within a 5.5-mile radius of Dobbins ARB (NAS Atlanta) and within 1.7 miles each side of the 289° bearing and the 109° bearing from the Dobbins ARB, extending from the 5.5-mile radius to 6.9 miles east and west of the airport; excluding that airspace northwest of a line connecting the 2 points of intersection with a 4-mile radius centered on Cobb County—McCormick Field and the 5.5-mile radius of Dobbins ARB, and also excluding that airspace south of a line connecting the 2 points of intersection with the 4-mile radius centered on Fulton County Airport—Brown Field. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

\* \* \* \* \*

Issued in College Park, Georgia, on June 12, 2002.

**Walter R. Cochran,**

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

[FR Doc. 02-15799 Filed 6-21-02; 8:45 am]

**BILLING CODE 4910-13-M**

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**FEDERAL TRADE COMMISSION**

**16 CFR Part 305**

**Rule Concerning Disclosures  
Regarding Energy Consumption and  
Water Use of Certain Home Appliances  
and Other Products Required Under  
the Energy Policy and Conservation  
Act ("Appliance Labeling Rule")**

**AGENCY:** Federal Trade Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Trade Commission (Commission) announces new ranges for heat pump water heaters. It also announces that the current ranges of comparability required by the Appliance Labeling Rule (Rule) for room

air conditioners, storage-type water heaters, gas-fired instantaneous water heaters, furnaces, boilers, and pool heaters will remain in effect until further notice.

**EFFECTIVE DATE:** September 23, 2002.

**FOR FURTHER INFORMATION CONTACT:** Hampton Newsome, Attorney, Division of Enforcement, Federal Trade Commission, Washington, DC 20580 (202-326-2889); hnewsome@ftc.gov.

**SUPPLEMENTARY INFORMATION:** The Rule was issued by the Commission in 1979, 44 FR 66466 (Nov. 19, 1979), in response to a directive in the Energy Policy and Conservation Act of 1975.<sup>1</sup> The Rule covers several categories of major household appliances and other consumer products including water heaters (this category includes storage-type water heaters, gas-fired instantaneous water heaters, and heat pump water heaters), room air conditioners, furnaces (this category includes boilers), and central air conditioners (this category includes heat pumps).

The Rule requires manufacturers of all covered appliances and pool heaters to disclose specific energy consumption or efficiency information (derived from the DOE test procedures) at the point of sale in the form of an "EnergyGuide" label and in catalogs. It also requires manufacturers of furnaces, central air conditioners, and heat pumps either to provide fact sheets showing additional cost information, or to be listed in an industry directory showing the cost information for their products. The Rule requires manufacturers to include, on labels and fact sheets, an energy consumption or efficiency figure and a "range of comparability." This range shows the highest and lowest energy consumption or efficiencies for all comparable appliance models so consumers can compare the energy consumption or efficiency of other models (perhaps competing brands) similar to the labeled model. The Rule also requires manufacturers to include, on labels for some products, a secondary energy usage disclosure in the form of an estimated annual operating cost based on a specified DOE national average cost for the fuel the appliances uses.

Section 305.8(b) of the Rule requires manufacturers, after filing an initial report, to report certain information annually to the Commission by

<sup>1</sup> 42 U.S.C. 6294. The statute also requires the Department of Energy (DOE) to develop test procedures that measure how much energy the appliance use, and to determine the representative average cost a consumer pays for the different types of energy available.

specified dates for each product type.<sup>2</sup> These reports, which are to assist the Commission in preparing the ranges of comparability, contain the estimated annual energy consumption or energy efficiency ratings for the appliances derived from tests performed pursuant to the DOE test procedures. Because manufacturers regularly add new models to their lines, improve existing models, and drop others, the data base from which the ranges of comparability are calculated is constantly changing. To keep the required information consistent with these changes, under § 305.10 of the Rule, the Commission will publish new ranges if an analysis of the new information indicates that the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission will publish a statement that the prior ranges remain in effect for the next year.

**1. Current Submissions**

Manufacturers have submitted data for room air conditioners, water heaters (including storage-type, gas-fired instantaneous, and heat pump water heaters), furnaces, boilers, and pool heaters. The Commission did not receive any data for heat pump water heaters this year. Accordingly, the Commission is amending the ranges of comparability for these products to eliminate the high and low endpoints. As long as the amended ranges published here are in effect, manufacturers that introduce new heat pump water heater models in the future should look to the requirements in § 305.10(b) of the Rule for guidance in preparing their labels. Manufacturers of heat pump water heaters must base the disclosures of estimated annual operating cost required at the bottom of EnergyGuides for these products on the 2002 Representative Average Unit Costs of Energy for electricity (8.28 cents per kilowatt-hour) that were published by DOE on April 24, 2002 (67 FR 20104), and by the Commission on June 7, 2002 (67 FR 39269).

The ranges of comparability for room air conditioners, storage-type water heaters, gas-fired instantaneous water heaters, furnaces, boilers, and pool heaters have not changed significantly enough to warrant a change to the current ranges. Therefore, the current ranges for these products will remain in effect until further notice.

This means that manufacturers of storage-type water heaters, furnaces, and

<sup>2</sup> Reports for room air conditioners, heat pump water heaters, storage-type water heaters, gas-fired instantaneous water heaters, furnaces, boilers, and pool heaters are due May 1.

boilers must continue to use the ranges that were published on September 23, 1994 (59 FR 48796). These manufacturers must continue to base the disclosures of estimated annual operating cost required at the bottom of EnergyGuides for these products on the 1994 Representative Average Unit Costs of Energy for electricity (8.41 cents per kilo Watt-hour), natural gas (60.4 cents per therm), propane (98 cents per gallon), and/or heating oil (\$1.05 per gallon) that were published by DOE on December 29, 1993 (58 FR 68901), and by the Commission on February 8, 1994 (59 FR 5699).

Manufacturers of gas-fired instantaneous water heaters must continue to use the ranges of comparability that were published on December 20, 1999 (64 FR 71019). They must continue to base the disclosures of estimated annual operating cost required at the bottom of EnergyGuides for these products in the 1999 Representatives Average Unit Costs of Energy for natural gas (68.8 cents per therm) and propane (77 cents per gallon) that were published by DOE by January 5, 1999 (64 FR 487) and by the Commission on February 17, 1999 (64 FR 7783).

Manufacturers of pool heaters must continue to use the ranges that were published on August 21, 1995 (60 FR 43367). Manufacturers of room air conditioners must continue to use the corrected ranges for room air conditioners that were published on November 13, 1995 (60 FR 56945, at 46949). Manufacturers of room air conditioners must continue to base the disclosures of estimated annual operating cost required at the bottom of EnergyGuides for these products on the 1995 Representative Average Unit Costs of Energy for electricity (8.67 cents per kilo Watt-hour), natural gas (63 cents per therm), propane (98.5 cents per gallon), and/or heating oil (\$1.008 per gallon) that were published by DOE on January 5, 1995 (60 FR 1773), and by the Commission on February 17, 1995 (60 FR 9295).

For up-to-date tables showing current range and cost information for all covered appliances, see the Commission's Appliance Labeling Rule web page at <http://www.ftc.gov/appliances>.

## II. Administrative Procedure Act

The amendments published in this notice involve routine, technical and minor, or conforming changes to the Rule's labeling requirements. These technical amendments involve a change to the ranges for heat pump water heaters covered by the Rule.

Accordingly, the Commission finds for good cause that public comment and a 30-day effective date for these technical, procedural amendments are impractical and unnecessary (5 U.S.C. 553(b)(A)(B) and (d)).

## III. Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a Regulatory Flexibility Act analysis (5 USC 603–604) are not applicable to this proceeding because the amendments do not impose any new obligations on entities regulated by the Appliance Labeling Rule. These technical amendments involve a routine change to the ranges for heat pump water heaters covered by the Rule. Thus, the amendments will not have a “significant economic impact on a substantial number of small entities.” 5 U.S.C. 605. The Commission has concluded, therefore, that a regulatory flexibility analysis is not necessary, and certifies, under Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the amendments announced today will not have a significant economic impact on a substantial number of small entities.

## IV. Paperwork Reduction Act

In the 1988 NPR, the Commission stated that the Rule contains disclosure and reporting requirements that constitute “information collection requirements” as defined by 5 CFR 1320.7(c), the regulation that implements the Paperwork Reduction Act (“PRA”).<sup>3</sup> The Commission noted that the Rule had been reviewed and approved in 1984 by the Office of Management and Budget (“OMB”) and assigned OMB Control No. 3084–0068. OMB has extended its approval for its recordkeeping and reporting requirements until September 30, 2004. The amendments now being adopted do not change the substance or frequency of the recordkeeping, disclosure, or reporting requirements and, therefore, do not require further OMB clearance.

### List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Accordingly, 16 CFR part 305 is amended as follows:

### PART 305—[AMENDED]

1. The authority citation for part 305 continues to read as follows:

**Authority:** 42 U.S.C. 6294.

<sup>3</sup> 44 U.S.C. 3501–3520.

2. Appendix D5 to Part 305 is revised to read as follows:

### Appendix D5 To Part 305—Water Heaters—Heat Pump

#### RANGE INFORMATION

| Capacity           | Range of estimated annual energy consumption (kWh/Yr.) |      |
|--------------------|--------------------------------------------------------|------|
|                    | Low                                                    | High |
| First hour rating  |                                                        |      |
| Less than 21 ..... | (*)                                                    | (*)  |
| 21 to 24 .....     | (*)                                                    | (*)  |
| 25 to 29 .....     | (*)                                                    | (*)  |
| 30 to 34 .....     | (*)                                                    | (*)  |
| 35 to 40 .....     | (*)                                                    | (*)  |
| 41 to 47 .....     | (*)                                                    | (*)  |
| 48 to 55 .....     | (*)                                                    | (*)  |
| 56 to 64 .....     | (*)                                                    | (*)  |
| 65 to 74 .....     | (*)                                                    | (*)  |
| 75 to 86 .....     | (*)                                                    | (*)  |
| 87 to 99 .....     | (*)                                                    | (*)  |
| 100 to 114 .....   | (*)                                                    | (*)  |
| 115 to 131 .....   | (*)                                                    | (*)  |
| Over 131 .....     | (*)                                                    | (*)  |

\* No data submitted.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 02–15842 Filed 6–21–02; 8:45 am]

BILLING CODE 6750–01–M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### 21 CFR Part 1308

[DEA–230I]

### Schedules of Controlled Substances: Excluded Veterinary Anabolic Steroid Implant Products

**AGENCY:** Drug Enforcement Administration (DEA), Department of Justice.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** The Drug Enforcement Administration (DEA) is designating three veterinary anabolic steroid implant products as being excluded from the Controlled Substances Act. This action is part of the ongoing implementation of the Anabolic Steroid Control Act.

**DATES:** Effective: June 24, 2002. Comments must be submitted on or before August 23, 2002.

**ADDRESSES:** Comments must be submitted to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537.

Attention: DEA Federal Register Representative/CCR  
**FOR FURTHER INFORMATION CONTACT:** Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307-7183.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Anabolic Steroids Control Act (ASCA) of 1990 (Title XIX of Pub. L. 101-647) placed anabolic steroids into Schedule III of the Controlled Substances Act (CSA) (21 U.S.C. 801 *et seq.*). Section 1902(b)(41)(B)(i) of the ASCA provides for the exclusion of any anabolic steroid which the Secretary of Health and Human Services has

approved for administration through implants to cattle or other nonhuman species. The procedure for implementing this section of the ASCA is described in § 1308.25 of Title 21 Code of Federal Regulations. The purpose of this rule is to identify three products which the Deputy Assistant Administrator, Office of Diversion Control, finds meet the excluded veterinary anabolic steroid implant product criteria.

**What Anabolic Steroid Veterinary Implant Products Are Being Added to the List of Products Excluded From Application of the CSA?**

The Deputy Assistant Administrator, having reviewed the applications which were made in conformance with 21

U.S.C. 802(41)(B)(i) and 21 CFR 1308.25, finds that the anabolic steroid products, Revalor®-IS, Revalor®-IH and Revalor®-200, are expressly intended for administration through implants to cattle and have been approved by the Secretary of Health and Human Services for such use. Therefore, pursuant to the authority vested in the Attorney General by Title XIX of Pub. L. 101-647 as delegated to the Administrator of DEA pursuant to 21 U.S.C. 871(a) and 28 CFR 0.100, the Deputy Assistant Administrator hereby orders that the following anabolic steroid veterinary implant products be added to the list of products excluded from application of the CSA and referenced in 21 CFR 1308.26(a).

**EXCLUDED VETERINARY ANABOLIC STEROID IMPLANT PRODUCTS**

| Trade name        | Company                       | NDC code     | Delivery system                                        | Ingredients                                        | Quantity                      |
|-------------------|-------------------------------|--------------|--------------------------------------------------------|----------------------------------------------------|-------------------------------|
| Revalor-IS .....  | Intervet Inc., Millsboro, DE. | 57926-022-01 | 10 implant cartridge .....<br>4 pellets/implant .....  | Trenbolone Acetate .....<br>Estradiol-17beta ..... | 20 mg/Pellet.<br>4 mg/Pellet. |
| Revalor-IH .....  | Intervet Inc., Millsboro, DE. | 57926-025-01 | 10 implant cartridge .....<br>4 pellets/implant .....  | Trenbolone Acetate .....<br>Estradiol-17beta ..... | 20 mg/Pellet.<br>2 mg/Pellet. |
| Revalor-200 ..... | Intervet Inc., Millsboro, DE. | 57926-024-01 | 10 implant cartridge .....<br>10 pellets/implant ..... | Trenbolone Acetate .....<br>Estradiol-17beta ..... | 20 mg/Pellet.<br>2 mg/Pellet. |

The exemption of these products relates to their production, distribution, and use in animals only. If any person distributes, dispenses or otherwise diverts these products to use in humans, he/she shall be deemed to have distributed a Schedule III controlled substance and may be prosecuted for CSA violations.

Section 102(41)(b) of the CSA (21 U.S.C. 802(41)(B)(i)) states that the term “anabolic steroid” “does not include an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the Secretary of Health and Human Services for such administration.” Title 21 CFR 1308.25(a) permits any person to apply for an exemption from any schedule of the CSA for any product meeting the above criteria. Therefore, in compliance with 21 CFR 1308.25, and having been presented with the proper documentation, DEA is issuing this order that the three identified products are excluded from the definition of anabolic steroid pursuant to 21 U.S.C. 802(41)(B)(i).

Interested persons are invited to submit their comments in writing with regard to this interim rule. If any comments or objections raise significant issues regarding any finding of fact or conclusion of law upon which this order is based, the Deputy Assistant

Administrator shall immediately suspend the effectiveness of this order until she may reconsider the application in light of the comments and objections filed. Thereafter, the Deputy Assistant Administrator shall reinstate, revoke, or amend her original order as she determines appropriate.

**Regulatory Certifications**

*Regulatory Flexibility Act*

The granting of excluded status relieves persons who handle the excluded products in the course of legitimate business from the registration, record keeping, security, and other requirements imposed by the CSA. Accordingly, the Deputy Assistant Administrator certifies that this action will not have a significant economic impact upon a substantial number of small entities whose interests must be considered under the Regulatory Flexibility Act (5 U.S.C. 605(b)).

*Executive Order 12866*

It has been determined that drug control matters are not subject to review by the Office of Management and Budget (OMB) pursuant to the provisions of Executive Order 12866. Accordingly, this action is not subject to those provisions of Executive Order 12778 which are contingent upon review by OMB. Nevertheless, the Deputy Assistant Administrator has

determined that this is not a “major rule,” as that term is used in Executive Order 12866, and that it would otherwise meet the applicable standards of Sections 2(a) and 2(b)(2) of Executive Order 12778.

*Executive Order 12988*

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

*Executive Order 13132*

This interim rule does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own law. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

*Unfunded Mandates Reform Act of 1995*

This interim rule will not result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

*Small Business Regulatory Enforcement Fairness Act of 1996*

This interim rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Dated: June 14, 2002.

**Laura M. Nagel,**

*Deputy Assistant Administrator, Office of Diversion Control.*

[FR Doc. 02-15860 Filed 6-21-02; 8:45 am]

BILLING CODE 4410-09-M

**DEPARTMENT OF TRANSPORTATION****Coast Guard****33 CFR Part 100**

[CGD08-02-011]

RIN 2115-AE46

**Special Local Regulations; SAIL MOBILE 2002, Port of Mobile, Mobile, AL**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing special local regulations in the Port of Mobile for SAIL MOBILE 2002 in Mobile, Alabama. This action is necessary to provide for the safety of life and property on the navigable waters of the United States during SAIL MOBILE 2002 activities. These regulations establish special anchorages and regulate vessel traffic in Mobile Bay and the Mobile River from July 3, 2002 to July 8, 2002.

**DATES:** This rule is effective from 6 a.m. on July 3, 2002 to 5 p.m. on July 8, 2002.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket, are part of docket [CGD08-02-011] and are available for inspection or at copying Marine Safety Office Mobile, 150 North Royal Street, P.O. Box 2924, Mobile, AL 36652-2924, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant (LT) Jeff Morgan or Lieutenant Junior Grade (LTJG) Mark Sawyer, Marine Safety Office Mobile,

Operations Department, at (251) 441-5121.

**SUPPLEMENTARY INFORMATION:****Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and, under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Information was made available to the Coast Guard in insufficient time to publish an NPRM or for publication in the **Federal Register** 30 days prior to the event. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to protect participating vessels and mariners as well as the public from the hazards associated with this event.

**Background and Purpose**

The City of Mobile, Alabama is sponsoring a Parade of Tall Ships, titled SAIL MOBILE 2002, in Mobile Bay and Mobile River as part of the city's tri-centennial celebration. Events are scheduled from July 3, 2002 through July 8, 2002. Participating vessels, including tall ships, will be at anchorage in Mobile Bay on July 3, 2002. On July 4, 2002, the participating vessels will transit from anchorage up the Mobile Bay Ship Channel to the Mobile River where they will make a 180 degree turn just south of the Cochran Bridge and proceed to their designated berth or anchorage. Participating vessels are scheduled to remain in Mobile until July 8, 2002. The Coast Guard expects a minimum of 2,000 spectator craft for this event.

The Coast Guard is establishing a temporary regulated area to provide for the safety of spectators and participants of SAIL MOBILE 2002. This regulated area is intended to protect participating vessels and spectators by restricting vessel traffic around participating vessels, establishing spectator viewing areas, and establishing temporary anchorages for participating vessels. All vessels, other than officially registered participants of SAIL MOBILE 2002 are prohibited from using the participant anchorage areas as described in this rule.

The regulated area includes all waters of Mobile Bay from the mouth of the bay between Fort Morgan and Dauphin Island to the Mobile River south of the Cochran Bridge near mile 3 of the Mobile River. Within this regulated area there will be two participant anchorages

for participating vessels only. Only vessels officially registered in the Parade of Tall Ships will be permitted to anchor in these areas.

*Participant Anchorage 1* will be in effect from 6 a.m. on July 3, 2002 to 11 p.m. on July 4, 2002, and will include that portion of the Mobile Bay within the following boundaries: 30°14'48" N, 88°02'14" W to 30°14'47" N, 88°00'53" W to 30°14'12" N, 88°00'55" W to 30°13'47" N, 88°01'52" W to 30°14'48" N, 88°02'14" W [NAD 83].

*Participant Anchorage 2* will be in effect from 11 a.m. on July 4, 2002 to 5 p.m. on July 8, 2002, and will include all the waters of the Mobile River within the following boundaries: 30°41'36" N, 88°02'04" W to 30°41'04" N, 88°02'06" W to 30°41'31" N, 88°02'05" W to 30°41'32" N, 88°02'02" W to 30°41'36" N, 88°02'04" W [NAD 83].

While participating vessels are underway within the regulated area, other vessels may not approach within 100 yards of the participating vessel without the express permission of the Coast Guard Patrol Commander. While participating vessels are at anchor or moored, other vessels may not approach within 50 feet of the participating vessel without the express permission of the Coast Guard Patrol Commander. The Coast Guard Patrol Commander will be the Captain of the Port, Mobile or a designated commissioned, warrant or petty officer of the U.S. Coast Guard.

Event organizers plan to establish spectator viewing areas for vessels along the parade route in the Mobile River. Spectator areas will be located outside of the Mobile Shipping Channel in the Mobile River south of the Cochran Bridge. Markers along the channel south of the Cochran Bridge will outline these spectator areas. More precise information regarding these spectator areas will be published via local notices and general media as soon as the information is available. Spectator vessels are not allowed outside these specially marked areas 30 minutes immediately prior to and during the passing of the Parade of Tall Ships without the express permission of the Coast Guard Patrol Commander. The parade is scheduled from 11 a.m. to 5 p.m. on July 4, 2002.

These special local regulations are necessary to ensure the safety of life and property on the navigable waters of the United States. It may be necessary for the Coast Guard to establish additional safety or security zones in addition to these rules to safeguard dignitaries and certain vessels participating in the event. If the Coast Guard deems it necessary to establish such zones at a later date, the details of those zones may

be announced separately via the **Federal Register**, Local Notice to Mariners, Marine Safety Broadcast, or any other means available.

### Regulatory Evaluation

This rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not “significant” under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This rule will only be in effect for a short period of time, and notifications to the marine community will be made through broadcast notice to mariners. The impacts on routine navigation are expected to be minimal. Although the regulated area will apply to the entire Mobile Bay and part of the Mobile River, normal traffic will primarily be affected only on July 4, 2002. Vessels needing to transit within 100 yards of an underway participating vessel or 50 feet of an anchored or moored participating vessel may seek to gain permission from the Coast Guard Patrol Commander or his designated on-scene representative.

### Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities for the reasons enumerated under the Regulatory Evaluation section above. If you are a small business entity and are significantly affected by this regulation please contact LT Jeff Morgan or LTJG Mark Sawyer, Marine Safety Office Mobile, Operations Department, at (251) 441–5121.

### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement

Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

### Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

### Unfunded Mandates Reform Act

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

### Taking of Private Property

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

### Civil Justice Reform

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

### Protection of Children

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

### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it 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.

### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that Order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraphs 34(h) and 34(f) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A “Categorical Exclusion Determination” is available in the docket for inspection or copying where indicated under **ADDRESSES**.

### List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

### PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

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

2. A new temporary § 100.35T-08-011 is added to read as follows:

**§ 100.35T-08-011 Special Local Regulations; SAIL MOBILE 2002 Mobile Bay, Mobile, Alabama.**

(a) *Definitions.*

Coast Guard Patrol Commander is the Captain of the Port Mobile or a designated commissioned, warrant, or petty officer of the U.S. Coast Guard.

*Non-Participating vessels* are all other vessels not registered as participants for the Parade of Tall Ships on July 4, 2002.

*Participating vessels* are vessels registered to participate in the official Parade of Tall Ships on July 4, 2002.

(b) *Regulated areas.* The following are regulated areas:

(1) *Event area.* All waters of Mobile Bay from the mouth of the bay between Fort Morgan and Dauphin Island to the Mobile River south of the Cochran Bridge near mile 3 of the Mobile River.

(2) *Participant anchorage areas.*

(i) *Participant Anchorage 1* includes that portion of the Event Area in Mobile Bay bounded by a line connecting the following points: Starting at 30°14'48" N, 88°02'14" W; thence to 30°14'47" N, 88°00'53" W; thence to 30°14'12" N, 88°00'55" W; thence to 30°13'47" N, 88°01'52" W; thence to 30°14'48" N, 88°02'14" W [NAD 1983].

(ii) *Participant Anchorage 2* includes all the waters of the Event Area in the Mobile River bounded by a line connecting the following points: Starting at 30°41'36" N, 88°02'04" W; thence to 30°41'04" N, 88°02'06" W; thence to 30°41'31" N, 88°02'05" W; thence to 30°41'32" N, 88°02'02" W; thence to 30°41'36" N, 88°02'04" W [NAD 1983].

(3) *Spectator areas.* Spectator areas for viewing the parade will be outlined by markers outside of, and along the channel of, the Mobile River south of the Cochran Bridge.

(c) *Regulations.* (1) Non-participating vessels are not allowed to approach within 100 yards of any participating vessel that is underway within the regulated areas in paragraph (b) of this section without express authorization by the Coast Guard Patrol Commander.

(2) Non-participating vessels are not allowed to approach within 50 feet of any participating vessel that is moored or anchored within the Event Area without express authorization by the Coast Guard Patrol Commander.

(3) Only participating vessels are permitted to anchor in the participant anchorages.

(4) All persons and vessels shall comply with the instructions of the Coast Guard Patrol Commander.

(5) All non-participating vessels in the Event Area must remain in the marked

spectator areas from 30 minutes immediately prior to and during the Parade of Tall Ships unless expressly authorized by the Coast Guard Patrol commander.

(d) *Enforcement schedule.* (1) The Parade of Tall Ships is scheduled to begin at 11 a.m. and end at 5 p.m. on July 4, 2002.

(2) *Participant Anchorage 1* will be enforced from 6 a.m. on July 3, 2002 to 11 p.m. on July 4, 2002.

(3) *Participant Anchorage 2* will be enforced from 11 a.m. on July 4, 2002 to 5 p.m. on July 8, 2002.

(e) *Effective dates.* (1) This section is effective from 6 a.m. on July 3, 2002, to 5 p.m. on July 8, 2002.

Dated: June 7, 2002.

**Roy J. Casto,**

*Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.*

[FR Doc. 02-15796 Filed 6-21-02; 8:45 am]

BILLING CODE 4910-15-U

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 165

[COTP TAMPA-02-053]

RIN 2115-AA97

#### Security Zones; Tampa Bay and Crystal River, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

**SUMMARY:** The Coast Guard is establishing temporary security zones in Tampa Bay, Tampa, Florida, and Crystal River, Florida. These zones, which are based on temporary security zones for vessels, waterfront facilities and bridges that will soon expire, are needed to ensure public safety and security in the Tampa Bay area. Entry into these zones will be prohibited unless authorized by the Captain of the Port, or his designated representative.

**DATES:** This rule is effective from 6:01 p.m. on June 15, 2002 until 11:59 p.m. October 31, 2002.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of [COTP Tampa 02-053] and are available for inspection or copying at Marine Safety Office Tampa, 155 Columbia Drive, Tampa, Florida 33606-3598 between 8 a.m. and 3 p.m. Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LCDR David McClellan, Coast Guard

Marine Safety Office Tampa, at (813) 228-2189 extension 102.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Publishing a NPRM, which would incorporate a comment period before a final rule could be issued, and delaying the rule's effective date would be contrary to the public interest since immediate action is needed to protect the public, ports and waterways of the United States.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard will issue a broadcast notice to mariners to advise mariners of the restriction. The Coast Guard will publish a NPRM proposing to make these temporary security zones permanent and requesting public comment.

##### Background and Purpose

The terrorist attacks of September 2001 killed thousands of people and heightened the need for development of various security measures throughout the seaports of the United States, particularly those vessels and facilities which are frequented by foreign nationals and maintain an interest to national security. Following these attacks by well-trained and clandestine terrorists, national security and intelligence officials have warned that future terrorists attacks are likely. The Captain of the Port of Tampa has determined that these security zones are necessary to protect the public, ports, and waterways of the United States from potential subversive acts.

These zones are based on temporary security zones for vessels, waterfront facilities and bridges that will soon expire. The following five, existing temporary final rules were published in the **Federal Register**:

*Security Zone for Crystal River, FL* (66 FR 62940, December 4, 2001). This rule created a temporary fixed security zone around the Florida Power Crystal River nuclear power plant located at the end of the Florida Power Corporation Channel, Crystal River, Florida.

*Security Zone Sunshine Skyway Bridge, Tampa, FL* (66 FR 65838, December 21, 2001). This rule created temporary fixed security zones 100 feet around all bridge supports and rocky outcroppings at the base of the supports

for the Sunshine Skyway Bridge in Tampa Bay.

*Security Zone Tampa, FL* (67 FR 8186, February 22, 2002). This rule created temporary security zones 100 yards around moored vessels carrying or transferring Liquefied Petroleum Gas (LPG), Anhydrous Ammonia (NH<sub>3</sub>) and/or grade "A" and "B" flammable liquid cargo. Additionally, any vessel transiting within 200 yards of moored vessels carrying or transferring Liquefied Petroleum Gas (LPG), Anhydrous Ammonia (NH<sub>3</sub>) and/or grade "A" and "B" cargo must proceed through the area at the minimum speed necessary to maintain safe navigation.

*Security Zone Cruise Ships Tampa, FL* (67 FR 10618, March 8, 2002). This rule created temporary security zones 100 yards around cruise ships moored in the Port of Tampa. Additionally, any vessel transiting within 200 yards of a moored cruise ship must proceed through the area at the minimum speed necessary to maintain safe navigation.

*Security Zone St. Petersburg Harbor, FL* (67 FR 36098, May 23, 2002). This rule established temporary fixed security zones around all Coast Guard and waterfront facilities and moorings in St. Petersburg Harbor, FL.

On December 4, 2001, the Captain of the Port issued a temporary rule titled "Security Zone Moving Cruise Ships, Tampa, FL" that has not yet been published in **Federal Register**. On April 16, 2002, the Captain of the Port issued a temporary rule titled "Security Zone facilities, Tampa, FL" that has not yet been published in **Federal Register**. [This April 2002 rule was subsequently published on June 14, 2002 (67 FR 40861).

This temporary final rule published today combines many security zones in the Tampa Bay area into one rule. These zones will be located in the following areas:

(1) Fifty-yard security zones around all piers and waterfront facilities in Port Sutton, East Bay, Hooker's Point, Sparkman Channel, Ybor Channel and portions of Garrison Channel;

(2) Two hundred-yard minimal speed zone and a one hundred-yard security zone around moored vessels carrying or transferring Liquefied Petroleum Gas (LPG), Anhydrous Ammonia (NH<sub>3</sub>) and/or grade "A" and "B" flammable liquid cargo, and moored cruise ships;

(3) One hundred-yard security zones around all cruise ships east of the Tampa Bay "T" sea buoy entering or departing Tampa Bay. Additionally, any vessel transiting within 200 yards of a moving cruise ship must proceed through the area at the minimum speed necessary to maintain safe navigation,

(4) One hundred-foot security zones around Coast Guard waterfront facilities and moorings in Saint Petersburg (Bayboro) Harbor;

(5) All waters of the Florida Power Corporation Channel and Demory Gap Channel around the Florida Power Crystal River nuclear power plant; and

(6) One hundred-foot security zones around all bridge supports and rocky outcroppings at the base of the supports for the Sunshine Skyway Bridge to October 31, 2002, to ensure public safety and security in the Tampa Bay area.

The Coast Guard will, during the effective period of this temporary final rule, complete notice and comment rulemaking for permanent regulations.

### Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

We expect the economic impact of this rule to be minimal and that a full Regulatory Evaluation under paragraph 10e of the regulation policies and procedures of DOT is unnecessary. This temporary rule may have some impact on the public, but these potential impacts will be minimized for the following reasons: there is ample room for vessels to navigate around security zones, and there are several locations for recreational and commercial fishing vessels to fish throughout the Tampa Bay Region, and the Captain of the Port may, on a case-by-case basis allow persons or vessels to enter a security zone.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic effect upon a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because the majority of the zones are limited in size, leaving ample room for

vessels to navigate around the zones. The zones will not significantly impact commuter and passenger vessel traffic patterns, and mariners will be notified of the zones via local notice to mariners and marine broadcasts. Also, the Captain of the Port may allow entrance into a zone on a case-by-case basis.

### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

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

### Collection of Information

This rule modifies existing collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

### Unfunded Mandates Reform Act

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

effects of this rule elsewhere in this preamble.

### Taking of Private Property

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

### Civil Justice Reform

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

### Environmental

The Coast Guard considered the environmental impact of this rule and concluded under Figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A “Categorical Exclusion Determination” is available in the docket for inspection or copying where indicated under **ADDRESSES**.

### Protection of Children

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

### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationships between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a “tribal implication” under the Order.

### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or use. We have determined that it is not a “significant energy action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of

the Office of Information and regulatory Affairs as a significant energy action. Therefore, it does not require a statement of Energy Effects under Executive Order 13211.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165, as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. A new temporary § 165.T07–053 is added to read as follows:

#### § 165.T07–053 Security Zones: Tampa Bay, Tampa, Florida, Crystal River, Florida.

(a) The following areas are security zones:

(1) *Florida Power Crystal River Power Plant*—The security zone for the Florida Power Corporation Channel encompasses the waters within the following points: 28°56.87'N, 082°45.17'W (Northwest corner), 28°57.37'N, 082°41.92'W (Northeast corner), 28°56.81'N, 082°45.17'W (Southwest corner), and 28°57.32'N, 082°41.92'N (Southeast corner). The security zone for the Demory Gap Channel encompasses the waters within the following points: 28°57.61'N, 082°43.42'W (Northwest corner), 28°57.53'N, 082°41.88'W (Northeast corner), 28°57.60'N, 082°43.42'W (Southwest corner), 28°57.51'N, 082°41.88'W (Southeast corner).

(2) *Port of Tampa, Hazardous Cargo Vessels*—Temporary security zones are established 100 yards around moored vessels carrying or transferring Liquefied Petroleum Gas (LPG), Anhydrous Ammonia (NH<sub>3</sub>) and/or grade “A” and “B” flammable liquid cargoes in the Port of Tampa, Florida. Additionally a 200-yard minimal speed zone is created around these vessels.

(3) *Port of Tampa, Cruise Ships*—Temporary security zones are established 100 yards around moored cruise ships in Tampa, Florida. Additionally a 200-yard minimal speed zone is created around these cruise ships.

(4) *Moving Cruise Ships, Tampa Bay*—One hundred-yard security zones around all cruise ships east of the Tampa Bay “T” sea buoy entering or

departing Tampa Bay. Additionally, any vessel transiting within 200 yards of a moving cruise ship must proceed through the area at the minimum speed necessary to maintain safe navigation.

(5) *St. Petersburg Harbor Seawall and Moorings*—The Coast Guard is establishing temporary fixed security zones in all waters north of the marked channel in St. Petersburg Harbor, St. Petersburg, Florida. These security zones will encompass all waters on the north side of channel serving St. Petersburg Harbor, commencing at dayboard “10” in approximate position 27°45.58'N, 082°37.52'W, and westward along the seawall 100 feet from the seawall and around all moorings and vessels to the end of the storage facility in approximate position 27°45.68'N, 082°37.80'W.

(6) *St. Petersburg Harbor South Moorings*—A security zone is established for the Coast Guard south moorings in St. Petersburg Harbor. The zone will extend 100 feet around the piers commencing from approximate position 27°45.52'N, 082°37.96'W to 27°45.52'N, 082°37.60'W. All positions noted are fixed using the North American Datum of 1983 (World Geodetic System 1984). The southern boundary of the zone is shoreward of a line between Green Daybeacon 11(LLN 2500) westerly to the entrance to Salt Creek.

(7) *Pendola Point to East Bay*—Temporary security zones are established 50 yards from shoreline or seawall and encompassing all piers around facilities commencing at: 27°54.16'N 082°26.11'W, east northeast to 27°54.19'N 082°26.00'W, then northeast to 27°54.37'N 082°25.72'W closing off all of Port Sutton Channel to commercial and recreational fisherman, then northerly to 27°54.48'N 082°25.72'W, then northeasterly and terminating at point 27°55.27'N 082°25.17'W.

(8) *Eastern Side of Hookers Point*—Temporary security zones are established 50 yards from shoreline or seawall and encompassing all piers around facilities commencing at: 27°56.05'N 082°25.95'W southwesterly to 27°56.00'N 082°26.08'W then southerly 27°55.83'N 082°26.07'W then southeasterly to 27°55.66'N 082°25.73'W the south to 27°54.75'N 082°25.74'W then southwesterly and terminating at point 27°54.57'N 082°25.86'W.

(9) *Southwestern Hookers Point to Ybor Channel*—Temporary security zones are established 50 yards from shoreline or seawall and encompassing all piers around facilities commencing at: 27°54.74'N 082°26.47'W, northwest

to 27°55.25'N 082°26.73'W, then north-northwest to 27°55.60'N 082°26.80'W, then north-northeast to 27°56.00'N 082°26.74'W, then northeast to 27°56.56'N 082°26.55'W, and north to 27°56.84'N 082°26.55'W, west to 27°56.84'N 082°26.66'W, then southerly to 27°56.65'N 082°26.66'W, southwesterly to 27°56.7'N 082°26.7'W then southwesterly and terminating at 27°56.53'N 082°26.96'W.

(10) *Sunshine Skyway Bridge*—The Coast Guard is establishing temporary fixed security zones in all waters extending 100 feet around all bridge supports and rocky outcroppings at the base of the supports for the Sunshine Skyway Bridge in Tampa Bay, located at approximate position 27°37'12" N Latitude, 82°39'20" W Longitude.

b. *Regulations.* In accordance with the general regulations in § 165.33 of this part, entry into these zones is prohibited except as authorized by the Captain of the Port, or his designated representative. The Captain of the Port will notify the public of these restrictions via Marine Safety Broadcast on VHF-FM Channel 16 and 13 (157.1 MHz).

c. *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

d. *Dates.* This section is effective from 6:01 p.m. on June 15, 2002 until 11:59 p.m. October 31, 2002.

Dated: June 7, 2002.

A.L. Thompson, Jr.,

*Captain, U.S. Coast Guard, Captain of the Port, Tampa, Florida.*

[FR Doc. 02-15792 Filed 6-21-02; 8:45 am]

BILLING CODE 4910-15-P

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 165

[COTP San Francisco Bay 01-012]

RIN 2115-AA97

#### Security Zones; San Francisco Bay, San Francisco, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; change in effective period.

**SUMMARY:** The Coast Guard is revising the effective period of moving and fixed security zones extending 100 yards around all cruise ships and tank vessels that enter, are moored in, or depart from the San Francisco Bay and Delta ports, California. These security zones are needed for national security reasons to protect the public and ports from

potential subversive acts. Entry into these security zones is prohibited, unless specifically authorized by the Captain of the Port San Francisco Bay, or his designated representative.

**DATES:** The amendment to § 165.T11-098(c) in this rule is effective June 20, 2002. Section 165.T11-098, added at 67 FR 7613, February 20, 2002, effective from 11:59 p.m. PST on December 21, 2001, to 11:59 p.m. PDT on June 21, 2002, as amended in this rule, is extended in effect to 11:59 p.m. PST on December 21, 2002.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket COTP San Francisco Bay 01-012 and are available for inspection or copying at Coast Guard Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California 94501, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Ross Sargent, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437-3073.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

On February 20, 2002, we published a temporary final rule (TFR) for cruise ships and tank vessels in San Francisco Bay and Delta ports entitled "Security Zones; San Francisco Bay, San Francisco, CA" in the **Federal Register** (67 FR 7611) under § 165.T11-098. It has been in effect since December 21, 2001 and is set to expire 11:59 p.m. PDT on June 21, 2002.

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b), the Coast Guard finds that good cause exists for not publishing an NPRM. Due to the terrorist attacks on September 11, 2001, and the warnings given by national security and intelligence officials, there is an increased risk that further subversive or terrorist activity may be launched against the United States. A heightened level of security has been established around all cruise ships and tank vessels in San Francisco Bay and Delta ports. These security zones are needed to protect the United States and more specifically the people, waterways, and properties near the ports.

The original temporary final rule was urgently required to prevent possible terrorist strikes against the United States and more specifically the people, waterways, and properties in and near the San Francisco and Delta ports. It was anticipated that we would assess the security environment at the end of

the effective period to determine whether continuing security precautions were required and, if so, propose regulations responsive to existing conditions. We have determined the need for continued security regulations exists.

The Coast Guard will utilize the extended effective period created by this TFR to engage in notice and comment rulemaking to develop permanent regulations tailored to the present and foreseeable security environment with the Captain of the Port (COTP) San Francisco Bay. Therefore, the public will still have the opportunity to comment on this rule. The measures contemplated by the rule were intended to facilitate ongoing response efforts and prevent future terrorist attack. In this case, issuing a NPRM would delay the effective date of this rule; such a delay would be contrary to the public interest insofar as it may render individuals and facilities within and adjacent to cruise ships and tank vessels vulnerable to subversive activity, sabotage or terrorist attack. The measures contemplated by this rule are intended to prevent future terrorist attacks against individuals and facilities within or adjacent to cruise ships and tank vessels. Immediate action is required to accomplish these objectives and necessary to continue safeguarding these vessels and the surrounding area. Any delay in the effective date of this rule is impractical and contrary to the public interest.

The Coast Guard will be publishing a NPRM to establish permanent security zones that are temporarily effective under this rule. This revision preserves the status quo within the Ports while permanent regulations are developed.

For the reasons stated in the paragraphs above under 5 U.S.C. 553(d)(3), the Coast Guard also finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

#### Background and Purpose

Based on the September 11, 2001, terrorist hijackings and attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia, there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to the San Francisco Bay and Delta ports, against cruise ships and tank vessels entering, departing, or moored within the San Francisco Bay and Delta ports. The terrorist acts against the United States on September 11, 2001, have increased the need for safety and security measures on U.S. ports and waterways.

In response to these terrorist acts, and in order to prevent similar occurrences,

the Coast Guard has established a security zone around cruise ships and tank vessels to protect persons, transiting vessels, adjacent waterfront facilities, and the adjacent land of the San Francisco Bay and Delta ports. These security zones are necessary to prevent damage or injury to any vessel or waterfront facility, and to safeguard ports, harbors, or waters of the United States near the San Francisco and Delta ports.

As of today, the need for security zones around cruise ships and tank vessels still exist. This temporary final rule will extend these zones that were set to expire June 21, 2002, for 6 months—from June 21, 2002, to December 21, 2002. This will allow the Coast Guard time to publish a notice of proposed rulemaking (NPRM) in the **Federal Register**, which will include a public comment period, and for a final rule to be put into effect without there being an interruption in the protection provided by cruise ship and tank vessel security zones.

#### Discussion of Rule

This regulation extends the current security zone that prohibits all vessels and people from approaching cruise ships and tank vessels that are underway or moored in the San Francisco Bay and Delta ports. Specifically, no vessel or person may close to within 100 yards of a cruise ship or tank vessel that is entering, moored, or departing the San Francisco Bay and Delta ports.

A security zone is automatically activated when a cruise ship or tank vessel passes a line drawn between San Francisco Main Ship Channel buoys 7 and 8 (LLNR 4190 & 4195, positions 37°46.9' N, 122°35.4' W & 37°46.5' N, 122°35.2' W, respectively) while entering port and remains in effect while the vessel is moored within in the San Francisco Bay and Delta ports. When activated, this security zone will encompass a portion of the waterway described as a 100 yard radius around a cruise ship or tank vessel in the San Francisco Bay and Delta ports. This security zone is automatically deactivated when the cruise ship or tank vessel passes a line drawn between San Francisco Main Ship Channel buoys 7 and 8 (LLNR 4190 & 4195, positions 37°46.9' N, 122°35.4' W & 37°46.5' N, 122°35.2' W, respectively) on its departure from port. Vessels and people may be allowed to enter an established security zone on a case-by-case basis with authorization from the Captain of the Port.

As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L.

99–399), Congress amended the Ports and Waterways Safety Act (PWSA) to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. This authority, under section 7 of the PWSA (33 U.S.C. 1226), supplements the Coast Guard's authority to issue security zones under The Magnuson Act regulations promulgated by the President under 50 U.S.C. 191, including Subparts 6.01 and 6.04 of Part 6 of Title 33 of the Code of Federal Regulations.

Vessels or persons violating this section will be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192. Pursuant to 33 U.S.C. 1232, any violation of the security zone described herein, is punishable by civil penalties (not to exceed \$27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment up to 6 years and a maximum fine of \$250,000), and in rem liability against the offending vessel. Any person who violates this section, using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years. Vessels or persons violating this section are also subject to the penalties set forth in 50 U.S.C. 192: seizure and forfeiture of the vessel to the United States, a maximum criminal fine of \$10,000, and imprisonment up to 10 years.

The Captain of the Port will enforce these zones and may enlist the aid and cooperation of any Federal, State, county, municipal, and private agency to assist in the enforcement of the regulation. This regulation is proposed under the authority of 33 U.S.C. 1226 in addition to the authority contained in 50 U.S.C. 191 and 33 U.S.C. 1231.

#### Regulatory Evaluation

This rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not “significant” under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The size of the zones are the minimum necessary to provide adequate protection for cruise ships and tank vessels, their crews, other vessels and crews operating in the vicinity of cruise

ships and tank vessels, adjoining areas and the public. These zones will encompass a small portion of the waterway for a limited duration. Also, vessels and people may be allowed to enter the zones on a case-by-case basis with authorization from the Captain of the Port. Any hardships experienced by persons or vessels are considered minimal compared to the national interest in protecting cruise ships and tank vessels, their crews and the public.

#### Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The security zones will not have a significant economic impact on a substantial number of small entities for several reasons: Small vessel traffic can pass safely around the area and vessels engaged in recreational activities, sightseeing and commercial fishing have ample space outside of the security zones to engage in these activities. When a cruise ship or tank vessel is at anchor, vessel traffic will have ample room to maneuver around the security zones. Small entities and the maritime public will be advised of these security zones via public notice to mariners.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business

Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

### Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

### Unfunded Mandates Reform Act

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

### Taking of Private Property

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

### Civil Justice Reform

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

### Protection of Children

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

### Indian Tribal Governments

This rule does not have tribal implications under Executive Order

13175, Consultation and Coordination with Indian Tribal Governments, because it 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.

### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Environment

We have considered the environmental impact of this rule and concluded that under figure 2-1, paragraph (34)(g), of Commandant Instruction M16475.ID, this rule is categorically excluded from further environmental documentation because we are establishing a security zone. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under ADDRESSES.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05-1(g), 6.04-1, 6.04-6, 160.5; 49 CFR 1.46.

2. Revise § 165.T11-098 to read as follows:

#### § 165.T11-098 Security Zones; San Francisco Bay and Delta ports

\* \* \* \* \*

(c) *Effective period.* This section is effective at 11:59 p.m. PDT on December

21, 2001, and will terminate at 11:59 p.m. PST on December 21, 2002.

\* \* \* \* \*

Dated: June 12, 2002.

**L.L. Hereth,**

*Captain, U.S. Coast Guard, Captain of the Port, San Francisco Bay, California.*

[FR Doc. 02-15966 Filed 6-20-02; 2:17 pm]

BILLING CODE 4910-15-P

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 175

[USCG-2000-8589]

RIN 2115-AG04

### Wearing of Personal Flotation Devices (PFDs) by Certain Children Aboard Recreational Vessels

**AGENCY:** Coast Guard, DOT.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Coast Guard is requiring that most children under age 13 aboard recreational vessels wear personal flotation devices (PFDs), or lifejackets. During 1995-1998, 105 children under 13 died in the water, 66 of them by drowning. This Rule should reduce the number of children who drown because they are not wearing lifejackets.

**DATES:** This Interim Rule is effective December 23, 2002. Comments and related material must reach the Docket Management Facility on or before August 23, 2002.

**ADDRESSES:** To make sure they do not enter the docket [USCG-2000-8589] more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL-401, 400 Seventh Street SW., Washington, DC 20590-0001.

(2) By hand-delivery to room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

(3) By fax to the Docket Management Facility at 202-493-2251.

(4) Electronically through the Internet Site for the Docket Management System at <http://dms.dot.gov>.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble

as being available in the docket, will become part of this docket and be available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL-401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this Interim Rule, call Carl Perry, Coast Guard, telephone: 202-267-0979. If you have questions on viewing the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202-366-5149.

#### **SUPPLEMENTARY INFORMATION:**

##### **Regulatory History**

On May 1, 2001, we published in the **Federal Register** [66 FR 21717] a notice of proposed rulemaking (NPRM) titled "Wearing of Personal Flotation Devices (PFDs) by Certain Children Aboard Recreational Vessels". We received 46 letters commenting on the proposed rule. No public hearing was requested and none was held.

The NPRM followed two published notices of request for comments, both titled "Recreational Boating Safety-Federal Requirements for Wearing Personal Flotation Devices," under the docket number CGD 97-059. The first appeared in the **Federal Register** on September 25, 1997 [62 FR 50280]; the second, which extended the comment period, on March 20, 1998 [63 FR 13586]. The comments received in response to these notices we discussed in the NPRM.

After summarizing the comments received in response to the NPRM, we consulted the National Boating Safety Advisory Council (NBSAC) at its meeting in October 2001 regarding the results. NBSAC recommended that we proceed to publish a Final Rule, as proposed in the NPRM.

We published a Final Rule in the **Federal Register** on February 27, 2002 [67 FR 8881], addressing requirements for children under age 13 to wear PFDs while the children are on deck and their vessels are under way. First, for States without their own statutes or rules on age, we established a Federal requirement complete in itself. Second, for States with unqualified statutes or rules on age (for most States with laws on age), we adopted those statutes or rules whole. Third, however, for States with their own statutes or rules on age qualified by, say, lengths of vessels, we purported to adopt those statutes or

rules though not so qualified. Even this could have worked except for one problem: Our boarding-officers and those States' boarding-officers would have been enforcing different laws on the same waters.

A State Boating Law Administrator alerted us to this potential misfit between our own rule and States' qualified statutes or rules. At the same time, as we prepared guidance for our own boarding officers on the fine points of enforcement, we observed the same misfit. We decided that we needed to withdraw the Final Rule as it stood and rectify it. We have already published a Notice of Withdrawal [67 FR 14645 (March 27, 2002)]. By this Interim Rule we rectify the Rule as it stood.

##### **Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [USCG-2000-8589], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, by hand-delivery, by fax, or electronically to the Docket Management Facility at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or hand-delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and want to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this Interim Rule in view of them.

##### **Public Meeting**

We do not plan to hold a public meeting. You may ask for one by submitting a request to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

##### **Background and Purpose**

The number of deaths by drowning of children under 13 has decreased from 26 in 1995 to 11 in 1998. This trend is favorable on its face, and suggests the possibility that the appropriate Federal policy may be one of watchful waiting. Yet a review of statistics on recreational-

boating accidents during 1998 showed that the rate of children drowning in States that require children to wear lifejackets (1.22 such drownings for every 1000 accidents) is lower than that of States that do not (1.31 such drownings for every 1000 accidents).

By late 1995, 26 States had enacted statutes or instated rules requiring children to wear lifejackets while aboard recreational vessels. The requirements, however, were not consistent nationwide, affecting children of different ages, while aboard vessels of different sizes, and engaged in different activities. By late 1999, 36 States had enacted statutes or instated rules requiring children to wear lifejackets while aboard recreational vessels. The requirements, however, still were not consistent nationwide. They varied by the age for wearing: from under age 18, when the vessel operator is under 18, to under age 6. They varied in other particulars, too: on the sizes of vessels (more than 26 feet in length; or less than 65 feet, 26 feet, 19 feet, 18 feet, or 16 feet in length); whether the vessels were under way, in motion, or not specified; and whether the children were on open decks, below decks, or in enclosed cabins.

In support of ongoing State efforts to improve boating safety, we are instating a requirement that children under 13 wear lifejackets approved by the Coast Guard while aboard recreational vessels under way, except when the children are below decks or in enclosed cabins. We are nevertheless adopting any State's statute or rule requiring children aboard recreational vessels to wear lifejackets within those States to avoid differences in enforcement between State and Federal boarding-officers. We encourage States to establish their own requirements for children and also encourage greater uniformity of State statutes and rules nationwide.

##### **Discussion of Comments and Changes**

By the close of the comment period on August 30, 2001, we had received 46 comments, from—

- 11 recreational boaters;
- 7 governmental agencies;
- 3 representatives of the boating industry;
- 1 general business;
- 1 boating organization;
- 20 general boating interests;
- 2 safety organizations; and
- The National Transportation Safety Board (NTSB).

Twenty-two comments supported the Rule as proposed in the NPRM, eight supported it with changes, and sixteen opposed it.

Most of the comments that supported the Rule, as proposed in the NPRM, stated that it would be a positive step toward reducing drownings and toward a uniform requirement across the States. Two comments indicated that requiring children to wear PFDs would make boating safer and more pleasant for parents because parents themselves often wear PFDs, again to influence children. Parents also know that mishaps happen quickly and that they cannot always watch children on a boat so use of PFDs increases their sense of safety. In separate comments, two agencies in North Carolina stated that that State's data on drownings indicate that most children who drowned there were not wearing PFDs at the time of the incidents.

Eight comments either suggested helpful changes or stated that they could support the Rule, or at least not object to it if certain changes were made.

Two comments requested that the Rule allow the use of automatic, inflatable PFDs or safety harnesses on all vessels or at least on every vessel more than 21 feet in length.

But the proposed rule never contemplated prohibiting, and this Interim Rule does not prohibit, the use of inflatable PFDs for children. The Coast Guard has already approved automatic, hybrid, inflatable PFDs for children, which means these PFDs meet the requirements of this Rule. Once the Coast Guard has approved automatic, fully inflatable PFDs for children to wear, such devices will also meet these requirements. Nor does this Rule prohibit the use of safety harnesses; it just does not allow their use instead of wearing PFDs. The Coast Guard has decided not to revise this Rule to take account of these two comments, because the Rule anticipates them.

One comment suggested limiting the Rule to children on boats less than 18 feet that are under way or making way, while another suggested limiting it to children on the decks of vessels more than 65 feet.

The Coast Guard has no data indicating any specific length above which children become safe even without wearing lifejackets. Even so, we want to avoid disparate applicability of Federal and State requirements for wearing PFDs within any specific State. Therefore, this rule adds a new § 175.25 to adopt any State statute or rule requiring certain children to wear lifejackets, including such limits on applicability as the lengths of vessels; whether the vessels are under way, in motion, or not specified; and whether

the children are on open decks, below decks, or in enclosed cabins.

Several comments asked the Coast Guard to lower the age limit because many 12-year-olds are better swimmers than many adults. One comment suggested lowering it to 6 years old when a vessel is not under way. Another comment recommended exempting those children who have passed a swimming course or a swimming-proficiency test.

In a study of Recreational Boating Safety from 1993, NTSB recommended that the Coast Guard work with the National Association of State Boating Law Administrators (NASBLA) and the American Academy of Pediatrics to develop "a uniform component of standards that establishes an age at or below which all children should be required by all States to wear personal flotation devices while in recreational boats." NTSB proposed this strategy instead of one that would set specific Federal age-based requirements for wearing PFDs. The Coast Guard, these two organizations, and others endorsed mandatory use of lifejackets for children 12 and under. The other organizations were the National Safety Council, NBSAC, the U.S. Coast Guard Auxiliary, the National Water Safety Congress, the National Recreational Boating Safety Coalition, the National Safe Boating Council, the National Marine Manufacturers Association, the PFD Manufacturers Association, the American Medical Association, the American Camping Association, and the National Safe Kids Campaign. At least 14 States selected the same age-based requirements for children to wear lifejackets, either under 13 years or 12 years and under, which squares with the recent recommendations of NBSAC and NTSB.

Therefore, we have retained in this Interim Rule the Federal age-based requirement of under 13, as proposed in the NPRM. (Under 33 CFR 175.5, the States may set their own wearing requirements different from the Federal ones. Still, under it, the Coast Guard need not defer to States that have set no such requirements by statute or rule; and it does not so defer here.)

Another comment suggested that the current wording of "appropriate PFDs" is too vague and requested that the "appropriate" be replaced with "a Type I, II, III, or V PFD."

In the preamble to the NPRM [66 FR 21717], under paragraph 2 of the discussion of section 175.15 of the proposed rule, we stated that the proposed requirement would be to wear lifejackets approved by the Coast Guard. We agree with the comment and have

revised this section to read "\* \* \* appropriate PFDs approved by the Coast Guard."

In its comment, the NTSB requested that the Coast Guard reconsider allowing States to set their own age-based requirements, even if lower than 12 years old. The NTSB urged the Coast Guard to establish a uniform standard for the mandatory use of PFDs for all children under age 13. According to NTSB, a national standard would help parents and law-enforcement agencies by minimizing confusion about which children must wear PFDs in which States. Another comment also asked that the Rule preempt the different age-based requirements from State to State.

Again, the Coast Guard has decided not to amend 33 CFR 175.5 so as to preempt the States from setting their own wearing requirements different from the Federal ones and, in fact, is adopting them where they exist. States' requirements, even where they vary, represent a real improvement.

Seven of the sixteen opposing comments stated that mandatory use of lifejackets is a State issue.

One comment expressed concern that Federal action would interfere with individual State efforts to mandate use of PFDs. It and another suggested that each State be allowed to continue drafting laws tailored to its own distinct waters and boating community. Another comment stated that the low number of children's drownings that appear in national statistics indicate that States are handling the issue properly. Two others disapproved of a Federal requirement because it would create confusion at a time when most States already require that children wear lifejackets. One of those, from the Virginia Department of Game and Inland Fisheries, stated that, because under the proposed rule States would continue to enforce existing age limits, it is "unclear how [that rule] would encourage greater uniformity of boating laws." It added that Virginia's own data on boating accidents did not support imposing the requirement on "potentially hundreds of thousands of 'recreational vessel users'."

This Interim Rule acknowledges the law-enforcement efforts of the many States that already require children under specific ages to wear lifejackets while on board recreational vessels and, by adopting any statutes or rules requiring children to wear lifejackets, including any limits on applicability, within those States, does not interfere with those efforts. It adds authority for boarding officers of the Coast Guard, enforcing Federal law (or State law assimilated to it), to support those

efforts. Further, we encourage other States to undertake their own such efforts, without imposing a Federal mandate in this Interim Rule.

Other opposing comments stated that national statistics do not warrant a Federal rule, and one suggested that the Coast Guard focus on education rather than regulation. Another questioned whether the Coast Guard's own statistics supported the Rule. It stated that some entries in the Boating Accident Reporting Database (BARD) first report deaths as due to drownings, which coroners later conclude were actually due to carbon-monoxide poison. Another responded that the data indicate that the Rule would not have saved most children who drowned; and it concluded that age 12 "is certainly too old."

The Coast Guard has fostered and will continue to foster safety in recreational boating through education and public awareness. However, we disagree with the comments implying that our boarding officers should not be authorized to support States' law-enforcement officers by enforcing requirements for children to wear lifejackets within the States with such requirements. Our applying "under 13" agrees with recommendations from NBSAC and the NTSB. Whether or not our statistics compel Federal measures, they do, as we observe, support them. Therefore, we have retained the age-based requirement as proposed.

Other comments objecting to the Rule noted the Coast Guard's limited funds for enforcement. One stated that because most States already have a mandated age limit, generally 12, the Coast Guard would be wasting valuable man-hours handing out citations like parking tickets. It also voiced concern that the citations could lead to higher insurance costs for individual boaters. Another stated that a Federal rule would be ineffective because there would be no added funding for enforcement.

In the preamble to the NPRM, under paragraph 1 of the Regulatory Evaluation discussing the costs of the proposed rule, we stated that "\* \* \* the Coast Guard already trains its boarding officers to check safety equipment." Enforcement of the Rule will entail few if any stops that these officers would not have been making anyway during enforcement of, say, rules on carriage of that equipment. The Coast Guard has decided that the Rule, as proposed in the NPRM, anticipates these comments and it adopts that Rule, unchanged in these respects, as this Interim Rule.

Three comments voiced concern that the proposed rule did not consider how uncomfortable lifejackets can be for

children, especially those boating in hot, humid climates. One of the three stated that children wearing lifejackets in those climates could suffer heat stroke and argued that the Rule would discriminate against children who are under 13 but who are good, even excellent, swimmers. Another added that the Coast Guard could reduce the number of drownings more effectively if it focused educational campaigns on adults who use canoes and johnboats to go fishing or bird-watching. These people view boating only as a means to doing the primary activity, so they may not be as aware of boating safety as boaters with children on board.

Some models and types of lifejackets are more comfortable than others, designs are ever-evolving, and there are already some designs available in the marketplace that reduce the threat of injury by heat stroke. Voluntary swimming is not the same as involuntary swimming after falling overboard or after a collision. Again, the Coast Guard has fostered and will continue to foster recreational boating safety through education and public awareness, even where boating is involved but where it is not the primary activity. The Coast Guard adopts the proposed rule, unchanged in these respects, as this Interim Rule.

Other comments stated that the decision whether to place a child in a lifejacket should belong to the parents or guardians and that the government cannot protect people from their own poor judgment.

This Interim Rule does not preclude parents and guardians from the exercise of good judgment, but it does prohibit the operator of the boat from getting under way until each child on board and on deck is wearing a lifejacket. It is likely to have the same effect on the judgment of parents and guardians as laws that require the use of seatbelts and special seats for children in cars. Even if "government cannot protect people from their own poor judgment," it can protect some people from some others' poor judgment. The Coast Guard adopts the proposed rule, unchanged in these respects, as this Interim Rule.

#### Discussion of Interim Rule

1. Section 175.3 adds a definition of the term "State" to clarify the applicability of non-Federal requirements and the Federal adoption of those requirements.

2. Section 175.15 accomplishes a minor editorial change and adds a new paragraph establishing a requirement for children under 13 to wear lifejackets approved by the Coast Guard while aboard recreational vessels.

3. Subpart B adds a new section 175.25 adopting States' statutes or rules requiring children to wear lifejackets while aboard recreational vessels within those States.

This Interim Rule (once effective) applies the Federal standard in full only where a State has not enacted or instated such a requirement. It would apply in full now, therefore, only in American Samoa, Colorado, Guam, Hawaii, Idaho, Indiana, Iowa, Minnesota, the Northern Mariana Islands, Nevada, New Mexico, North Carolina, North Dakota, South Dakota, the Virgin Islands, Virginia, Wisconsin, and Wyoming [see the 1999 edition of the National Association of State Boating Law Administrators, *Reference Guide to State Boating Laws*]; and, for recreational vessels owned in the United States, it applies (once effective) on the high seas.

#### Regulatory Evaluation

This Interim Rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget (OMB) has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)[44 FR 11040 (February 26, 1979)].

An interim Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT follows:

##### 1. Cost of Rule

This Interim Rule imposes no costs on the boating public. Existing rules require the carriage of an appropriate lifejacket for each passenger. Costs to the Government are non-existent as well because the Coast Guard already directs its boarding officers to board recreational vessels and already trains them to check safety equipment, once there.

##### 2. Benefit of Rule

This Interim Rule is appropriate because, even though statistics on boating accidents show that the actual numbers of children under 13 that drowned in recent years were relatively small (14 in 1998, 14 in 1999, and 7 in 2000), these few drownings were avoidable. It should reduce the number of children under 13 that drown every year because they are not wearing lifejackets.

This Rule affects only those States that have not established requirements, by statute or rule, for children to wear lifejackets. In those States, there were 7

drownings and 1 moderate injury and 3 critical injuries due to near-drownings of children under 13 from 1996 through 2000. These drownings and near-drownings might have been prevented if the children had worn lifejackets. (These numbers may overstate the number of lives that could have been saved if the children had worn lifejackets: Narratives in accident reports may fail to disclose circumstances in which the victims were pinned, for example, and would have drowned anyway. Equally, though,

they may understate the number of lives that could have been saved: Many accidents go unreported entirely.)

A memorandum from the Office of the Secretary of Transportation, dated January 29, 2002, sets the benefit of averting an accidental fatality in regulatory analyses at \$3.0 million. Another memorandum from that Office, dated January 8, 1993, yet never superseded, advises agencies within the Department to classify injuries as minor, moderate, serious, severe, critical, or fatal. The latter memorandum also

assigns to each degree of injury averted a certain percentage of the value of society's willingness to pay to avert a fatality. To calculate the value of society's willingness to pay to avert each degree of injury, we multiplied \$3.0 million by the percentage assigned to each degree of injury averted.

If we consider a 100% rate of compliance with a requirement for children to wear lifejackets, we can calculate the retrospective benefits of this Rule as below:

#### BENEFIT OF AVERTING ACCIDENTAL INJURIES AND FATALITIES FOR STATES WITHOUT EXISTING RULES

| Severity category of injury | Benefit of averting an accidental injury or fatality | Number of injuries (1996–2000) | Benefit if accidental injuries and fatalities are averted |
|-----------------------------|------------------------------------------------------|--------------------------------|-----------------------------------------------------------|
| Minor .....                 | $(\$3,000,000)(0.0020) = \$6,000$                    | 0                              | $(\$6,000)(0) = 0$                                        |
| Moderate .....              | $(\$3,000,000)(0.0155) = \$46,500$                   | 1                              | $(\$46,500)(1) = \$46,500$                                |
| Serious .....               | $(\$3,000,000)(0.0575) = \$172,500$                  | 0                              | $(\$172,500)(0) = 0$                                      |
| Severe .....                | $(\$3,000,000)(0.1875) = \$562,500$                  | 0                              | $(\$562,500)(0) = 0$                                      |
| Critical .....              | $(\$3,000,000)(0.7625) = \$2,287,500$                | 3                              | $(\$2,287,500)(3) = \$6,862,500$                          |
| Fatal .....                 | $(\$3,000,000)(1.000) = \$3,000,000$                 | 7                              | $(\$3,000,000)(7) = \$21,000,000$                         |
| Total .....                 |                                                      | 11                             | \$27,909,000                                              |

The total value of injuries and fatalities averted for 1996–2000 would have been \$27,909,000. Therefore, the average annual value of injuries and fatalities averted would have been \$5,581,800, calculated as  $(\$27,909,000)/(5 \text{ years})$ .

#### *Small Entities*

Under the Regulatory Flexibility Act [5 U.S.C. 601–612], we have considered whether this Interim Rule has a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This Federal requirement for children under 13 to wear lifejackets applies (once effective) to operators of recreational vessels on waters subject to the jurisdiction of the United States (as defined in 33 CFR 2.05–30). Further, it applies likewise to operators of recreational vessels owned in the United States, while operating on the high seas (as defined in 33 CFR 2.05–1). Last, since this Rule adopts any State statute or rule requiring certain children to wear lifejackets, including any limits on applicability, within those States, this requirement applies likewise to operators of recreational vessels either in States with such requirements or on

navigable waters of the United States outside States altogether.

Because the Regulatory Flexibility Act does not apply to individuals, the Coast Guard certifies under 5 U.S.C. 605(b) that this Rule does not have a significant economic impact on a substantial number of small entities. If you think that this Rule affects small entities, that your business, organization, or governmental jurisdiction qualifies as a small entity, and that this Rule will have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think this Rule affects small entities, how your business, organization, or governmental jurisdiction qualifies, and how and to what degree this Rule would economically affect it.

#### *Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Public Law 104–121], we have offered to assist small entities in understanding this Interim Rule so that they can better evaluate its effects on them and participate in the rulemaking. If the Rule affects your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Carlton Perry, Project Manager, Office of Boating Safety, by telephone at 202–

267–0979, or by e-mail at [cperry@comdt.uscg.mil](mailto:cperry@comdt.uscg.mil).

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

#### *Collection of Information*

This Interim Rule calls for no new collection of information under the Paperwork Reduction Act of 1995 [44 U.S.C. 3501–3520].

#### *Federalism*

We have analyzed this Interim Rule under Executive Order 13132 and have determined that, because the Federal requirement for children under 13 to wear lifejackets will not supersede or preempt any State's comparable requirement, this Rule does not have implications for federalism under that Order. The Federal requirements apply in full only where there are no State requirements; where there are State requirements, the Federal requirements apply only so as to assimilate the State requirements.

*Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 [2 U.S.C. 1531–1538] governs the issuance of Federal rules that impose unfunded mandates. An unfunded mandate is a requirement that a State, local, or tribal government, or the private sector, incur direct costs without the Federal Government's having first provided the funds to pay those costs. This Interim Rule does not impose an unfunded mandate.

*Taking of Private Property*

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

*Reform of Civil Justice*

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

*Protection of Children*

We have analyzed this Interim Rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This Rule is not an economically significant rule. Nor does it create an environmental risk to health or risk to safety that may disproportionately affect children; on the contrary, it advances the welfare of children even though it defers to States' limits on applicability of their requirements for children to wear lifejackets.

*Indian Tribal Governments*

This Interim Rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it 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.

*Energy Effects*

We have analyzed this Interim Rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order, because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a

significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs within OMB as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

*Environment*

We have considered the environmental impact of this Interim Rule and concluded that, under figure 2–1, paragraph (34)(a), of Commandant Instruction M16475.ID, this Rule is categorically excluded from further environmental documentation. The Rule requires that certain children aboard recreational vessels wear lifejackets. A Determination of Categorical Exclusion is available in the docket where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 175**

Marine Safety.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 175 as follows:

1. The citation of authority for part 175 continues to read as follows:

**Authority:** 46 U.S.C. 4302; 49 CFR 1.46.

2. Amend § 175.3 by adding the following definition in alphabetical order to read as follows:

**§ 175.3 Definitions.**

\* \* \* \* \*

*State* means a State or Territory of the United States of America, whether a State of the United States, American Samoa, the Commonwealth of the Northern Marianas Islands, the District of Columbia, Guam, Puerto Rico, or the United States Virgin Islands.

\* \* \* \* \*

3. Amend § 175.15 by removing from the introductory text the cite “§ 175.17” and adding in its place the cite §§ 175.17 and 175.25”; by removing from paragraph (b) the term “PFD’s” and adding in its place the term “PFDs”; and by adding a new paragraph (c), to read as follows:

**§ 175.15 Personal flotation devices required.**

\* \* \* \* \*

(c) No person may operate a recreational vessel under way with any child under 13 years old aboard unless each such child is either—

(1) Wearing an appropriate PFD approved by the Coast Guard; or

(2) Below decks or in an enclosed cabin.

4. Add a new § 175.25 to subpart B, to read as follows:

**§ 175.25 Adoption of States' requirements for children to wear personal flotation devices.**

On waters within the geographical boundaries of any State that has established by statute or rule a requirement under which each child must wear an appropriate PFD approved by the Coast Guard while aboard a recreational vessel, no person may use such a vessel in violation of that statute or rule.

Dated: June 3, 2002.

**Kenneth T. Venuto,**

*Rear Admiral, U.S. Coast Guard, Acting Assistant Commandant for Operations.*

[FR Doc. 02–15793 Filed 6–21–02; 8:45 am]

**BILLING CODE 4910–15–P**

**NATIONAL ARCHIVES AND RECORDS ADMINISTRATION****36 CFR Part 1206**

**RIN 3095–AA93**

**National Historical Publications and Records Commission Grant Regulations**

**AGENCY:** National Historical Publications and Records Commission, National Archives and Records Administration (NARA).

**ACTION:** Final rule.

**SUMMARY:** The rule updates and clarifies the National Historical Publications and Records Commission (NHPRC or “the Commission”) regulations using plain language. We are removing outdated information, and expanding sections for greater clarity and conformity with our current guidelines. This revised regulation applies to all NHPRC applicants and grantees.

**EFFECTIVE DATE:** July 24, 2002.

**FOR FURTHER INFORMATION CONTACT:**

Nancy Allard at 301–837–1850, or Nancy Copp at 202–501–5610.

**SUPPLEMENTARY INFORMATION:** The proposed rule was published in the February 6, 2002, **Federal Register** (67 FR 5542) for a 60-day public comment period. NARA announced the availability of the proposed rule widely, including to all current grantees and State historical records coordinators. A copy of the proposed rule was also posted on the NARA web site for review. No timely comments were received. We are issuing this final rule without change.

This final rule is a significant regulatory action for the purposes of Executive Order 12866 and has been reviewed by the Office of Management and Budget. As required by the

Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities. In fiscal year 2000 the NHPRC made grants to only 72 organizations and entities as defined in the Act, from the 84 applications submitted.

#### List of Subjects in 36 CFR Part 1206

Archives and records, Grant programs—education, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, NARA revises part 1206 of title 36, Code of Federal Regulations to read as follows:

### PART 1206—NATIONAL HISTORICAL PUBLICATIONS AND RECORDS COMMISSION

#### Subpart A—General

Sec.

- 1206.1 How do you use pronouns in this part?
- 1206.2 What does this part cover?
- 1206.3 What terms have you defined?
- 1206.4 What is the purpose of the Commission?
- 1206.5 Who is on the Commission?
- 1206.6 How do you organize the grant program?
- 1206.8 How do you operate the grant program?

#### Subpart B—Publications Grants

- 1206.10 What are the scope and purpose of publications grants?
- 1206.12 What type of proposal is eligible for a publications grant?
- 1206.14 What type of proposal is ineligible for a publications grant?
- 1206.16 What are my responsibilities once I have received a publications grant?
- 1206.18 What is a subvention grant, and am I eligible for one?

#### Subpart C—Records Grants

- 1206.20 What are the scope and purpose of records grants?
- 1206.22 What type of proposal is eligible for a records grant?
- 1206.24 What type of proposal is ineligible for a records grant?

#### Subpart D—State Historical Records Advisory Boards

- 1206.30 What is a State historical records advisory board?
- 1206.32 What is a State historical records coordinator?
- 1206.34 What are the duties of the deputy State historical records coordinator?

#### Subpart E—Applying for NHPRC Grants

- 1206.40 What types of funding and cost sharing arrangements does the Commission make?
- 1206.42 Does the Commission ever place conditions on its grants?
- 1206.44 Who may apply for NHPRC grants?
- 1206.46 When are applications due?
- 1206.48 How do I apply for a grant?
- 1206.50 What must I provide as a formal grant application?

- 1206.52 Who reviews and evaluates grant proposals?
- 1206.54 What formal notification will I receive and will it contain other information?

#### Subpart F—Grant Administration

- 1206.60 Who is responsible for administration of NHPRC grants?
- 1206.62 Where can I find the regulatory requirements that apply to NHPRC grants?
- 1206.64 When do I need prior written approval for changes in the grant project?
- 1206.66 How do I obtain written approval for changes in my grant project?
- 1206.68 Are there any changes for which I do not need approval?
- 1206.70 What reports am I required to make?
- 1206.72 What is the format and content of the financial report?
- 1206.74 What is the format and content of the narrative report?
- 1206.76 What additional materials must I submit with the final narrative report?
- 1206.78 Does the NHPRC have any liability under a grant?
- 1206.80 Must I acknowledge NHPRC grant support?

**Authority:** 44 U.S.C. 2104(a); 44 U.S.C. 2501–2506.

#### Subpart A—General

##### § 1206.1 How do you use pronouns in this part?

In the section heading questions we use the pronouns “I” and “my” to refer to the reader, and “you” to refer to the National Historical Publications and Records Commission (“NHPRC” or “the Commission”) as if you, the reader, were asking us, the Commission, these questions. In the section body, we use the pronouns “you” and “yours” to refer to the reader and “we” and “our” to refer to the Commission as we answer the questions posed.

##### § 1206.2 What does this part cover?

This part prescribes the procedures and rules governing the operation of the grant program of the National Historical Publications and Records Commission.

##### § 1206.3 What terms have you defined?

(a) The term *Commission* means the National Historical Publications and Records Commission or the Chairman of the Commission or the Executive Director of the Commission, acting on the Commission’s behalf.

(b) The term *historical records* means record material having permanent or enduring value regardless of physical form or characteristics, including, but not limited to, manuscripts, archives, personal papers, official records, maps, audiovisual materials, and electronic files.

(c) In §§ 1206.30 and 1206.32, the term *State* means all 50 States of the

Union, plus the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Northern Mariana Islands, and the Trust Territories of the Pacific.

(d) The term *State projects* means records projects involving records or activities directed by organizations operating within one State. Records or activities of such projects will typically be under the administrative control of the organization applying for the grant. The records or activities need not relate to the history of the State.

(e) The term *cost sharing* means the financial contribution the applicant pledges to the cost of a project. Cost sharing can include both direct and indirect expenses, in-kind contributions, third-party contributions, and any income earned directly by the project (e.g., registration fees).

(f) The term *direct costs* means expenses that are attributable directly to the cost of a project, such as salaries, project supplies, travel expenses, and equipment rented or purchased for the project.

(g) The term *indirect costs* means costs incurred for common or joint objectives and therefore not attributable to a specific project or activity. Typically, indirect costs include items such as overhead for facilities maintenance and accounting services.

(h) The term *board* refers to a State historical records advisory board.

(i) The term *coordinator* means the coordinator of a State historical records advisory board.

##### § 1206.4 What is the purpose of the Commission?

The National Historical Publications and Records Commission, a statutory body affiliated with the National Archives and Records Administration, supports a wide range of activities to preserve, publish, and encourage the use of primary documentary sources. These sources can be in every medium, created with tools ranging from quill pen to computer, relating to the history of the United States. Through our grant programs, training programs, and special projects, we offer advice and assistance to non-Federal, non-profit organizations, agencies, and institutions, including Federally-acknowledged or State-recognized Native American tribes or groups, and to individuals committed to the preservation, publication, and use of United States documentary resources.

##### § 1206.5 Who is on the Commission?

Established by Congress in 1934, the Commission is a 15-member body, chaired by the Archivist of the United

States and comprised of representatives of the three branches of the Federal Government and of professional associations of archivists, historians, documentary editors, and records administrators.

**§ 1206.6 How do you organize the grant program?**

We primarily offer grants through a program supporting publications projects (Subpart B) and records projects (Subpart C). We also offer fellowships for individuals in archival administration and documentary editing, as well as an annual institute for the editing of historical documents.

**§ 1206.8 How do you operate the grant program?**

(a) The Executive Director and staff manage the program under guidance from the Commission and the immediate administrative direction of its chairman, the Archivist of the United States.

(b) To assure fair treatment of every application, all members of the Commission and its staff follow conflict-of-interest rules.

(c) The purpose and work plan of all NHPRC funded grant projects must be in accord with current NHPRC guidelines and funding can be released only upon the recommendation of the Commission to the Archivist.

**Subpart B—Publications Grants**

**§ 1206.10 What are the scope and purpose of publications grants?**

Publications projects are intended to make documentary source material that is important to the study and understanding of United States history widely available. Historical records must have national value and interest.

**§ 1206.12 What type of proposal is eligible for a publications grant?**

We provide support for:

(a) Documentary editing projects consisting of either the papers of a United States leader in a significant phase of life in the United States or historical records relating to outstanding events or topics or themes of national significance in United States history. These projects involve collecting, compiling, transcribing, editing, annotating, and publishing, either selectively or comprehensively, the papers or historical records.

(b) Fellowships in historical documentary editing at editorial projects supported by the NHPRC.

(c) Subvention grants to nonprofit presses to help defray publication costs of NHPRC-supported or endorsed editions.

**§ 1206.14 What type of proposal is ineligible for a publications grant?**

We do not support:

(a) Historical research apart from the editing of documentary publications; or  
(b) Documentary editing projects to publish the papers of someone who has been deceased for fewer than ten years.

**§ 1206.16 What are my responsibilities once I have received a publications grant?**

(a) *Printed publications.*

(1) *With no subvention grant.* You, the project director, must send three copies of each book publication to: National Historical Publications and Records Commission (NHPRC), National Archives and Records Administration, 700 Pennsylvania Avenue, NW, Washington, DC 20408-0001.

(2) *With subvention grant.* You, the publisher, must submit five copies of each book publication to the NHPRC at the address in paragraph (a)(1) of this section and ten copies to the project director or editor. The project director need not provide any copies to the NHPRC. (See § 1206.18.)

(b) *Microform publications.* For microform projects, you, the grantee, must make positive micrographics and all finding aids available to institutions, scholars, or students through interlibrary loan and for purchase. You must also send three complimentary copies of the microform guides and indexes to the NHPRC at the address in paragraph (a)(1) of this section.

(c) *Electronic documentary publications.* If you publish a documentary edition in electronic form, you must produce a copy of the edition in an archivally-recognized format for long-term preservation.

**§ 1206.18 What is a subvention grant, and am I eligible for one?**

(a) A subvention grant is a subsidy of printing costs.

(b) We use subvention grants to encourage the widest possible distribution of NHPRC-supported and endorsed documentary editions and the highest archival permanence standards of paper, printing, and binding.

(c) The Commission considers grant applications from nonprofit presses for the subvention of part of the costs of manufacturing and distributing volumes that we have funded or formally endorsed.

(d) You, the publisher, must send five complimentary copies to NHPRC, and ten complimentary copies to the project director or editor for each published volume for which we gave you a subvention grant.

**Subpart C—Records Grants**

**§ 1206.20 What are the scope and purpose of records grants?**

Records projects are supported by the National Historical Publications and Records Commission to preserve and make available State government, local government, and non-government historical records of national and State significance for the purpose of furthering an understanding and appreciation of United States history.

**§ 1206.22 What type of proposal is eligible for a records grant?**

We provide support for:

(a) Locating, preserving and making available records of State, local, and other governmental units; and other private collections maintained in non-Federal, non-profit repositories and special collections relating to particular fields of study, including the arts, business, education, ethnic and minority groups, immigration, labor, politics, professional services, religion, science, urban affairs, and women;

(b) Advancing the state of the art in archival and records management; and in the long-term maintenance and easy access of authentic electronic records;

(c) Promoting cooperative efforts among institutions and organizations in archival and records management;

(d) Improving the knowledge, performance, and professional skills of those who work with historical records; and

(e) Fellowships in archival administration, a training program in various aspects of archival management held at host institutions.

**§ 1206.24 What type of proposal is ineligible for a records grant?**

We do not support proposals:

(a) To construct, renovate, furnish, or purchase a building or land;

(b) To purchase manuscripts or other historical records;

(c) To conserve archaeological artifacts, museum objects, or works of art;

(d) To exhibit archaeological artifacts, museum objects, works of art, and documents;

(e) To acquire, preserve, or describe books, periodicals, or other library materials;

(f) To acquire, preserve, or describe art objects, sheet music, or other works primarily of value as works of art or entertainment;

(g) To support celebrations, reenactments, and other observations of historical events.

(h) To conduct a records project centered on the papers of an appointed

or elected public official who remains in major office, or is politically active, or the majority of whose papers have not yet been accessioned into a repository;

(i) To process historical records, most of which will be closed to researchers for more than five years, or not be accessible to all users on equal terms, or will be in a repository that denies public access;

(j) To conduct an arrangement, description, or preservation project in which the pertinent historical records are privately owned or deposited in an institution subject to withdrawal upon demand for reasons other than requirements of law; and

(k) To conduct an arrangement, description, or preservation project involving Federal government records that are:

(1) In the custody of the National Archives and Records Administration (NARA) or an archives officially affiliated with NARA;

(2) In the custody of another Federal agency; or

(3) Deposited in a non-Federal institution without an agreement authorized by NARA.

#### **Subpart D—State Historical Records Advisory Boards**

##### **§ 1206.30 What is a State historical records advisory board?**

(a) Each State actively participating in the NHPRC records program must adopt an appointment process and appoint a State historical records advisory board (the board) consisting of at least seven members, including the State historical records coordinator (see § 1206.32), who chairs the board, unless otherwise specified in State statute or regulation. The board coordinator must provide the Commission with a description of the appointment process. A majority of the members should have recognizable experience in the administration of government records, manuscripts, or archives. The board should be as broadly representative as possible of the public and private archives, records offices, and research institutions and organizations in the State. Board members will not be deemed to be officials or employees of the Federal Government and will receive no Federal compensation for their service on the board. They are appointed for three years. They may be re-appointed to serve additional terms. Preferably their terms should be staggered so that one-third of the board is newly appointed or re-appointed each year. If the board is not established in State law, members may continue to serve until replacements are appointed. The board

may adopt standards for attendance and may declare membership positions open if those standards are not met. The Board should adopt a conflict-of-interest policy, unless otherwise provided for in State statute or regulation.

(b) The board is the central advisory body for historical records planning and for Commission-funded records projects carried out within the State. The board helps historical records repositories and other information agencies coordinate activities within the State. The board reviews State records grant proposals for State projects as defined in the NHPRC guidelines and makes recommendations to the Commission. The board also engages in planning activities by developing, revising, and submitting to the Commission priorities for State historical records projects following the NHPRC guidelines. The board may also provide various other services. For example, it may sponsor and publish surveys of the conditions and needs of historical records in the State; solicit or develop proposals for projects to be carried out in the State with NHPRC grants or regrants; promote an understanding of the role and value of historical records; and review the operation and progress of projects in the State financed by NHPRC grants.

(c) The NHPRC will not consider a grant proposal from a State government agency until a board is appointed and all appointments are current. If an active board is not in place within a State, local governments, nonprofit organizations or institutions, and individuals within that state may apply directly to the Commission for support.

##### **§ 1206.32 What is a State historical records coordinator?**

(a) *Appointment.* In order to actively participate in the NHPRC records program, your governor must appoint a State historical records coordinator (coordinator), the full-time professional official in charge of the State archival program or agency, unless otherwise specified in state statute or regulation. If your State has another State government historical agency or agencies with archival and/or records responsibilities, the official(s) in charge of at least one of these must be a member of the State historical records advisory board (board).

(b) *Duties.* The coordinator is appointed to a minimum four-year term, but may continue to serve until replaced by the governor or until resignation. The coordinator will be the central coordinating officer for the historical records grant program in the State and should serve as chair of the board unless otherwise specified in the State statute

or regulation. The coordinator is not deemed to be an official or employee of the Federal Government and will receive no Federal compensation for such service. The “Manual of Suggested Practices for State Historical Records Coordinators and State Historical Records Advisory Boards” which is available from the Commission and from State historical records coordinators, provides further information on the role of the coordinator. For a copy, write to NHPRC, National Archives and Records Administration, 700 Pennsylvania Avenue NW, Washington, DC 20408–0001, or contact us by e-mail at [nhprc@nara.gov](mailto:nhprc@nara.gov).

(c) *Replacement.* In the event of the resignation of the coordinator or other inability to serve, a deputy coordinator, if one has been designated, will serve as acting coordinator until the governor makes an appointment. In the absence of a deputy coordinator, the NHPRC will recognize an acting coordinator, selected by the State board, who will serve until the governor appoints a coordinator in order to conduct the necessary business of the board.

##### **§ 1206.34 What are the duties of the deputy State historical records coordinator?**

The governor or coordinator may designate a deputy State historical records coordinator to assist in carrying out the duties and responsibilities of the coordinator and to serve as an acting coordinator at the coordinator’s direction or upon the coordinator’s resignation or other inability to serve.

#### **Subpart E—Applying for NHPRC Grants**

##### **§ 1206.40 What types of funding and cost sharing arrangements does the Commission make?**

(a) *Types of grants.*

(1) *Matching grant.* A matching grant is a way to demonstrate shared Federal/non-Federal support for projects. We will only match funds raised from non-Federal sources, either monies provided by the applicant’s own institution specifically for the project or from a non-Federal third-party source.

(2) *Outright grant.* Outright grants are those awards we make without any matching component.

(b) *Cost sharing arrangements.*

(1) For publications projects that first received NHPRC funding prior to 1992, the Commission will supply as much as 75 percent of the direct costs.

(2) For publications projects funded after 1992, the Commission will provide no more than 50 percent of direct costs. We will give preference to projects for

which the sponsoring institution bears at least 25 percent of the direct costs. For short-term (i.e., 3 years or less) publications projects, we will give preference to applicants that provide at least 50 percent of the project's total direct and indirect costs.

(3) For records projects, the Commission will give preference to projects in which the applicants provide at least 50 percent of the project's total direct and indirect costs.

(4) We prefer the applicant cover indirect costs through cost sharing.

#### **§ 1206.42 Does the Commission ever place conditions on its grants?**

In making its decisions on grants, the Commission may place certain conditions on its grants. We describe those possible conditions in the booklet *Grant Guidelines: How to Apply for NHPRC Grants, How to Administer NHPRC Grants*. For a copy, write to NHPRC, National Archives and Records Administration, 700 Pennsylvania Avenue NW, Washington, DC 20408-0001, or contact us by e-mail at [nhprc@nara.gov](mailto:nhprc@nara.gov).

#### **§ 1206.44 Who may apply for NHPRC grants?**

The Commission will consider applications from State and local

government agencies (Federal agencies are *not* eligible to apply), U.S. non-profit organizations and institutions, including institutions of higher education, Federally acknowledged or state-recognized Native American tribes or groups, United States citizens applying as individuals rather than for an organization, and State historical records advisory boards. Most NHPRC grants to individuals are awarded under its fellowship programs. In general, we prefer projects operating within a host institution.

#### **§ 1206.46 When are applications due?**

The Commission generally meets twice a year, and we consider grant proposals during our meetings. For current application deadlines contact the NHPRC staff or your State historical records coordinators (for records grant proposals). Some State boards have established pre-submission review deadlines for records proposals; further information is available from your State coordinator(s). We will publish deadlines once a year in the **Federal Register**. All proposals must be postmarked by those deadlines.

#### **§ 1206.48 How do I apply for a grant?**

(a) *Contact the NHPRC staff.* We encourage you to discuss your proposal through correspondence, by phone, or in person with Commission staff and/or, in the case of records proposals, with the appropriate State historical records coordinator before you submit the proposal and at all stages of your proposal's development.

(b) *Contact your State Historical Records Advisory Board.*

(1) Contact is not necessary if:

(i) Your proposal is for documentary editing and publication subvention projects;

(ii) You are a Native American applicant; or

(iii) Your project will largely take place in more than one state.

(2) Staff contacts and a list of State historical records coordinators may be found on our Web site at <http://www.nara.gov/nhprc>.

#### **§ 1206.50 What must I provide as a formal grant application?**

You must submit the following materials as part of your grant application:

(a) *Application forms.* You can obtain copies of the following application forms from the Commission:

| If you are an applicant for . . .                                           | Then you must submit . . .                                                                                                                                     |
|-----------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (1) NHPRC publication and records grants .....                              | "Application for Federal Assistance" (Standard Form 424) and "Budget Form" (NA Form 17001; OMB Control Number 3095-0004);                                      |
| (2) Subvention grants .....                                                 | NHPRC subvention grant application (OMB Control Number 3095-0021), "Application for Federal Assistance" (Standard Form 424) and "Budget Form" (NA Form 17001); |
| (3) Archival or historical documentary editing fellowship host institutions | NHPRC "Application for Host Institutions of Archival Administration or Historical Documentary Editing Fellowships" (OMB Control Number 3095-0015)              |
| (4) NHPRC-sponsored fellowships .....                                       | "Application for Archival Administration or Historical Documentary Editing Fellowships" (OMB Control Number 3095-0014);                                        |
| (5) NHPRC-sponsored editing institute .....                                 | "Application for Attendance at the Institute for the Editing of Historical Documents" (OMB Control Number 3095-0012).                                          |

(b) *Assurances and certifications.* You must submit the following assurances and certifications, signed by an authorized representative of your institution, or if you are an individual applicant, by you:

(1) "Assurances—NonBConstruction Programs" (Standard Form 424B).

(2) "Certification Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-free Workplace Requirements."

(c) *Project summary.* You must submit a project summary. A description of the

project summary is found in the booklet *Grant Guidelines: How to Apply for NHPRC Grants, How to Administer NHPRC Grants* that is available from the NHPRC and from State historical records coordinators.

(d) *List of performance objectives.*

You must list in the proposal from four to seven quantifiable objectives by which the project can be evaluated following the submission of the final report and the closing of the grant. NHPRC evaluates the project to

determine whether it produces the results promised in grant applications.

(e) *Submission requirements.* Send the original, signed copy of your application to the NHPRC, National Archives and Records Administration, 700 Pennsylvania Avenue, NW, Washington, DC 20408-0001. Your properly completed application and any materials you send with it (such as pamphlets and photographic prints) will not be returned to you. Additional copies must be sent as follows:

| If you are applying for . . .                                                           | Then you must send . . .            |
|-----------------------------------------------------------------------------------------|-------------------------------------|
| (1) A documentary editing project that has previously been supported by the Commission. | Two additional copies to the NHPRC; |
| (2) A subvention grant .....                                                            | Two additional copies to the NHPRC; |

| If you are applying for . . .                                                                               | Then you must send . . .                                                                                                                                                                                                              |
|-------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (3) A new documentary editing project .....                                                                 | Two additional copies to the NHPRC;                                                                                                                                                                                                   |
| (4) A records grant and you are a Native American applicant .....                                           | Two additional copies to the NHPRC;                                                                                                                                                                                                   |
| (5) A records grant that is being done in a state where there is a State historical records advisory board. | One additional copy to the NHPRC and one copy to the State historical records coordinator. In order to help facilitate the review process, however, it is recommended that applicants send a copy for each member of the state board; |
| (6) A records grant whose work will take place in more than one State                                       | Two additional copies to the NHPRC.                                                                                                                                                                                                   |

#### **§ 1206.52 Who reviews and evaluates grant proposals?**

(a) *State boards.* State historical records advisory boards evaluate records proposals on technical merits as well as on their relation to State-plan priorities. The board can return proposals it finds inappropriate or incomplete, with recommendations for revision, on which we will not act unless the applicant submits a revision for consideration in a later cycle. The Board may also recommend that the Commission reject the proposal.

(b) *Peer reviewers.* The NHPRC asks from five to ten external peer reviewers, some of whom may be selected from a list provided by you, to evaluate the proposal if the proposal:

(1) Requests NHPRC funds of \$75,000 or more;

(2) Requests a grant period of two years or more;

(3) Involves complex technological processes and issues with which the NHPRC staff may be unfamiliar;

(4) Is a resubmission that the NHPRC invited; or

(5) Is not reviewed by a State historical records advisory board.

(c) *Other reviewers.* We may subject on-going documentary editions to special review by NHPRC staff and outside specialists, particularly when:

(1) You propose to change the project director/editor;

(2) Your sponsoring institution encounters difficulties or you propose a change in that institution;

(3) Your major search for materials has been completed;

(4) Your project finishes publication in one medium and plans to begin publication in another; or

(5) You change your project's estimate of quantity of publications and/or time needed to complete the project.

(d) *NHPRC staff.* NHPRC staff will analyze the reviewer's comments, State board evaluations, the appropriateness of the project toward Commission goals, the proposal's completeness and conformity to application requirements. The staff will, through a questions letter to you, raise important issues or concerns and allow you the opportunity to respond. The staff will then make recommendations to the Commission.

(e) *The Commission.* After individually reviewing the proposal and recommendations on it from State boards, peer reviewers, and NHPRC staff, Commission members will deliberate on all eligible proposals and recommend to the Archivist of the United States what action to take on each (fund, partially fund, endorse, reject, resubmit, *etc.*). By statute the Archivist chairs the Commission and has final authority to make or deny a grant.

#### **§ 1206.54 What formal notification will I receive, and will it contain other information?**

(a) The grant award document is a letter from the Archivist of the United States to you, the grantee. The letter and attachments specify terms of the grant. NHPRC staff notifies project directors informally of awards and any conditions soon after the Commission recommends the grant to the Archivist of the United States. Unsuccessful applicants will be notified within two weeks by letter.

(b) The grant period begins and ends on the dates specified in the award document. Grant periods must begin on the first day of a month and end on the last day of a month.

#### **Subpart F—Grant Administration**

#### **§ 1206.60 Who is responsible for administration of NHPRC grants?**

The grantee institution and the project director designated by the institution share primary responsibility for the administration of grants. In the case of grants made to individuals, the individual named as project director has primary responsibility for the administration of the grant.

#### **§ 1206.62 Where can I find the regulatory requirements that apply to NHPRC grants?**

(a) In addition to this part 1206, NARA has issued other regulations that apply to NHPRC grants in 36 CFR ch. XII, subchapter A. NARA also applies the principles and standards in the following Office of Management and Budget (OMB) Circulars for NHPRC grants:

(1) OMB Circular A-21, "Cost Principles for Educational Institutions";

(2) OMB Circular A-87, "Cost Principles for State, Local and Indian Tribal Governments";

(3) OMB Circular A-122, "Cost Principles for Non-Profit Organizations"; and

(4) OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

(b) These regulations and circulars are available on our Web site at

[www.nara.gov/nhprc](http://www.nara.gov/nhprc). Our regulations may also be found at <http://www.nara.gov/nara/cfr/subch-a.html>,

and OMB Circulars at <http://www.whitehouse.gov/omb/grants/>.

(c) Additional policy guidance related to Title VI of the Civil Rights Act of 1964, regarding persons with limited English proficiency, is provided in our guidelines.

#### **§ 1206.64 When do I need prior written approval for changes to the grant project?**

You must obtain prior written approval from the Commission for any changes in the grant project and terms of the grant, including:

(a) Revising the scope or objectives of the project;

(b) Changing the project director or other key project personnel who are specifically named in the grant application or award or related correspondence;

(c) Contracting out, sub-granting, or otherwise obtaining the services of a third party to perform activities central to the purposes of the grant, unless specified in the grant proposal;

(d) Changing the beginning date of the grant or extending the grant period;

(e) Re-budgeting of grants of \$100,000 or more, when cumulative transfers among direct cost categories total more than 10 percent of the total project budget (*i.e.*, grant funds plus other funds). With written approval from the Executive Director of the Commission, grantees may adjust the amounts allocated to existing budget lines for both grant funds and cost sharing and may transfer grant funds among existing NHPRC-funded direct cost categories that appear in the final project budget approved by the Commission at the time of the grant award. Cost-sharing funds may also be shifted among existing cost-sharing categories; and

(f) Creating the following new cost categories:

| You must obtain approval from . . .                                                 | When your new cost category was not in the final approved budget where . . .                                                                                                                                             |
|-------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (1) The Executive Director of the Commission, or the Executive Director's designee. | (i) such action seems appropriate for the fulfillment of the original purposes of the grant; and (ii) the amount of funds involved does not exceed 10 percent of the amount of the award, or \$5,000, whichever is less. |
| (2) The full Commission .....                                                       | The amount of funds involved exceeds the amount in paragraph (f)(1)(ii) of this section.                                                                                                                                 |

**§ 1206.66 How do I obtain written approval for changes in my grant project?**

(a) You must make all requests for changes in the form of a letter. The grant receiving institution's authorized representative, as indicated on the grant application form (SF 424), must sign the letter. The signed, written response of the Commission's Executive Director, or the Executive Director's designee, will constitute approval for the change.

(b) You must make requests for extension of the grant period not more than two months before the scheduled end of the grant period. We will not allow extensions unless you are up-to-date in your submission of financial and narrative reports.

**§ 1206.68 Are there any changes for which I do not need approval?**

You do not need approval for re-budgeting of grants of less than \$100,000. For such grants:

(a) You may adjust the amounts allocated to existing budget lines for both grant funds and cost sharing;

(b) You may transfer grant funds among existing NHPRC-funded direct cost categories that appear in the final project budget approved by the Commission at the time of the grant award; and

(c) You may also shift cost-sharing funds among existing cost-sharing categories.

**§ 1206.70 What reports am I required to make?**

(a) Grant recipients are generally required to submit annual financial status reports and semi-annual narrative progress reports, as well as final financial and narrative reports at the conclusion of the grant period. The grant award document will specify the dates your reports are due.

(b) Send the original reports to the NHPRC, National Archives and Records Administration, 700 Pennsylvania Avenue, NW, Washington, DC 20408-0001. One copy of each records project narrative report must be sent to the State historical records coordinator if the board reviewed the proposal. Other records projects should send courtesy

copies of narrative reports to State coordinators whose States are involved in or affected by the project. Provide the names of individuals to whom copies of the report have been sent when submitting the original report to the NHPRC.

**§ 1206.72 What is the format and content of the financial report?**

You must submit financial reports on Standard Form 269 and have them signed by the grantee's authorized representative or by an appropriate institutional fiscal officer. If cost sharing figures are 20 percent less than anticipated in the project budget you must explain the reason for the difference.

**§ 1206.74 What is the format and content of the narrative report?**

(a) Interim narrative reports should summarize briefly the objectives and activities for the entire grant and then focus on those accomplished during the reporting period. The report should include a summary of project activities; whether the project proceeded on schedule; any revisions of the work plan, staffing pattern, or budget; and any web address created by the project. It should include an analysis of the goals met during the reporting period and any goals for the period that were not accomplished. For documentary editing projects, it also must include information about the publication of volumes and the completion of finding aids, as well as any work that is pending with publishers.

(b) The final report must provide a detailed assessment of the project, following the format in paragraph (a) of this section, including whether the goals set in the original proposal were realistic; whether there were unpredicted results or outcomes; whether the project encountered unexpected problems and how you faced them; and how you could have improved the project. You must discuss the project's impact, if any, on the grant-receiving institution and others. You must indicate whether all or part of the project activities will be continued after

the end of the grant, whether any of these activities will be supported by institutional funds or by grant funds, and if the NHPRC grant was instrumental in obtaining these funds.

(c) The project director must sign narrative reports.

**§ 1206.76 What additional materials must I submit with the final narrative report?**

(a) For records-related projects, you are required to send the NHPRC three copies of any finding aids, reports, manuals, guides, forms, articles about the project, and other materials produced about or based on the grant project at the time that the final narrative report is submitted.

(b) Documentary editing projects must send the NHPRC three copies of any book edition unless support for their publication was provided by an NHPRC subvention grant. For those volumes, presses rather than projects are responsible for submitting the required number of volumes (see § 1206.18(d)). Projects with microform editions must send the NHPRC three copies of the microform guides and indexes produced by the project.

**§ 1206.78 Does the NHPRC have any liability under a grant?**

No, the National Archives and Records Administration (NARA) and the Commission cannot assume any liability for accidents, illnesses, or claims arising out of any work undertaken with the assistance of the grant.

**§ 1206.80 Must I acknowledge NHPRC grant support?**

Yes, grantee institutions, grant project directors, or grant staff personnel may publish results of any work supported by an NHPRC grant without review by the Commission; however, publications or other products resulting from the project must acknowledge the assistance of the NHPRC grant.

Dated: May 2, 2002.

**John W. Carlin,**

*Archivist of the United States.*

[FR Doc. 02-15861 Filed 6-21-02; 8:45 am]

BILLING CODE 7515-01-P

**ENVIRONMENTAL PROTECTION  
AGENCY****40 CFR Part 52**

[CA 266-0358c, FRL-7235-7]

**Interim Final Determination That State  
Has Corrected the Rule Deficiencies  
and Deferral of Sanctions, Ventura  
County Air Pollution Control District,  
State of California****AGENCY:** Environmental Protection  
Agency (EPA).**ACTION:** Interim final determination.

**SUMMARY:** Elsewhere in today's **Federal Register**, EPA has proposed full approval of revisions to the California State Implementation Plan (SIP). The revisions concern Ventura County Air Pollution Control District (District) Permitting Rule (Rule 10) and New Source Review (NSR) Rule (Rule 26). Based on the proposed full approval, EPA is making an interim final determination that the State has corrected deficiencies in the rule for which a sanction clock began on January 8, 2001. This action will defer the imposition of the offset and highway sanctions. Although this action is effective upon publication, EPA will take comment and will publish a final rule after considering comments received on this interim final determination.

**DATES:** This interim final determination is effective June 24, 2002. Comments must be received by July 24, 2002.

**ADDRESSES:** Written comments must be submitted to Nahid Zoueshtiagh (Air-3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Copies of the rule revisions and EPA's technical support document (TSD) for this action are available for public inspection at EPA's Region IX office during normal business hours. The submitted rule revisions are also available for inspection at the following locations:

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

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95812.

An electronic copy of the TSD is available from EPA Region IX upon request. The District rules are also available on the Internet at: <http://arbis.arb.ca.gov/drdb/ven/cur.htm>

**FOR FURTHER INFORMATION CONTACT:**  
Nahid Zoueshtiagh, U.S. Environmental

Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901, Telephone: (415) 972-3978, e-mail address:  
[zoueshtiagh.nahid@epa.gov](mailto:zoueshtiagh.nahid@epa.gov).

**SUPPLEMENTARY INFORMATION:****I. Background**

On December 7, 2000, EPA published a limited approval and limited disapproval in the **Federal Register** (65 FR 76567). The effective date of our limited disapproval was January 8, 2001. EPA's disapproval action started an 18-month clock for the imposition of one sanction (followed by a second sanction 6 months later) and a 24-month clock for promulgation of a Federal Implementation Plan (FIP). On May 20, 2002, the State subsequently submitted a revised version of Rules 10, 26.1, 26.2, 26.3, 26.4, 26.6, and the new Rule 26.11. In the Proposed Rules section of today's **Federal Register**, EPA is also proposing full approval of the May 20, 2002 submittal.

EPA is taking this interim final rulemaking action because it has determined that the District has corrected the deficiencies noted in its limited disapproval. However, EPA is also providing the public with an opportunity to comment on this interim final action. If, based on the comments on this action and the comments on EPA's proposed approval, EPA determines that the State's submittal is not approvable and this interim final action was inappropriate, EPA will propose to disapprove the State's submittal and will take interim final action finding that the State has not corrected the original disapproval deficiencies. Upon a final disapproval of the State's submittal, EPA would finalize the interim final finding, finding that the State has not corrected the deficiencies.

This action neither stops nor tolls the sanctions clock that started for these deficiencies on January 8, 2001, the effective date of limited approval and limited disapproval. However, this action will defer the imposition of the offset and highway sanctions. See 40 CFR 52.31(d)(2)(ii). If EPA takes final action approving the State's submittal after accepting comments on the proposed rule, such action will permanently stop the sanctions clock and will permanently lift any imposed, stayed or deferred sanctions. However, if at any time EPA determines that the State, in fact, did not correct the disapproval deficiencies, as appropriate, EPA either will withdraw this interim final determination or take action finding that the State has not corrected

the deficiencies. Such action will retrigger the sanctions consequences as described in 40 CFR 52.31 and would result in the immediate imposition of sanctions if the sanctions clock had expired.

**II. EPA Action**

Today we are taking interim final action finding that the State has corrected the disapproval deficiencies that started the sanctions clock. Based on this action, imposition of the offset and highway sanctions will be deferred until EPA takes final action approving the State's submittal or EPA takes action proposing or finally disapproving in whole or part the State submittal. If EPA takes final action approving the State submittal, any sanctions clocks will be permanently stopped and any imposed, stayed or deferred sanctions will be permanently lifted.

We have preliminarily determined that the State has an approvable plan and implementing rules and relief from pending sanctions should be provided as quickly as possible. Therefore, we are invoking the good cause exception to the 30-day notice requirement of the Administrative Procedure Act because the purpose of this notice is to relieve a restriction. See 5 U.S.C. 553(d)(1).

**III. 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 defers federal sanctions. 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 only defers sanctions, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

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

implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely defers sanctions, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), because it is not economically significant. This rule does not contain technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. However, section 808 provides that any rule for which the issuing agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of June 24, 2002. 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 August 23, 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 rules. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

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

Dated: June 14, 2002.

**Laura Yoshii,**

*Deputy Regional Administrator, Region IX.*

[FR Doc. 02-15722 Filed 6-21-02; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 122

#### EPA Administered Permit Programs: The National Pollutant Discharge Elimination System

##### CFR Correction

In Title 40 of the Code of Federal Regulations, Parts 100 to 135, revised as of July 1, 2001, on pages 164 and 166, § 122.26 is corrected by revising paragraphs (c)(1) introductory text and (c)(1)(i)(E)(4), on page 167, by removing and reserving paragraph (c)(2), and on page 171, in paragraph (d)(2)(iii) introductory text, by revising the reference to “(d)(a)(iii)(A)(3)” to read “(d)(2)(iii)(A)(3)”, as follows:

**§ 122.26 Storm water discharges (applicable to State NPDES programs, see § 123.25).**

\* \* \* \* \*

(c) \* \* \*

(1) *Individual application.*

Dischargers of storm water associated with industrial activity and with small construction activity are required to apply for an individual permit or seek coverage under a promulgated storm water general permit. Facilities that are required to obtain an individual permit or any discharge of storm water which the Director is evaluating for designation (see § 124.52(c) of this chapter) under paragraph (a)(1)(v) of this section and is not a municipal storm sewer, shall submit an NPDES application in accordance with the requirements of § 122.21 as modified and supplemented by the provisions of this paragraph.

(i) \* \* \*

(E) \* \* \*

(4) Any information on the discharge required under § 122.21(g)(7)(vi) and (vii);

[FR Doc. 02-55515 Filed 6-21-02; 8:45 am]

**BILLING CODE 1505-01-D**

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 64

[Docket No. FEMA-7785]

#### Suspension of Community Eligibility

**AGENCY:** Federal Emergency Management Agency, FEMA.

**ACTION:** Final rule.

**SUMMARY:** This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

**EFFECTIVE DATES:** The effective date of each community's suspension is the third date (“Susp.”) listed in the third column of the following tables.

**ADDRESSES:** If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

**FOR FURTHER INFORMATION CONTACT:** Edward Pasterick, Division Director, Program Marketing and Partnership Division, Federal Insurance Administration and Mitigation Directorate, 500 C Street, SW.; Room 411, Washington, DC 20472, (202) 646-3098.

**SUPPLEMENTARY INFORMATION:** The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*; unless an

appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C.

4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

#### National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

#### Regulatory Flexibility Act

The Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

#### Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

#### Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

#### Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp.; p. 252.

#### Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp.; p. 309.

#### List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

#### PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

#### § 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

| State and Location                               | Community No. | Effective date authorization/cancellation of sale of flood insurance in community | Current effective map date | Date certain Federal assistance no longer available in special flood hazard areas |
|--------------------------------------------------|---------------|-----------------------------------------------------------------------------------|----------------------------|-----------------------------------------------------------------------------------|
| <b>Region III</b>                                |               |                                                                                   |                            |                                                                                   |
| Pennsylvania: Banks, Township of, Carbon County. | 421452        | July 25, 1975, Emerg.; October 1, 1986, Reg. June 3, 2002.                        | June 3, 2002 ....          | June 3, 2002                                                                      |
| Beaver Meadows, Borough of, Carbon County.       | 420247        | August 5, 1975, Emerg.; June 3, 1986, Reg. June 3, 2002.                          | .....do .....              | Do.                                                                               |
| Bowmanstown, Borough of, Carbon County           | 420248        | July 2, 1975, Emerg.; September 3, 1982, Reg. June 3, 2002.                       | .....do .....              | Do.                                                                               |
| Franklin, Township of, Carbon County .....       | 421014        | December 4, 1973, Emerg.; August 1, 1977, Reg. June 3, 2002.                      | .....do .....              | Do.                                                                               |
| Jim Thorpe, Borough of, Carbon County ....       | 420249        | August 7, 1973, Emerg.; August 15, 1977, Reg. June 3, 2002.                       | .....do .....              | Do.                                                                               |
| Kidder, Township of, Carbon County .....         | 421453        | August 29, 1975, Emerg.; February 2, 1989, Reg. June 3, 2002.                     | .....do .....              | Do.                                                                               |
| Lansford, Borough of, Carbon County .....        | 420250        | September 29, 1975, Emerg.; May 21, 1982, Reg. June 3, 2002.                      | .....do .....              | Do.                                                                               |
| Lower Towamensing, Township of, Carbon County.   | 421455        | July 29, 1975, Emerg.; November 15, 1989, Reg. June 3, 2002.                      | .....do .....              | Do.                                                                               |

| State and Location                                                | Community No. | Effective date authorization/cancellation of sale of flood insurance in community | Current effective map date | Date certain Federal assistance no longer available in special flood hazard areas |
|-------------------------------------------------------------------|---------------|-----------------------------------------------------------------------------------|----------------------------|-----------------------------------------------------------------------------------|
| Mahoning, Township of, Carbon County .....                        | 421041        | February 1, 1974, Emerg.; September 29, 1978, Reg. June 3, 2002.                  | .....do .....              | Do.                                                                               |
| Nesquehoning, Borough of, Carbon County                           | 420252        | April 16, 1974, Emerg.; July 3, 1990, Reg. June 3, 2002.                          | .....do .....              | Do.                                                                               |
| Parryville, Borough of, Carbon County .....                       | 420254        | December 12, 1973, Emerg.; March 1, 1978, Reg. June 3, 2002.                      | .....do .....              | Do.                                                                               |
| Penn Forest, Township of, Carbon County ..                        | 421457        | July 9, 1979, Emerg.; February 2, 1989, Reg. June 3, 2002.                        | .....do .....              | Do.                                                                               |
| Summit Hill, Borough of, Carbon County .....                      | 421451        | July 23, 1975, Emerg.; December 14, 1979, Reg. June 3, 2002.                      | .....do .....              | Do.                                                                               |
| Towamensing, Township of, Carbon County                           | 421458        | July 30, 1975, Emerg.; November 1, 1986, Reg. June 3, 2002.                       | .....do .....              | Do.                                                                               |
| Weissport, Borough of, Carbon County .....                        | 420256        | May 30, 1974, Emerg.; February 2, 1990, Reg. June 3, 2002.                        | .....do .....              | Do.                                                                               |
| <b>Region I</b>                                                   |               |                                                                                   |                            |                                                                                   |
| Connecticut: Enfield, Town of, Hartford County.                   | 090028        | April 4, 1974, Emerg.; March 28, 1980, Reg. June 17, 2002.                        | June 17, 2002 ..           | June 17, 2002                                                                     |
| Maine: York, Town of, York County .....                           | 230159        | January 14, 1972, Emerg.; November 2, 1973, Reg. June 17, 2002.                   | .....do .....              | Do.                                                                               |
| <b>Region II</b>                                                  |               |                                                                                   |                            |                                                                                   |
| New Jersey: Jay, Town of, Essex County ...                        | 360265        | February 13, 1976, Emerg.; August 15, 1983, Reg. June 17, 2002.                   | .....do .....              | Do.                                                                               |
| <b>Region III</b>                                                 |               |                                                                                   |                            |                                                                                   |
| West Virginia: Alderson, Town of, Monroe and Greenbrier Counties. | 540041        | March 7, 1975, Emerg.; September 27, 1991, Reg. June 17, 2002.                    | .....do .....              | Do.                                                                               |
| Monroe County, Unincorporated Areas .....                         | 540278        | October 26, 1976, Emerg.; January 14, 1983, Reg. June 17, 2002.                   | .....do .....              | Do.                                                                               |
| Peterstown, Town of, Monroe County .....                          | 540143        | November 27, 1974, Emerg.; August 1, 1979, Reg. June 17, 2002.                    | .....do .....              | Do.                                                                               |
| <b>Region V</b>                                                   |               |                                                                                   |                            |                                                                                   |
| Minnesota: Blaine, City of, Anoka County ....                     | 270007        | June 11, 1974, Emerg.; November 15, 1979, Reg. June 17, 2002.                     | .....do .....              | Do.                                                                               |
| <b>Region VII</b>                                                 |               |                                                                                   |                            |                                                                                   |
| Kansas: Countryside, City of, Johnson County.                     | 200160        | August 21, 1975, Emerg.; June 30, 1976, Reg. June 17, 2002.                       | .....do .....              | Do.                                                                               |
| DeSoto, City of, Johnson County .....                             | 200161        | May 16, 1975, Emerg.; August 1, 1979, Reg. June 17, 2002.                         | .....do .....              | Do.                                                                               |
| Edgerton, City of, Johnson County .....                           | 200162        | January 12, 1976, Emerg.; August 1, 1979, Reg. June 17, 2002.                     | .....do .....              | Do.                                                                               |
| Fairway, City of, Johnson County .....                            | 205185        | June 12, 1970, Emerg.; April 23, 1971, Reg. June 17, 2002.                        | .....do .....              | Do.                                                                               |
| Gardner, City of, Johnson County .....                            | 200164        | June 25, 1975, Emerg.; April 15, 1977, Reg. June 17, 2002.                        | .....do .....              | Do.                                                                               |
| Johnson County, Unincorporated Areas .....                        | 200159        | September 17, 1979, Emerg.; August 15, 1980, Reg. June 17, 2002.                  | .....do .....              | Do.                                                                               |
| Lake Quivira, City of, Johnson County .....                       | 200166        | July 23, 1975, Emerg.; July 26, 1977, Reg. June 17, 2002.                         | .....do .....              | Do.                                                                               |
| Leawood, City of, Johnson County .....                            | 200167        | September 1, 1972, Emerg.; September 30, 1977, Reg. June 17, 2002.                | .....do .....              | Do.                                                                               |
| Lenexa, City of, Johnson County .....                             | 200168        | June 12, 1975, Emerg.; August 1, 1977, Reg. June 17, 2002.                        | .....do .....              | Do.                                                                               |
| Merriam, City of, Johnson County .....                            | 200169        | April 14, 1975, Emerg.; May 15, 1978, Reg. June 17, 2002.                         | .....do .....              | Do.                                                                               |
| Mission, City of, Johnson County .....                            | 200170        | May 23, 1975, Emerg.; May 15, 1978, Reg. June 17, 2002.                           | .....do .....              | Do.                                                                               |
| Mission Hills, City of, Johnson County .....                      | 200171        | May 7, 1975, Emerg.; September 29, 1978, Reg. June 17, 2002.                      | .....do .....              | Do.                                                                               |
| Olathe, City of, Johnson County .....                             | 200173        | January 19, 1973, Emerg.; November 15, 1978, Reg. June 17, 2002.                  | .....do .....              | Do.                                                                               |
| Overland Park, City of, Johnson County .....                      | 200174        | September 8, 1972, Emerg.; September 30, 1977, Reg. June 17, 2002.                | .....do .....              | Do.                                                                               |
| Prairie Village, City of, Johnson County .....                    | 200175        | March 26, 1975, Emerg.; September 29, 1978, Reg. June 17, 2002.                   | .....do .....              | Do.                                                                               |
| Roeland Park, City of, Johnson County .....                       | 200176        | November 7, 1975, Emerg.; June 30, 1976, Reg. June 17, 2002.                      | .....do .....              | Do.                                                                               |

| State and Location                                     | Community No. | Effective date authorization/cancellation of sale of flood insurance in community | Current effective map date | Date certain Federal assistance no longer available in special flood hazard areas |
|--------------------------------------------------------|---------------|-----------------------------------------------------------------------------------|----------------------------|-----------------------------------------------------------------------------------|
| Shawnee, City of, Johnson County .....                 | 200177        | February 24, 1975, Emerg.; November 15, 1978, Reg. June 17, 2002.                 | .....do .....              | Do.                                                                               |
| Westwood, City of, Johnson County .....                | 200179        | July 27, 1975, Emerg.; June 25, 1976, Reg. June 17, 2002.                         | .....do .....              | Do.                                                                               |
| Westwood Hills, City of, Johnson County ....           | 200180        | September 4, 1975, Emerg.; August 3, 1984, Reg. June 17, 2002.                    | .....do .....              | Do.                                                                               |
| <b>Region VIII</b>                                     |               |                                                                                   |                            |                                                                                   |
| Montana: Lewis and Clark County, Unincorporated Areas. | 300038        | August 26, 1975, Emerg.; April 1, 1981, Reg. June 17, 2002.                       | .....do .....              | Do.                                                                               |

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: June 10, 2002.

**Robert F. Shea,**

*Acting Administrator, Federal Insurance Administration and Mitigation Administration.*

[FR Doc. 02–15812 Filed 6–21–02; 8:45 am]

BILLING CODE 6718–05–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 54

[CC Docket Nos. 00–256 and 96–45; FCC 02–181]

#### Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers; Federal-State Joint Board on Universal Service

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission waives, on its own motion, the requirement that carriers file annual certifications on June 30, 2002, in order to receive Interstate Common Line Support (ICLS). The Commission finds that this requirement is unnecessary because carriers have already filed such certifications on April 18, 2002, for the ICLS funding year beginning July 1, 2002. The Commission also amends its rules to permit adjustments to Long Term Support (LTS) to reflect projected revenues of carriers that participate in the National Exchange Carrier Association (NECA) common line pool. This amendment conforms the rules governing the calculation of LTS to the Commission's intent in the *MAG Order*, ensures appropriate LTS funding levels, and will enable NECA to file common line tariffs that comply with the Commission's rules.

**DATES:** Effective June 24, 2002.

#### FOR FURTHER INFORMATION CONTACT:

Theodore Burmeister, Attorney, Telecommunications Access Policy Division, Wireline Competition Bureau, (202) 418–7400.

**SUPPLEMENTARY INFORMATION:** This is a summary of a Commission's Order and Second Order on Reconsideration in CC Docket Nos. 00–256 and 96–45 released on June 13, 2002. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC, 20554.

#### I. Introduction

1. In this Order we waive, on our own motion, the requirement that carriers file annual certifications on June 30, 2002, in order to receive Interstate Common Line Support (ICLS). We find that this requirement is unnecessary because carriers have already filed such certifications on April 18, 2002, for the ICLS funding year beginning July 1, 2002. We also amend our rules to permit adjustments to Long Term Support (LTS) to reflect projected revenues of carriers that participate in the National Exchange Carrier Association (NECA) common line pool. This amendment conforms the rules governing calculation of LTS to the Commission's intent in the *MAG Order*, 66 FR 59719, November 30, 2001, ensures appropriate LTS funding levels, and will enable NECA to file common line tariffs that comply with part 69 of the Commission's rules.

#### II. Waiver of the June 30, 2002, Filing Requirement

##### A. Discussion

2. We waive, on our own motion, the requirement that carriers file an annual certification on June 30, 2002. The Commission may exercise its discretion to waive a rule where special circumstances make strict compliance

with the rule inconsistent with the public interest. We find that special circumstances exist here to warrant a waiver. Generally, the requirement that carriers file a certification on June 30 of each year serves the public interest by ensuring that carriers use ICLS only for the “provision, maintenance, and upgrading of facilities and services for which the support is intended,” in accordance with section 254(e). In the initial ICLS funding year, however, the June 30 filing requirement merely duplicates the earlier filing required on April 18, 2002, which covers the same certification period. The duplicative filing requirement is therefore unnecessary. We therefore conclude that special circumstances warrant a waiver of the June 30, 2002 filing requirement.

#### III. Long Term Support Rules

##### A. Discussion

3. On our own motion, we amend our rules to permit LTS to be adjusted so that it does not exceed the difference between each carrier's projected common line revenue requirement and its projected revenues from SLCs, other common line end-user charges, and transitional CCL charges. This amendment conforms the rules governing the calculation of LTS to our intent in the *MAG Order*, ensures appropriate LTS funding levels, and will enable NECA to file common line tariffs that comply with our rules.

4. Amendment of our LTS rule is necessary to fulfill our goals in reforming the interstate universal service support mechanisms and access rate structure in the *MAG Order*. The current LTS rule does not take into account the increased SLC revenues resulting from the reforms adopted in the *MAG Order*. This makes no difference for the vast majority of carriers, whose common line revenue requirements will exceed their revenues from SLCs, other end-user common line

charges, transitional CCL charges, and LTS. For some carriers, however, the reforms adopted in the *MAG Order* reduced the need for high-cost support for interstate loop costs below the amount of LTS they currently receive. Failure to adjust LTS for these carriers would lead to earnings in excess of their common line revenue requirements. We retained LTS in the *MAG Order* solely for the purpose of stabilizing membership in the common line pool during the transition to a more efficient rate structure. We did not intend to negate our cost recovery rules for rate-of-return carriers and permit the carriers to recover more than their common line revenue requirements, nor did we intend that any carrier would have a "negative" ICLS amount. Accordingly, we conclude that amendment of the LTS rule is necessary.

5. We also find that this amendment is necessary to ensure the appropriate LTS funding levels. This amendment will prevent waste of universal service support by ensuring that LTS is not distributed to any rate-of-return carrier except to the extent that it is required to maintain the affordability of the carrier's interstate common line services. We conclude that the potential alternatives to adjusting LTS would not serve the public interest. For example, we decline to require NECA to reduce its tariffed SLC or transitional CCL rates to offset the excess LTS payments. Reducing SLCs would use universal service funds to subsidize rates below the caps the Commission has set. Reducing the transitional CCL rate would undermine the decision to use a transitional CCL charge to gradually implement the reforms adopted in the *MAG Order*.

6. Finally, this amendment will enable NECA to file common line tariffs that comply with our part 69 rules. Rate-of-return carriers, including members of the common line pool, are limited to recovery of their costs plus a prescribed rate of return. The common line pool would over earn if NECA filed tariffs for SLCs and CCL charges that reflect the aggregate cost and revenue data included in the April 18 projected ICLS filing, without adjustment of LTS. If NECA files a tariff that on its face permits excessive recovery, any ratepayer—end users or interexchange carriers subject to CCL charges—could request that the Commission suspend the tariff to prevent over-recovery.

#### IV. Procedural Matters

##### A. Supplemental Final Regulatory Flexibility Analysis

7. In compliance with the Regulatory Flexibility Act (RFA), this Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) supplements the Final Regulatory Flexibility Analysis (FRFA) included in the *MAG Order*, to the extent that changes to that Order adopted here on reconsideration require changes in the conclusions reached in the FRFA. We note that we do not find that this Order on Reconsideration creates a significant economic impact on small entities. We could therefore meet our obligations under the RFA by certifying that there is no significant economic impact on small entities, rather than including this SFRFA. We nonetheless include this Supplemental FRFA to demonstrate that we have considered the impact of our action on small entities in adopting this Order on Reconsideration.

##### 1. Need For, and Objective of, the Second Order on Reconsideration

8. This Second Order on Reconsideration is necessary to conform the rules governing the calculation of LTS to our intent in the *MAG Order*, ensure appropriate LTS funding levels, and enable NECA to file common line tariffs that comply with our rules. Section 254 of the Communications Act of 1934, as amended by the 1996 Act, requires the Commission to promulgate rules to preserve and advance universal service support. Pursuant to that mandate, the Commission, in the *MAG Order*, adopted reforms to the interstate access rate structure and universal service support mechanisms for rate-of-return carriers. In making these reforms, the Commission created ICLS to provide explicit universal service support for the interstate common line, but left the existing interstate support mechanism, LTS, unchanged for the July 1, 2002–June 30, 2003, funding year. We now conclude that it is necessary to amend LTS to permit reductions of LTS to certain carriers in certain circumstances. As described, this is necessary in order to permit NECA to file a tariff on behalf pooling carriers that does not result in revenues in excess of their authorized rate-of-return. This is consistent with our intent in adopting the reforms in the *MAG Order*.

##### 2. Summary of Significant Issues Raised by Public Comments

9. No petitions were submitted in response to the previous FRFA.

##### 3. Description and Estimate of the Number of Small Entities to Which This Order on Reconsideration Will Apply

10. In the previous FRFA at paragraphs 289–300 of the *MAG Order*, we described and estimated the number of small entities that would be affected by the new universal service rules. These included local exchange carriers, interexchange carriers, competitive service providers, and providers of wireless telephony, rural radiotelephone service, fixed microwave services, and 39 GHz service. The rule amendment adopted herein may apply to the same entities affected by the rules adopted in that order. We therefore incorporate by reference paragraphs 289–300 of the *MAG Order*.

##### 4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

11. The rule amendment adopted in this Second Order on Reconsideration contains no new reporting, recordkeeping, or other compliance requirement.

##### 5. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

12. As noted, the amendment to our rules adopted in this Order on Reconsideration does not have a significant impact on small entities. We take action to reaffirm the ability of rate-of-return carriers to recover their costs plus the Commission-approved rate of return on investment. Although the amendment does limit the carriers' ability to recover its revenue from a particular source, LTS, it has no net impact on their overall ability to recover their costs and rate return.

13. We did consider other alternatives that would have limited carriers revenue recovery from other sources, but concluded that reducing the tariffed SLC rates or transitional CCL charge rates imposed by these carriers would not be in the public interest. Reducing SLCs would use universal service funds to subsidize rates below the caps the Commission has set. Reducing the transitional CCL rate would undermine the decision to use a transitional CCL charge to gradually implement the reforms adopted in the *MAG Order*.

##### 6. Report to Congress

14. The Commission will send a copy of this Second Order on Reconsideration, including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A). In addition, the

Commission will send a copy of this Second Order on Reconsideration, including the Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Second Order on Reconsideration and Supplemental FRFA (or summaries thereof) will also be published in the **Federal Register**. See 5 U.S.C. 604(b).

#### *B. Paperwork Reduction Act*

15. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 (PRA) and found to impose no new or modified reporting or recordkeeping requirements or burdens to the public.

#### **V. Ordering Clauses**

16. Pursuant to the authority contained in sections 1–4, 10, 201–02, and 254 of the Communications Act of 1934 as amended, 47 U.S.C. 1–4, 10, 201–02, and 254, and §§ 1.3 and 1.103 of the Commission's rules, this Order and Second Order on Reconsideration is adopted.

17. Section 54.904(d) is waived with respect to the filing required pursuant to that rule on June 30, 2002.

18. Section 54.303(b) of the Commission's rules is amended, effective June 24, 2002. Good cause exists to make this effective June 24, 2002. The actions we take in this Order on Reconsideration are intended to facilitate compliance other Commission rules. It is necessary that the amendment take effect as soon as possible in order to best fulfill this purpose.

19. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Second Order on Reconsideration, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

#### **List of Subjects 47 CFR Part 54**

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

**Marlene Dortch,**  
*Secretary.*

#### **Rule Change**

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

#### **PART 54—UNIVERSAL SERVICE**

1. The authority citation for part 54 continues to read as follows:

**Authority:** 47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

2. Section 54.303 is amended by adding paragraph (b)(5) to read as follows:

#### **§ 54.303 Long term support.**

\* \* \* \* \*

(b) \* \* \*

(5)(i) Beginning July 1, 2002, each carrier will be eligible to receive LTS equal to the lesser of:

(A) The LTS for which the carrier would be eligible pursuant to paragraph (b)(4) of this section, or

(B) Its common line revenue requirement as calculated in accordance with part 69 of this chapter, minus:

(1) The study area revenues obtained from end-user common line charges at their allowable maximum as determined by §§ 69.104(n) and 69.104(o) of this chapter;

(2) The carrier common line charge revenues to be phased out pursuant to § 69.105 of this chapter;

(3) The special access surcharges pursuant to § 69.114 of this chapter; and

(4) The line port costs in excess of basic analog service pursuant to § 69.130 of this chapter.

(ii) Under no circumstance shall a carrier have LTS that is less than zero.

(iii) In calculating an LTS amount pursuant to paragraph (b)(5)(i)(B) of this section, the Administrator shall use data filed pursuant to § 54.903 of this chapter.

[FR Doc. 02–15840 Filed 6–20–02; 8:45 am]

**BILLING CODE 6712–01–P**

### **FEDERAL COMMUNICATIONS COMMISSION**

#### **47 CFR Part 73**

[DA 02–1378; MM Docket No. 01–322; RM–10332]

#### **Radio Broadcasting Services; Fremont and Sunnyvale, CA**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In response to a *Notice of Proposed Rule Making*, 66 FR 63654 (December 10, 2001) this document reallocates Channel 285A from Fremont, California to Sunnyvale, California and provides Sunnyvale with its first local aural transmission service. The coordinates for Channel 285A at Sunnyvale are 37–18–41 North Latitude and 121–48–58 West Longitude.

**DATES:** Effective July 29, 2002.

**FOR FURTHER INFORMATION CONTACT:** R. Barthen Gorman, Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 01–322, adopted June 5, 2002, and released June 14, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A245 12th Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

#### **List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

#### **PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

#### **§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Fremont, Channel 285A, and adding Sunnyvale, Channel 285A.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Office of Broadcast License Policy, Media Bureau.*

[FR Doc. 02–15675 Filed 6–21–02; 8:45 am]

**BILLING CODE 6712–01–P**

### **FEDERAL COMMUNICATIONS COMMISSION**

#### **47 CFR Part 73**

#### **Radio Broadcasting Services; Various Locations**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, on its own motion, editorially amends the Table of FM Allotments to specify the actual classes of channels allotted to various communities. The changes in channel classifications have been authorized in response to applications filed by licensees and permittees operating on these channels. This action is taken

pursuant to *Revision of Section 73.3573(a)(1) of the Commission's Rules Concerning the Lower Classification of an FM Allotment*, 4 FCC Rcd 2413 (1989), and the *Amendment of the Commission's Rules to permit FM Channel and Class Modifications [Upgrades] by Applications*, 8 FCC Rcd 4735 (1993).

**DATES:** Effective June 24, 2002.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, adopted May 29, 2002, and released June 7, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

#### PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

##### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by removing Channel 262C and adding Channel 262C1 at Tusculumbia.

3. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by removing Channel 277C1 and adding Channel 277C0 at Pella.

4. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Channel 282A and adding Channel 282C3 at Vandalia.

5. Section 73.202(b), the Table of FM Allotments under South Carolina, is amended by removing Channel 253A and adding Channel 253C3 at Pawley's Island.

6. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 240A and adding Channel 241C3 at Dalhart and by removing Channel 286a and adding Channel 286C2 at Seadrift.

7. Section 73.202(b), the Table of FM Allotments under Washington, is amended by removing Channel 256C2 and adding Channel 256C1 at Walla Walla.

8. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by removing Channel 287C2 and adding Channel 287C1 at Diamondville.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Office of Broadcast License Policy, Media Bureau.*

[FR Doc. 02-15671 Filed 6-21-02; 8:45 am]

**BILLING CODE 6712-01-P**

#### FEDERAL COMMUNICATIONS COMMISSION

##### 47 CFR Part 73

[DA 02-1340; MM Docket No. 02-42; RM-10382]

#### Radio Broadcasting Services; Chester and Westwood, CA

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In response to a *Notice of Proposed Rule Making*, 67 FR 12501 (March 19, 2002), this document reallocates Channel 259A from Chester, California, to Westwood, California, and provides Westwood with its first local commercial aural transmission service. The coordinates for Channel 259A at Westwood are 40-14-21 North Latitude and 121-01-52 West Longitude.

**DATES:** Effective July 22, 2002.

**FOR FURTHER INFORMATION CONTACT:** R. Barthen Gorman, Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 02-42, adopted May 29, 2002, and released June 7, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY-A257, 445 12th Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

#### PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 reads as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

##### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 259A at Chester and adding Westwood, Channel 259A.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Office of Broadcast License Policy, Media Bureau.*

[FR Doc. 02-15668 Filed 6-21-02; 8:45 am]

**BILLING CODE 6712-01-P**

#### FEDERAL COMMUNICATIONS COMMISSION

##### 47 CFR Part 95

[WT Docket No. 98-169; FCC 02-130]

#### Regulatory Flexibility in the 218-219 MHz Service

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; denial of petition for reconsideration.

**SUMMARY:** This document denies the Ad Hoc Coalition's ("Coalition") second petition for reconsideration of the Commission's *218-219 MHz Second Reconsideration Order*. The Coalition's petition contains previously raised constitutional and price inflation arguments and a newly raised, albeit untimely, Administrative Procedure Act ("APA") argument. The Commission dismisses as repetitious the Coalition's constitutional and price inflation arguments because these arguments were previously the subject of reconsideration and fully considered in the *218-219 MHz Second Reconsideration Order*. The Commission also dismisses the Coalition's untimely APA argument because the Coalition does not plead or otherwise establish new facts, changed circumstances, or public interest considerations that would merit review of the untimely request for reconsideration.

**FOR FURTHER INFORMATION CONTACT:** Francis Gutierrez, Auctions and Industry Analysis Division, Wireless Telecommunications Commission, at (202) 418-0660.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Third Order on Reconsideration of the Report and Order and Memorandum Opinion and Order (*Third Report and Order*) released on May 8, 2002. The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

## I. Introduction

1. The Commission has before it the Ad Hoc Coalition's ("Coalition") second Petition for Reconsideration. The Coalition seeks reconsideration of the *218-219 MHz Second Reconsideration Order*, 66 FR 9212 (February 7, 2001), that denied the Coalition's first Petition for Reconsideration. The Commission dismisses the second Petition for Reconsideration for the reasons set forth.

## II. Background

2. On July 28 and 29, 1994, the Commission conducted an auction in the 218-219 MHz Service ("Auction No. 2"). The applicable rules at the time included provisions to encourage participation by small businesses and minority- and women-owned entities. Small businesses were entitled to pay eighty-percent of their winning bids in installments while businesses owned by minorities and/or women were entitled to a twenty-five percent bidding credit that could be applied to one of the two licenses available in each market. Bidders that were both, small businesses and minority- and/or women-owned entities could use installment financing as well as bidding credits.

3. At the time our rules were adopted for Auction No. 2, the standard of review applied to federal programs designed to enhance opportunities for racial minorities and women was an "intermediate scrutiny standard." In June 1995, almost a year after the conclusion of Auction No. 2, the U.S. Supreme Court decided *Adarand Constructors v. Peña*, holding that racial classifications are subject to "strict scrutiny" and will be found unconstitutional unless "narrowly tailored" and in furtherance of "compelling governmental interests."

4. On December 5, 1995, the Coalition filed a Petition for Relief that alleged

that the bidding credits in Auction No. 2 were unconstitutional and sought a twenty-five percent reduction of its members' winning bids to match the bidding credits provided to minority- and women-owned entities. At the same time, members of the Coalition sought judicial review as petitioners and intervenors in appeal of the Commission's *IVDS Omnibus Order*, 11 FCC Rcd. 1282 (1996), in which the Commission denied a challenge to race- and gender-based bidding credits brought by Graceba Total Communications. The Commission held the Petition for Relief in abeyance pending the outcome of this case.

5. On June 26, 1996, the U.S. Supreme Court decided *United States v. Virginia*, which held that to successfully defend a gender-based program, the government must demonstrate an "exceedingly persuasive justification" for the program.

6. On November 21, 1996, the Commission released the *Competitive Bidding Tenth Report and Order*, 61 FR 60198 (November 27, 1996), which modified certain competitive bidding provisions concerning the treatment of small businesses, businesses owned by members of minority groups and women, and rural telephone companies for the then-planned second IVDS auction, in order to address the legal requirements of the Supreme Court's decisions in *Adarand* and *VMI*. Additionally, in order to avoid undue delay of future auctions in other services, the Commission eliminated the race- and gender-based provisions for those auctions and instead employed a similar provision for small businesses.

7. On June 20, 1997, the D.C. Circuit dismissed the Coalition's challenge to the *IVDS Omnibus Order*, finding that the appeal was not ripe due to the Coalition's Petition pending before the Commission. Subsequently, on January 9, 1998, the Coalition filed with the Commission a Supplement to its Petition for Relief that claimed that: (i) failure to provide the twenty-five percent reduction in the license payments amounts to an unconstitutional taking of property without due process of law; and (ii) finality-related concerns do not bar the retroactive application of *Adarand*. The Coalition also expanded its requested remedy to include all Auction No. 2 winning bidders who did not receive a 25 percent bidding credit.

8. On May 28, 1998, the Wireless Telecommunications Bureau ("Bureau") issued the *Community Teleplay Order*, 13 FCC Rcd. 12426 (1998), which denied the Coalition's requests based on its finding that members of the Coalition

had sufficient opportunity to raise a challenge in a timely manner, but failed to do so. On June 29, 1998, the Coalition filed an Application for Review.

9. On September 10, 1999, the Commission released the *218-219 MHz Order*, 64 FR 59656 (November 3, 1999), which, among other things, dismissed the Coalition's Application for Review as moot because the *218-219 MHz Order* eliminated from the Commission's rules the bidding credit for minority- and women-owned businesses. Thus, all minority- and women-owned businesses lost the bidding credit they had previously received in Auction No. 2. At the same time, to fulfill the Commission's statutory mandate of encouraging participation by small businesses, rural telephone companies, and businesses owned by members of minority groups and women, the Commission granted a retroactive twenty-five percent bidding credit to the accounts of "every winning bidder in the 1994 auction of what is now the 218-219 MHz Service that met the small business qualifications for that auction." The Commission noted that this approach minimized the disruption to entities that have previously received a bidding credit and the public, and that similar bidding credits had been provided to bidders in other services. The Commission also rejected the Coalition's takings argument.

10. On December 3, 1999, the Coalition filed its first Petition for Reconsideration ("First Petition for Reconsideration") alleging that the remedial bidding credit adopted in the *218-219 MHz Order* represented a "conversion" of an unconstitutional race- and gender-based preference to a small business preference and that the new credit did not resolve its constitutional claims and should be subject to strict scrutiny. The Coalition requested that the Commission extend the remedial bidding credit to all Auction No. 2 bidders regardless of size.

11. On December 13, 2000, the Commission denied the Coalition's First Petition for Reconsideration in the *218-219 MHz Second Reconsideration Order*. The Commission rejected the argument that the remedial bidding credit was impermissibly motivated and found that the remedial bidding credit satisfied rational basis review because it was adopted to further Congress's objective to disseminate licenses among a wide variety of applicants. Finally, the Commission determined that there was no evidence to support the allegation, previously raised by Kingdon Hughes (another Petitioner), that the original bidding credits inflated the prices paid by auction participants. The

Commission declined to expand the remedial bidding credit to all winning bidders in Auction No. 2.

12. On February 15, 2001, the Bureau exercised its delegated authority and issued a *Refund Procedures PN*, 16 FCC Rcd. 3453 (2001), explaining the procedures relating to the remedial bidding credit. The Commission is presently processing the refund requests of all eligible requestors.

13. On March 9, 2001, the Coalition filed its second Petition for Reconsideration ("Second Petition for Reconsideration") seeking reconsideration of the Commission's *218–219 MHz Second Reconsideration Order*. The Coalition, in its Second Petition for Reconsideration, argued that the remedial bidding credit was unconstitutional and that the price inflation argument (previously raised by Kingdon Hughes in his Petition for Reconsideration of the *218–219 MHz Order*) was not "wholly speculative." The Coalition also raised, for the first time with sufficient particularity, the argument that the remedial bidding credit violated the notice and comment provisions of the Administrative Procedures Act ("APA") because the remedial bidding credit was not included in the *218–219 MHz Notice of Proposed Rule Making*, 66 FR 9212 (February 7, 2001).

### III. Discussion

14. The Commission dismisses as repetitious the Coalition's Second Petition for Reconsideration with respect to the constitutional and price inflation arguments because these arguments were previously the subject of reconsideration and fully considered in the *218–219 MHz Second Reconsideration Order*. The Commission also dismisses the Coalition's untimely APA argument because the Coalition does not plead or otherwise establish new facts, changed circumstances, or public interest considerations that would merit review of this untimely request for reconsideration.

15. Repetitious Arguments. The Commission does not grant reconsideration for the purpose of allowing a petitioner to reiterate arguments already presented. This is particularly true, where a petitioner advances arguments that the Commission previously considered and rejected in a prior order on reconsideration. If this were not the case, the Commission "would be involved in a never ending process of review that would frustrate the Commission's ability to conduct its business in an orderly fashion."

However, the Commission will entertain a petition for reconsideration if it is based on new evidence or changed circumstances or if reconsideration is in the public interest. In this case, a comparison of the Coalition's Second Petition for Reconsideration with the Coalition's First Petition for Reconsideration and the Petition of Kingdon Hughes establishes that the Coalition's constitutional and price inflation arguments were previously raised and fully addressed in the *218–219 MHz Second Reconsideration Order*.

16. In its First Petition for Reconsideration, the Coalition argued that the remedial bidding credit adopted in the *218–219 MHz Order* represented a "conversion" of an unconstitutional race- and gender-based preference to a small business preference. The Coalition argued that this "conversion" failed to resolve its constitutional claims. Additionally, the Coalition contended that the remedial bidding credit was impermissibly motivated, violated *Hunt v. Cromartie*, (which states that "a law that is facially neutral with respect to race classification warrants strict scrutiny under the Equal Protection Clause only if it can be proved that the law was motivated by a racial purpose or object, or if it is unexplainable on grounds other than race") and should be subject to strict scrutiny review. The Commission rejected these arguments in the *218–219 MHz Second Reconsideration Order*. The Commission explained that the remedial bidding credit was adopted not to remedy the race- and gender-discrimination that allegedly occurred in 1994. Rather, the Commission explained that the extent of any "remedy" for the alleged race- and gender-discrimination was the elimination of the race and gender-based bidding credit. The remedial bidding credit was accorded to small businesses to fulfill the Commission's statutory mandate of encouraging participation by small businesses and to make the rules consistent with those in other services. Thus, the Commission resolved a multi-faceted and complex set of regulatory issues by leveling the bidding credit upward. Because the remedial bidding credit was not based on race- or gender-classifications, the Commission found that it is not subject to strict scrutiny review and satisfied rational basis review. In its Second Petition for Reconsideration, the Coalition reiterated its constitutional arguments concerning the remedial bidding credit. Because these arguments were fully addressed by the Commission

in a prior order, these arguments are dismissed as repetitious.

17. The Coalition also raised in its Second Petition for Reconsideration, an argument previously raised by Kingdon Hughes in his Petition for Reconsideration of the *218–219 MHz Order*, which asserted that the bidding credits inflated the prices paid by licensees. The Commission rejected this argument as wholly speculative in the *218–219 Second Reconsideration Order*. Again, because this argument was previously raised by another petitioner, and fully addressed by the Commission in the *218–219 MHz Second Reconsideration Order*, this argument is dismissed as repetitious.

18. APA Argument. The Coalition's APA argument is untimely. Although the Commission did not previously address this argument, it was not originally made with enough particularity in the Coalition's First Petition for Reconsideration to merit the Commission's attention. The Coalition's inclusion of this argument in its Second Petition for Reconsideration does not correct its earlier failure or obviate the fact that the argument is now untimely.

19. The Commission's rules require that petitioners state with particularity the grounds on which reconsideration of a Commission action is sought. The precedent is clear that the Commission "need not sift pleadings and documents" to identify arguments that are not "stated with clarity" by a petitioner. It is the petitioner that has the burden of clarifying its petition before the agency." The mere mention of a legal concept is insufficient to properly raise an argument for review. As the Court of Appeals for the D.C. Circuit has noted "even where an issue has been "raised" before the Commission, if it is done in an incomplete way \* \* \* the Commission has not been afforded a fair opportunity [to pass on the issue]." In the First Petition for Reconsideration, the Coalition's passing reference to the APA in a section devoted to the constitutionality of the remedial bidding credit does not meet the standard. Although the Coalition characterized the adoption of the remedial bidding credit as "dubious" under the APA, it did not develop any argument or cite any authority. Indeed, the Coalition did not even specifically claim that the remedial bidding credit violated the APA. Thus, this passing reference in the First Petition for Reconsideration did not comport with the requirement that the basis for a petition for reconsideration be stated with particularity and, accordingly, the issue was not properly raised for our review.

20. As previously noted, “[t]he Communications Act, our rules, and the need for administrative orderliness require petitioners to raise issues in a timely manner.” Accordingly, unless the public interest would be served by reconsideration, § 1.429(i) of the Commission’s rules limits subsequent reconsideration to modifications made to the original order on reconsideration. The *218–219 MHz Second Reconsideration Order* did not modify the remedial bidding credit. Thus, a petition for reconsideration of the *218–219 MHz Second Reconsideration Order*

that challenges the remedial bidding credit is precluded under § 1.429(i). This result is particularly appropriate where, as here, the Coalition’s Second Petition for Reconsideration did not establish that the public interest would be served by review of the untimely APA argument. Accordingly, the Coalition’s APA argument is dismissed.

#### IV. Ordering Clause

21. It is ordered that, pursuant to the authority of sections 4(i), 257, 303(b), 303(g), 303(h), 303(q), 303(r), 309(j) and 332(a) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 257,

303(b), 303(g), 303(h), 303(q), 303(r), 309(j) and 332(a), and § 1.429 of the Commission’s rules the Second Petition for Reconsideration filed by the Ad Hoc Coalition is dismissed.

22. It is further ordered that the *Third Report and Order* is adopted and that a copy be sent to the Ad Hoc Coalition via certified mail, return-receipt requested.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 02–15787 Filed 6–21–02; 8:45 am]

**BILLING CODE 6712–01–P**

# Proposed Rules

Federal Register

Vol. 67, No. 121

Monday, June 24, 2002

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

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Airspace Docket No. 02-AEA-06]

#### Amendment of Class D Airspace, Huntington, WV

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed amendment would increase the upper limit of the Class D airspace at Huntington, WV. Controlled airspace extending upward from the surface is needed to contain aircraft executing Instrument Flight Rule (IFR) procedures and provide a safer operating environment. This action would increase the upper limits of the existing Class D airspace from 3,300 feet MSL to 3400 feet MSL.

**DATES:** Comments must be received on or before July 21, 2002.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA-520, Docket No. 02-AEA-06, FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434-4809.

The official docket may be examined in the Office of the Regional Counsel, AEA-7, FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434-4809. An informal docket may also be examined during normal business hours in the Airspace Branch, AEA-520, FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY, 11434-4809.

**FOR FURTHER INFORMATION CONTACT:** Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA-520, FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY, 11434-4809; telephone: (718) 553-4521.

#### SUPPLEMENTARY INFORMATION:

#### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views,

or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 02-AEA-06." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket closing both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

#### Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA-7, FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY, 11434-4809. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

#### The Proposal

The FAA is considering an action to amend Part 71 of the Federal Aviation Regulations (14 CFR part 71) to provide additional controlled airspace for Instrument Flight Rules (IFR) procedures at Tri State/Milton J Ferguson Field Airport, Huntington, WV. This action would provide the needed additional Class D Airspace area.

Class D airspace designations for airspace areas extending upward from the surface are published in Paragraph 5000 of FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document would be published subsequently in the Order.

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

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### The Proposed Amendment

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

#### PART 71—[AMENDED]

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

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

#### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is proposed to be amended as follows:

*Paragraph 5000 Class D airspace areas extending upward from the surface of the earth.*

\* \* \* \* \*

#### **AEA WV D Huntington, WV [Revised]**

Tri State/Milton J Ferguson Field Airport,  
Huntington, WV  
(Lat. 38°22'00" N., long. 82°33'29" W.)

That airspace extending upward from the surface to and including 3,400 feet MSL within a 4-mile radius of Tri State/Milton J Ferguson Field Airport.

\* \* \* \* \*

Issued in Jamaica, New York on May 23, 2002.

**F.D. Hatfield,**

*Manager, Air Traffic Division, Eastern Region.*  
[FR Doc. 02-15800 Filed 6-21-02; 8:45 am]

**BILLING CODE 4910-13-M**

## **DEPARTMENT OF TRANSPORTATION**

### **Coast Guard**

#### **33 CFR Part 66**

**[USCG-2000-7466]**

**RIN 2115-AF98**

#### **Allowing Alternatives to Incandescent Lights, and Establishing Standards for New Lights, in Private Aids to Navigation**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to remove the requirement to use only tungsten-incandescent-light sources for private aids to navigation (PATONs) and to establish more-specific performance standards for all lights in PATONs. These measures would enable private industry and owners of PATONs to take advantage of recent changes in lighting technology—specifically allow owners of PATONs to use lanterns based on the technology of light-emitting diodes (LEDs). They might reduce the consumption of power, simplify the maintenance of PATONs, and make the rules for PATONs equivalent to those for Federal aids to navigation.

**DATES:** Comments and related material must reach the Docket Management Facility on or before August 23, 2002.

**ADDRESSES:** To make sure that your comments and related material do not enter the docket [USCG-2000-7466] more than once, please submit them by only one of the following means:

(1) By mail to the Facility, U.S. Department of Transportation, room PL-401, 400 Seventh Street SW., Washington, DC 20590-0001. Caution: Because of recent delays in the delivery

of mail, your comments may reach the Facility more quickly if you choose one of the other means described below.

(2) By delivery to room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

(3) By fax to the Facility at 202-493-2251.

(4) Electronically through the Web Site for the Docket Management System at <http://dms.dot.gov>.

The Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, 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, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call Dan Andrusiak, Office of Aids to Navigation, at Coast Guard Headquarters, telephone 202-267-0327. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202-366-5149.

#### **SUPPLEMENTARY INFORMATION:**

##### **Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [USCG-2000-7466], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

## **Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

## **Regulatory Information**

### *Background*

The Marine Safety Council (MSC) of the Coast Guard recommended this rulemaking to provide owners of PATONs with more options for selecting equipment. This rule might reduce lifecycle cost, reduce the consumption of power, and simplify the maintenance of PATONs by allowing the use of lighting technologies other than those based on tungsten-incandescent light sources.

### *History of Rulemaking*

On October 4, 2000, the Coast Guard published a direct final rule (DFR) [65 FR 59124] under the same docket number as the one borne by this NPRM: USCG-2000-7466. We published that rule as a DFR because we expected that the public would readily embrace it; however, we received an adverse comment. Because of this, we withdrew the DFR [66 FR 8 (January 2, 2001)] so our engineers could analyze and respond to the comment. They did so. Not only did they follow the commenter's advice to make performance standards for LEDs more specific; they also recommended to the MSC the standardizing of all rules related to lights used as PATONs.

### *Response to Adverse Comment*

Our engineers have analyzed the adverse comment. We are publishing their responses to the several concerns in the order in which the commenter raised them.

Concern (1) "Absent the provision of standards for LED performance, the reliability of [PATONs] will decrease."

Our response: First, we agree that we should publish standards for the performance of LEDs. Second, we should make more explicit our performance standards for all lights used as PATONs: We propose to establish, in addition to the existing ones, specifications for range, effective intensity, uniformity in the horizontal plane (omnidirectionality), and divergence (beam spread). Third, we propose to require that each light feature

a label attached to the PATON that meets the requirements of new 33 CFR § 66.01–13 and indicates a recommended interval for replacement. And, fourth, we propose to require that any lantern using renewable energy must have autonomy of (the ability to maintain a charge for) at least 10 days.

Concern (2) “The color of many white LEDs and some green LEDs [does] not conform to current color standards” for lights in aids to navigation.

*Our response:* We agree that many white and some green LEDs may not conform to current color standards for lights in aids to navigation and may be inadequate for use in PATONs. Therefore, we are proposing to require that any source of light, of any color, used in a PATON conform to specific standards of color approved by the International Association of Lighthouse Authorities (IALA).

Concern (3) “There is no provision for a backup source, such as provided by a lampchanger.”

*Our response:* While we agree this is an important issue to consider, we believe that because LEDs are so reliable—their mean time between failure (MTBF) often exceeds 100,000 hours—it is not necessary to require a backup source. However, as discussed in our response to concern #1, we are proposing to require that intervals for replacement of all lights be made explicit.

Concern (4) “Degradation of output over time must be addressed.”

*Our response:* We have considered degradation of output over time and we feel confident that LEDs are safe, even safer than other lights on the market, for two primary reasons. First, as we stated in our response to concern (3), the lifespan of an LED is so long (100,000 hours or more) that burnout risk is minimal. Second, most manufacturers indicate that the average LED does not degrade before 50,000 hours of life. One year contains about 8,000 hours, so an LED at continuous burn would not degrade until 6.25 years later—and the predicted reduction would not be discernible to the eye when comparing the LED to a new source of light of any kind.

### Discussion of Proposed Rule

This proposed rule would remove the requirement to use only tungsten-incandescent-light sources for PATONs. As a result, it would enable industry and owners of PATONs to take advantage of recent changes in lighting technology—specifically, to use lanterns based on LEDs. This might reduce life cycle costs, reduce the consumption of power, simplify the maintenance of

PATONs, and align the performance standards requirements for the light sources of PATONs with those for Federal aids to navigation.

This rule would not preclude owners of PATONs from continuing to use any equipment that they are currently using until they modify or replace it. After a PATON was modified or replaced, however, it would have to meet the new performance standards.

### *What Specific Changes are we Proposing?*

We propose to revise § 66.01–5, to add the terms “range,” and “effective intensity” to help managers of Short Range Aids to Navigation determine whether equipment will meet the design requirements prescribed in Part 62.

We propose to revise § 66.01–10, to expand users’ choices by allowing the use of LEDs and other lights that meet the requirements of part 66. Users would still be able to use tungsten-incandescent-light sources that meet the requirements of this rule.

We propose to add § 66.01.11, to establish the requirements for lights used as PATONs. These requirements would ensure that the equipment provides a useful and reliable signal to the mariner.

We propose to add § 66.01–12, which would explain that, if you modify, replace, or install any light that requires a new application as described in § 66.01–5, you must comply with the rules in part 62. However, if you do not modify, replace, or install your existing light, or do anything else to necessitate a new application, you can continue to use that light. This “grandfather” effect would allow the use of currently authorized equipment so that owners of existing PATONs might not incur financial burdens.

We propose to add § 66.01–13, to explain when manufacturers of PATONs must comply with this rule. They must do so by the effective date of this rule.

We propose to add § 66.01–14, to require labels on all PATONs so that the buyer or anyone who inspects the PATONs can certify that they meet all requirements of this part. “Nominal range” means the distance at which a light is visible with ten nautical miles of visibility.

### Regulatory Evaluation

This proposed rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not

reviewed it under that Order. It is not “significant” under the regulatory policies and procedures of the Department of Transportation (DOT) [44 FR 11040 (February 26, 1979)].

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

### *Cost of Rule*

This rule would not impose any costs on current owners of PATONs unless they change their PATONs. While it would permit, it would not require, the use of LEDs. It would simply allow owners to use LEDs and set the standards for all PATON equipment to comply with the rules on aids to navigation. Therefore, owners of current or new PATONs would incur no added costs.

Under this rule, manufacturers of equipment used in PATONs would have to develop and affix labels on all PATONs they manufacture. Each label must contain the information listed in § 66.01–14(a). This would impose an added cost for creating, printing and attaching the labels.

The Coast Guard estimates that, in the first year following promulgation of this rule, manufacturers would spend 48 hours developing six labels, one label (each representing eight hours) for each of six newly designed PATONs; the cost would come to about \$1940. We estimate that, in following years, each manufacturer would design one new PATON every two years; the cost would come to about \$320. Costs incurred from attaching a label to each of the 500 PATONs made would come to about \$262 a manufacturer a year, assuming that each company makes exactly half of all PATONs produced and that a label costs \$1 to print.

### *Benefits of Rule*

This rule would let owners of PATONs choose from not only tungsten-incandescent-light sources, which are currently permitted, but also a new technology-LEDs. These consume less power and have a longer lifespan than the sources currently permitted. Besides, because the replacement date would be printed on each light, maintenance would be simpler for owners (as inspection would be for the Coast Guard).

Current rules do not allow manufacturers to sell LEDs for use in PATONs. This rule, however, would—and this could increase their sales.

### *Small Entities*

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

The Coast Guard conducted a survey of industry, and discovered that there are now two domestic manufacturers of tungsten-incandescent-lighting sources used for aids to navigation. Only one of them qualifies as small according to the standards of the Small Business Administration. This rule, however, will allow the small company to continue selling tungsten-incandescent PATONs. Barring unforeseen changes in the market for PATONs, we do not expect that the legalization of PATONs with LEDs will have any significant impact on the sale of cheaper, and more widely available tungsten-incandescent products.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

### *Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Public Law 104–121], we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call Dan Andrusiak, at the number given for him under **FOR FURTHER INFORMATION CONTACT**.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business

Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

### **Collection of Information**

This proposed rule provides for a collection of information under the Paperwork Reduction Act of 1995 [44 U.S.C. 3501–3520]. As defined in 5 CFR 1320.3(c), “collection of information” comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the collection, a description of the respondents, and an estimate of the total annual burden follow. Each estimated burden in this analysis pertains only to the requirements proposed by this rule; we do not incorporate the estimates or burdens noted in previous rulemakings.

#### *Summary of the Collection of Information*

This rule would require manufacturers that supply equipment for use in PATONs to develop and attach a label to each of these. The label would have to state the matter called for by this rule. And it would have to last the life of the equipment.

#### *Need for Information*

This rule would contain burdens for manufacturers of equipment used as PATONs. Manufacturers would have to develop and attach a label to each of their PATONs to inform the owners and inspectors that the equipment meets our standards. (And all such equipment used in PATONs would have to meet the standards in this rule.)

#### *Respondents*

The Coast Guard estimates that two manufacturers manufacture LEDs and tungsten-incandescent-light sources for use in PATONs.

#### *Frequency of Response*

The rule would call for no regular reporting. But it would require labels on all equipment provided for sale in PATONs.

#### *Estimate of Total Annual Burden*

The Coast Guard estimates that, in the first year following promulgation of this rule, manufacturers would spend 48 hours developing six labels, one label (each representing eight hours) for each of six newly designed PATONs; the cost would come to about \$1940. We estimate that, in following years, each manufacturer would design one new

PATON every two years; the cost would come to about \$320. Costs incurred from attaching a label to each of the 500 PATONs made would come to about \$262 a manufacturer a year, assuming that each company makes exactly half of all PATONs produced and that a label costs \$1 to print.

### *Federalism*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order, and have determined that it does not have implications for federalism.

### *Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 [2 U.S.C. 1531–1538] requires Federal agencies to assess the effects of their discretionary regulatory acts. In particular, the Act addresses those that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. This proposed rule would not result in such an expenditure.

### *Taking of Private Property*

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

### *Reform of Civil Justice*

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

### *Protection of Children*

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

### *Indian Tribal Governments*

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or

more tribes of Indians (including Alaskan natives), on the relationship between the Federal Government and these tribes, or on the distribution of power and responsibilities between the Federal Government and these tribes.

To help ourselves establish regular and meaningful consultation and collaboration with tribes of Indians, we published a notice in the **Federal Register** [66 FR 36361 (July 11, 2001)] requesting comments on how to best carry out the Order. We invite your comments on how this rule might affect tribal governments, even if any effect might not constitute a "tribal implication" under the Order.

#### Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under the more recent Order.

#### Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under figure 2-1, paragraph (34)(i), of Commandant Instruction M16475.IC, this rule is categorically excluded from further environmental documentation. A Determination of Categorical Exclusion is available in the docket for inspection or copying where indicated under **ADDRESSES**.

#### List of Subjects in 33 CFR Part 66

Navigation (water).

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 66 as follows:

#### PART 66—PRIVATE AIDS TO NAVIGATION

1. Revise the citation of authority for part 66 to read as follows:

**Authority:** 14 U.S.C. 83, 84, 85; 43 U.S.C. 1333; 49 CFR 1.46.

2. Revise § 66.01-5(f) to read as follows:

#### § 66.01-5 Application Procedure.

\* \* \* \* \*

(f) For lights: The color, characteristic, range, effective intensity, height above water, and description of illuminating apparatus.

\* \* \* \* \*

3. Revise § 66.01-10 to read as follows:

#### § 66.01-10 Characteristics.

The characteristics of a private aid to navigation must conform to those prescribed by the United States Aids to Navigation System set forth in subpart B of part 62 of this subchapter.

4. Add § 66.01-11 to read as follows:

#### § 66.01-11 Lights.

(a) Each light approved as a private aid to navigation must:

(1) Have at least the effective intensity required by this subpart omnidirectionally in the horizontal plane, except at the seams of its lens-mold.

(2) Have at least 50% of the effective intensity required by this subpart within  $\pm 2^\circ$  of the horizontal plane.

(3) Have an effective intensity of at least 1 candela for a nominal range of 1 nautical mile, 3 candelas for one of 2 nautical miles, and 10 candelas for one of 3 nautical miles. For a flashing light this intensity is determined by the formula:

$$I_e = G / (0.2 + t_2 - t_1)$$

Where:

$I_e$  = Effective intensity

$G$  = The integral of the instantaneous intensity of the flashed light with respect to time

$t_1$  = Time in seconds at the beginning of the flash

$t_2$  = Time in seconds at the end of the flash

$t_2 - t_1$  is greater than or equal to 0.2 seconds.

(4) Unless the light is a prefocused lantern, have a means of verifying that the source of the light is at the focal point of the lens.

(5) Emit a color within the angle of 50% effective intensity with color coordinates lying within the boundaries defined by the corner coordinates of the General Region in Table 66.01-11(5) established by the International Association of Lighthouse Authorities when plotted on the Standard Observer Diagram of the International Commission on Illumination (CIE).

TABLE 66.01-11(5).—COORDINATES OF CHROMATICITY

| Color       | Coordinates of Chromaticity |        |
|-------------|-----------------------------|--------|
|             | x axis                      | y axis |
| White ..... | 0.500                       | 0.382  |

TABLE 66.01-11(5).—COORDINATES OF CHROMATICITY—Continued

| Color        | Coordinates of Chromaticity |        |
|--------------|-----------------------------|--------|
|              | x axis                      | y axis |
| Green .....  | 0.440                       | 0.382  |
|              | 0.285                       | 0.264  |
|              | 0.285                       | 0.332  |
|              | 0.453                       | 0.440  |
|              | 0.500                       | 0.440  |
|              | 0.305                       | 0.689  |
| Red .....    | 0.321                       | 0.494  |
|              | 0.228                       | 0.351  |
|              | 0.028                       | 0.385  |
|              | 0.735                       | 0.265  |
| Yellow ..... | 0.721                       | 0.259  |
|              | 0.645                       | 0.335  |
|              | 0.665                       | 0.335  |
|              | 0.600                       | 0.400  |
|              | 0.596                       | 0.396  |
|              | 0.555                       | 0.435  |
|              | 0.560                       | 0.440  |

(6) Have a recommended interval for replacement of the source of light such as ensures that the lantern meets the minimal required intensity stated in paragraph (a)(3) of this section in case of degradation of either the source of light or the lens.

(7) Have autonomy of at least 10 days if the light has a self-contained power system. The literature concerning the light must clearly state the operating limits.

(b) The manufacturer of each light approved as a private aid to navigation must certify compliance by means of an indelible plate or label affixed to the aid that meets the requirements of § 66.01-13.

5. Add § 66.01-12 to read as follows:

#### § 66.01-12 May I continue to use the Private Aids to Navigation (PATON) I am currently using?

If, after [effective date of the final rule], you modify, replace, or install any light that requires a new application as described in § 66.01-5, you must comply with the rules in this part.

6. Add § 66.01-13 to read as follows:

#### § 66.01-13 When must my newly manufactured equipment comply with these rules?

After [effective date of the final rule] equipment manufactured for use as a private aid to navigation must comply with the rules in this part.

7. Add § 66.01-14 to read as follows:

#### § 66.01-14 Label affixed by manufacturer.

(a) Each light, intended or used as a private aid to navigation authorized by this part, must bear a legible, indelible label affixed by the manufacturer and indicating the—

(1) Name of the manufacturer;

- (2) Number of the model;
- (3) Nominal range;
- (4) Date placed in service;
- (5) Recommended service life based on the degradation of either the source of light or the lens;
- (6) Size of lamp (incandescent only);
- (7) Interval, in days or years, for replacement of dry-cell battery; and
- (8) Words to this effect: "This equipment complies with requirements of the U.S. Coast Guard in 33 CFR part 66."

(b) This label must last the service life of the equipment.

Dated: June 4, 2002.

**Kenneth T. Venuto,**

*Rear Admiral, U.S. Coast Guard, Acting Assistant Commandant for Operations.*

[FR Doc. 02-15794 Filed 6-21-02; 8:45 am]

BILLING CODE 4910-15-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[CA 266-0358b; FRL-7235-8]

### Revisions to the California State Implementation Plan, Ventura County Air Pollution Control District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the Ventura County Air Pollution Control District's (District) portion of the California State Implementation Plan (SIP). These revisions concern permitting and new source review (NSR) rules. We are taking comments on these proposed rules and plan to follow with a final action. Elsewhere in today's **Federal Register**, EPA has made an interim final determination that by submitting these revisions the District has corrected deficiencies noted in a December 7, 2000, limited approval and limited disapproval rulemaking (65 FR 76567), thereby deferring the imposition of sanctions.

**DATES:** Comments must be received by July 24, 2002.

**ADDRESSES:** Written comments must be submitted to Nahid Zoueshtiagh (Air-3), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

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

of the submitted SIP revisions at the following locations:

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

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95812.

An electronic copy of the TSD is available from EPA Region IX upon request. The District rules are also available on the Internet at: <http://arbis.arb.ca.gov/drdb/ven/cur.htm>

**FOR FURTHER INFORMATION CONTACT:** Nahid Zoueshtiagh, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901, telephone (415) 972-3978, email address: [zoueshtiagh.nahid@epa.gov](mailto:zoueshtiagh.nahid@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document, "we," "us" and "our" refer to EPA.

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#### I. Background

On December 7, 2000, EPA finalized the limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) (65 FR 76567). This limited approval and limited disapproval incorporated Ventura Air Pollution Control District Rules 10 through 15, 15.1, 16, 23, 24, 26, 26.1 through 26.10, 29 and 30 into the federally approved SIP. This action became effective on January 8, 2001. Our final action was a limited approval and limited disapproval because the rules contained deficiencies and were not fully consistent with the Clean Air Act (CAA) requirements. In our limited disapproval, we required the District to correct specific rule deficiencies within 18 months from the effective date of our action to avoid imposition of mandatory sanctions. In response, the District revised Rule 10 and Rule 26 and developed a new rule, Rule 26.11.

The District is designated a severe ozone nonattainment area, and an attainment area for all other criteria pollutants. The CAA air quality planning requirements for

nonattainment NSR are set out in part D of Title I of the Act, with implementing regulations at 40 CFR 51.160 through 51.165. The revisions to Rules 10 and 26 and submission of Rule 26.11 are the subject of today's proposal, and EPA has determined that the District's submittal satisfies the federal NSR implementing regulations.

## II. The State's Submittal

### A. What Rules Did the State Submit?

Table 1 lists the rules discussed in this proposed rulemaking. The rules were adopted by the District on May 14, 2002, and submitted to us by the California Air Resources Board (CARB) on May 20, 2002.

TABLE 1.—SUBMITTED RULES

| Rule No.    | Rule title                                       |
|-------------|--------------------------------------------------|
| 10 .....    | Permits Required                                 |
| 26.1 .....  | New Source Review—Definitions.                   |
| 26.2 .....  | New Source Review—Requirements.                  |
| 26.3 .....  | New Source Review—Exemptions.                    |
| 26.4 .....  | New Source Review—Emission Banking.              |
| 26.6 .....  | New Source Review—Calculations.                  |
| 26.11 ..... | New Source Review—ERC Evaluation At Time of Use. |

On May 30, 2002, EPA determined that the rules met the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

### B. Are There Other Versions of These Rules?

There are previous versions for all the above rules, except for Rule 26.11 because it is an entirely new rule. The TSD for this proposed rulemaking contains detailed information on the new rule and on the District's revisions to its previous rules.

### C. What Are the Purposes of the Submitted Revisions and New Rule?

The District has revised Rules 10 and 26 to correct the following deficiencies described in our December 7, 2000 final limited approval and limited disapproval.

Issue number 1. Permitting—Rule 10: there was no requirement to obtain an authority to construct (ATC) permit for emission units located at major NSR sources when relocated within five miles in the District.

Issue number 2. NSR—Rule 26: there was no requirement that emission reduction credits (ERCs) used as emission offsets for major NSR source

permitting actions be surplus at the time of use.

Issue number 3. NSR—Rule 26: the rule did not provide for denial of a permit for sources that may violate Prevention of Significant Deterioration (PSD) increments.

Issue number 4. NSR—Rule 26: for the alternatives analysis required by section 173(a)(5) of the CAA, the rule relied exclusively on the California Environmental Quality Act (CEQA) analysis.

A brief description of each rule revision and the new rule follows.

- Rule 10—Rule 10 as originally drafted exempted sources of all size categories from the requirement to obtain an ATC permit for emission units relocating within five miles from the previous location in Ventura County, provided that there is no emissions increase. The District revised this rule to limit the size category of sources that can use the exemption to exclude any source considered major for NSR permitting purposes. This revision corrected our deficiency number 1.

- Rule 26.1—The District revised both the definition of “Major Modification” and “Surplus Emission Reduction” to satisfy the NSR requirements.

Part 16 of the rule (definition of “Major Modification”) now states that emission reductions that are not surplus at the time of use shall not be included as a decrease in calculating federally significant contemporaneous net emissions increases. The revised definition also clarifies that a “federally significant net emissions increase” is a major modification for federal CAA NSR purposes. Finally, the definition now establishes that a “contemporaneous net emissions increase” is the sum, during the specified five-year evaluation period, of all emission increases and all emission reductions occurring at the modified major NSR source. In a severe nonattainment area such as Ventura County, a major NSR source is considered under both the District rules and the federal CAA as any source which emits or has the potential to emit 25 tons per year or more of nitrogen oxides (NO<sub>x</sub>) or reactive organic compounds (ROC).

Part 28 of the rule (definition of “Surplus Emission Reduction”) describes those surplus emission reductions that may qualify for use in the District as an offset. Part 28.a defines a surplus emission reduction for general District purposes (e.g., for banking and minor source permitting purposes) as those emission reductions not required by any federal, state, or District law, rule, order, permit or regulation, with a

limited exception for sources utilizing Best Available Control Technology (BACT) when not required by federal major source NSR.<sup>1</sup> For major NSR offset purposes, the revised rule has a different definition for “surplus.” Part 28.b defines creditable emission reductions for NSR offset purposes as the emission reduction that “exceeds the emission reduction otherwise required by the federal Clean Air Act.” This language is approvable since it is consistent with the language found in section 173(c)(2) of the CAA. EPA has previously determined that the emission reductions “otherwise required by the federal CAA” includes, at a minimum, each of the following:<sup>2</sup>

(1) Any emission reduction required by a stand-alone federal requirement or regulation, including, but not limited to, Acid Rain, New Source Performance Standards (NSPS), Reasonably Available Control Technology (RACT), and Maximum Achievable Control Technology (MACT), whether or not the requirements are part of the SIP or a local attainment plan.

(2) Any emission reduction relied upon by a permitting authority for attainment purposes, such as through an approved attainment plan, including emission reductions relied upon for Reasonable Further Progress calculations. See e.g., 40 CFR 51.165(a)(3)(ii)(G). This also applies to reductions that have been identified as necessary for attainment with federal air quality standards, even though the plan may not yet have been approved.

(3) Any emission reduction whose original emission is not included in the District’s emission inventory. See 40 CFR 51.165(a)(3)(ii)(C)(1).

(4) Any emission reduction based on a source-specific or source category-specific SIP provision used to comply with CAA requirements.

<sup>1</sup> For example, if an existing minor source is required to install BACT, something not required by the federal CAA, any actual emission reductions resulting from application of the more stringent controls could be considered surplus.

<sup>2</sup> See In Re Operating Permit Formaldehyde Plant Borden Chemical, Inc., Petition No. 6–01–1, (December 22, 2000), at pages 14–19 (Administrator’s Title V Order finding Louisiana’s regulation that generally defines surplus emission reductions as those not “required by any local, state or federal law, regulation, order, or requirement, and are in excess of reductions used to demonstrate attainment of federal and state ambient air quality standards” to be consistent with Section 173(c)(2) of the CAA); Proposed Rule, Clean Air Act Approval and Promulgation of California State Implementation Plan for the San Joaquin Valley Unified Air Pollution Control District, 64 FR 51493 (September 23, 1999), at page 51494 (Proposed limited approval and limited disapproval of SJVUAPCD’s NSR rules where we state that surplus means those emission reductions that “are not required by the Clean Air Act or otherwise relied on, such as in an attainment plan”)

(5) Any emission reduction required by a condition of a permit issued to comply with NSR CAA requirements. See, e.g., 40 CFR 51.165(a)(3)(ii)(G).

(6) Any emission reduction based on a source-specific emission limitation resulting from EPA enforcement cases (e.g., consent decrees).

- Rule 26.2—The District added a new subpart d to part B.2 to require that all ERCs provided by the applicant for an ATC permit for a new or modified major NSR source to be surplus at the time of use. These revisions correct deficiency number 2.

To correct deficiency number 3, the District revised Rule 26.2.C to state that it will deny an applicant an ATC for any new, replacement, modified or relocated emissions unit which would cause the violation of any ambient air quality standard or the violation of any ambient air increment as defined in 40 CFR 51.166(c). Today’s approval of this revision to Rule 26.2.C is for SIP strengthening purposes only. The District is neither approved for a Prevention of Significant Deterioration (PSD) program nor has been delegated the federal PSD program at 40 CFR 52.21 to implement, and the District has not submitted nor are we approving these rule revisions as they pertain to attainment pollutants for PSD purposes under CAA part C or 40 CFR 51.166. Under the PSD program, any new major source or source with a major modification (as defined by 40 CFR 52.21(b)) within the District’s jurisdiction must apply to EPA for a PSD permit as required by 40 CFR 52.21 and District Rule 26.10.

The District corrected deficiency number 4 by revising the language in Rule 26.2.E. The revised language in Rule 26.2.E satisfies the requirement of section 173(a)(5) of the CAA. Rule 26.2.E, as revised, requires the permit applicant to submit an analysis of alternative sites, sizes, production processes, and environmental control techniques that, in the Air Pollution Control Officer’s (APCO) independent judgment, demonstrates the benefits significantly outweigh the environmental costs. Therefore, the revised rule requires the APCO to deny a permit if, in the Control Officer’s judgment, the analysis fails to demonstrate that the benefits of the proposed source significantly outweigh the environmental and social costs. In making this determination, the APCO may rely on information provided in documents prepared under the California Environmental Quality Act.

- Rule 26.3—To correct deficiency number 1, the District revised part A.3 of this rule to remove the previous

exemption which allowed for a major NSR source to relocate an emission unit within 5 miles without obtaining a new ATC, though smaller sources are still exempt. This revision is consistent with the revisions made to Rule 10.

- Rule 26.4—In conjunction with the expanded analysis of a “contemporaneous net emissions increase” described in Rule 26.1.16, the District revised part F.3 of this rule to remove superfluous language excluding the temporary emission reduction credits from use in the contemporaneous net emissions increase analysis of a major source.

- Rule 26.6—The District revised part D.7.b to refer to the procedure under the new Rule 26.11 for calculating the total amount of all emission reduction credits that were determined to be surplus at the time of use. This revision corrects deficiency number 2.

- Rule 26.11—This is a new rule specifically developed to implement procedures to ensure that ERCs satisfy EPA’s requirement to be surplus at the time of use. The District will implement this program to correct deficiency number 2 related to the requirements of section 173(c)(2) of the CAA that emission reductions “otherwise required by the CAA” not be creditable emission reductions for NSR offsets purposes.

The rule describes the mechanism to be used by the District when calculating the surplus portion of each ROC and NO<sub>x</sub> ERC at the time of that ERC’s use as an offset. Generally, part B of the rule requires that each ERC provided by an applicant as an offset for its major source NSR ATC permit must be adjusted in conjunction with issuance of that ATC. The rule also creates an annual equivalency demonstration in the District. EPA has determined that the use of annual equivalency demonstrations is consistent with section 173 of the CAA, and has previously approved such a demonstration program for the San Joaquin Air Pollution Control District (Rule 2022, 66 FR 37587).

An annual equivalency demonstration allows the District to show, via an annual equivalency analysis, that it is meeting the major source NSR offset requirements of section 173 of the CAA in the aggregate for the year in which the major permit is issued. The use of the annual equivalency demonstration will allow the District to demonstrate compliance with the section 173(c) offset requirements by relying on all sources of creditable emission reductions created within the District during the yearly accounting period, including all properly-adjusted ERCs

relied on for District permitting actions. All actual emission reductions used in the equivalency program must be found to be surplus under section 173(c)(2), and must otherwise meet federal creditability requirements by being real, federally enforceable, permanent, and quantifiable. Finally, part C.6 establishes that the District must immediately discontinue the use of the annual equivalency program and require sufficient adjusted ERCs at the time of major source NSR permit issuance if the annual demonstration fails to show yearly equivalence.

### III. EPA’s Evaluation and Action

#### A. How Is EPA Evaluating the Rules?

The rules have been evaluated based on sections 173(c), 193, and 110(l) of the CAA, regulations under 40 CFR subpart I (Review of New Sources and Modification), and guidelines for EPA action on SIP submittals.

#### B. Do the Rules Meet the Evaluation Criteria?

We believe these rules are consistent with the relevant policy and guidance regarding Review of New Sources and Modifications, enforceability, RACT, and SIP relaxations. Relevant guidance documents are listed in the TSD. The District has made rule revisions to correct the deficiencies noted in our December 2000 action. The District has revised several parts of its rules and has developed a new rule to satisfy our requirements. The TSD contains more information on rule revisions and our evaluation.

EPA has concluded that its approval of the District’s rule revisions and development of a new rule meet the requirements of section 110(l) because the NSR permitting rule revisions strengthen Ventura County Air Pollution Control District’s overall nonattainment area plans for all nonattainment pollutants by making the District’s rules consistent with federal NSR requirements. Specifically, the SIP is strengthened because the rule revisions made by the District remove an existing exemption to obtaining an NSR permit, require an alternatives analysis in conjunction with appropriate permitting actions, provide the APCO the authority to deny a permit to a source who may violate the national air quality standard or available increment, and require that ERCs used as NSR offsets be surplus at the time of use. Moreover, because of these rule changes, the District’s revised rules will insure equivalent or greater emission reductions for all nonattainment air

pollutants, consistent with section 193 of the Act.

#### C. Public Comment and Final Action

Because EPA believes the submitted rule revisions fulfill all relevant requirements, we are proposing to fully approve them as described in section 110(k)(3) of the Act. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate these rules into the federally enforceable SIP.

### IV. 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 proposed 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 (Public Law 104–4).

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

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This 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, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: June 14, 2002.

**Laura Yoshii,**

*Deputy Regional Administrator, Region IX.*  
[FR Doc. 02-15723 Filed 6-21-02; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[NC-94;100-200225(a); FRL-7236-2]

#### Approval and Promulgation of Implementation Plans: North Carolina: Nitrogen Oxides Budget and Allowance Trading Program

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of North Carolina, through the North Carolina

Department of Environmental and Natural Resources (NCDENR), on September 18, 2001. This revision responds to the EPA's regulation entitled, "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone," otherwise known as the NO<sub>x</sub> SIP Call. This revision establishes and requires a nitrogen oxides (NO<sub>x</sub>) allowance trading program for large electric generating and industrial units and internal combustion engines beginning in 2004. The revision includes a budget demonstration and initial source allocations that demonstrate that North Carolina will achieve the required NO<sub>x</sub> emission reductions in accordance with the timelines set forth in EPA's NO<sub>x</sub> SIP Call. The intended effect of this SIP revision is to reduce emissions of NO<sub>x</sub> in order to help areas in the Eastern United States attain the national ambient air quality standard for ozone. EPA is proposing to approve North Carolina's NO<sub>x</sub> reduction and trading program because it meets the requirements of the Phase I and Phase II NO<sub>x</sub> SIP Call that will significantly reduce ozone transport in the eastern United States.

North Carolina has included credits from an Inspection and Maintenance (I/M) Program as part of its SIP demonstration. North Carolina's I/M rules will be approved in a separate document and will be approved prior to the final approval of this NO<sub>x</sub> submittal.

**DATES:** Written comments must be received on or before July 24, 2002.

**ADDRESSES:** All comments should be addressed to: Randy Terry at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.

Copies of documents relative to this action 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.

North Carolina Department of  
Environment and Natural Resources,  
512 North Salisbury Street, Raleigh,  
North Carolina 27604.

#### FOR FURTHER INFORMATION CONTACT:

Randy Terry, Regulatory Development 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) 562-9032. Mr. Terry can also be reached via electronic mail at [terry.randy@epa.gov](mailto:terry.randy@epa.gov).

**SUPPLEMENTARY INFORMATION:** Section 51.121 of EPA's regulations requires North Carolina to adopt rules to restrict emissions of nitrogen oxides such that the caps specified in the federal rule for North Carolina are attained and maintained. *See* 40 CFR 51.121. Section 51.121 originally required rules to be submitted to EPA for approval as part of the SIP by September 30, 1999. Because of a court ruling this date was delayed a year, until October 30, 2000. On October 30, 2000, NCDENR submitted temporary NO<sub>x</sub> emission control rules to the EPA for adoption. These rules were revised in North Carolina's September 18, 2001, submittal. These rules were submitted to meet the requirements of the NO<sub>x</sub> SIP Call until the permanent North Carolina NO<sub>x</sub> rules could undergo the entire process of becoming state approved and effective. Although these rules are temporary, they are fully effective and the state has met the requirements in their statute that eliminates the sunset provision. Additionally, on March 21, 2002, North Carolina submitted a response letter to EPA, providing clarification and interpretation of the temporary rules and positively addressing all of EPA's outstanding comments. Therefore, EPA can proceed to propose approving the temporary rule, as established in North Carolina's March 21, 2002 letter, to meet the NO<sub>x</sub> SIP Call.

The information in this proposal is organized as follows:

- I. EPA's Action
  - A. What action is EPA proposing today?
  - B. Why is EPA proposing this action?
  - C. What are the NO<sub>x</sub> SIP Call general requirements?
  - D. What is EPA's NO<sub>x</sub> budget and allowance trading program?
  - E. What guidance did EPA use to evaluate North Carolina's submittal?
  - F. What is the result of EPA's evaluation of North Carolina's program?
- II. North Carolina's Control of NO<sub>x</sub> Emissions
  - A. When did North Carolina submit the SIP revision to EPA in response to the NO<sub>x</sub> SIP Call?
  - B. What is the North Carolina's NO<sub>x</sub> Budget Trading Program?
  - C. What is the Compliance Supplement Pool?
  - D. What is the New Source Set-Aside program?
- III. Proposed Action
  - What is the Relationship of Today's Proposal to EPA's Findings Under the Section 126 Rule?
- IV. Administrative Requirements

## I. EPA's Action

### A. What Action Is EPA Proposing Today?

EPA is proposing to approve revisions to North Carolina's SIP concerning the adoption of its NO<sub>x</sub> Reduction and Trading Program, submitted on October 30, 2000, and revised on September 18, 2001.

### B. Why Is EPA Proposing This Action?

EPA is proposing this action because North Carolina's NO<sub>x</sub> reduction and trading program regulations, as explained in North Carolina's March 21, 2002 letter, meet the requirements of the Phase I and Phase II NO<sub>x</sub> SIP Call. Therefore, EPA is proposing full approval of North Carolina's NO<sub>x</sub> Reduction and Trading Program.

### C. What Are the NO<sub>x</sub> SIP Call General Requirements?

On October 27, 1998, EPA published a final rule entitled, "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone," otherwise known as the NO<sub>x</sub> SIP Call. See 63 FR 57356. The NO<sub>x</sub> SIP Call requires 22 states and the District of Columbia to meet statewide NO<sub>x</sub> emission budgets during the five month period from May 1 through September 30, called the ozone season (or control period), in order to reduce the amount of ground level ozone that is transported across the eastern United States. A court decision by the United States Court of Appeals at the District of Columbia Circuit (D.C. Circuit) on March 3, 2000, concerning the NO<sub>x</sub> SIP call (*Michigan v. EPA*, 213 F.3d 663 (D.C. Cir 2000)) reduced the number of states from 22 to 19.

EPA identified NO<sub>x</sub> emission reductions by source category that could be achieved by using highly cost-effective controls. The source categories included were large electric generating units (EGUs) and non-electric generating units (non-EGUs), internal combustion (IC) engines, and cement kilns. EPA determined state-wide NO<sub>x</sub> emission budgets based on the implementation of these cost effective controls for each affected jurisdiction to be met by the year 2007. Although states are not required to address IC engines until Phase II of the NO<sub>x</sub> SIP call, North Carolina has addressed IC engines in this revision. The NO<sub>x</sub> SIP Call allows states the flexibility to decide which source categories to regulate in order to meet the statewide budgets.

In the NO<sub>x</sub> SIP Call notice, EPA suggested that imposing statewide NO<sub>x</sub> emissions caps on large EGUs and non-EGUs would provide a highly cost effective means for states to meet their NO<sub>x</sub> budgets. In fact, the state-specific budgets were set assuming an emission rate of 0.15 pounds NO<sub>x</sub> per million British thermal units (lb. NO<sub>x</sub>/mmBtu) at EGUs, multiplied by the projected heat input (mmBtu/hr). The NO<sub>x</sub> SIP Call state budgets also assumed on average a 60 percent reduction from non-EGUs. The non-EU control assumptions were applied at units where the heat input capacities were greater than 250 mmBtu per hour, or in cases where heat input data were not available or appropriate, at units with actual emissions greater than one ton per day. The NO<sub>x</sub> SIP Call regulation gives the state the flexibility to determine what control strategy to use to meet the statewide NO<sub>x</sub> budget.

To assist the states in their efforts to meet the SIP Call, the NO<sub>x</sub> SIP Call notice included a model NO<sub>x</sub> allowance trading regulation, called "NO<sub>x</sub> Budget Trading Program for State Implementation Plans (40 CFR part 96) that could be used by states to develop their regulations. The NO<sub>x</sub> SIP Call notice explained that if states developed an allowance trading regulation consistent with the EPA model rule, they could participate in a regional allowance trading program that would be administered by the EPA. See 63 FR 57458–57459.

There were several periods during which EPA received comments on various aspects of the NO<sub>x</sub> SIP Call emissions inventories. On March 2, 2000, EPA published additional technical amendments to the NO<sub>x</sub> SIP Call in the **Federal Register** (65 FR 11222). On March 3, 2000, the D.C. Circuit issued its decision on the NO<sub>x</sub> SIP Call that largely upheld EPA's position. *Michigan v. EPA*, 213 F.3d 663. The D.C. Circuit denied petitioners' requests for rehearing or rehearing en banc on July 22, 2000. However, the D.C. Circuit Court remanded four specific elements to EPA for further action: The definition of electric generating unit, the level of control for stationary internal combustion engines, the geographic extent of the NO<sub>x</sub> SIP Call for Georgia and Missouri, and the inclusion of Wisconsin. On March 5, 2001, the U.S. Supreme Court declined to hear an appeal by various utilities, industry groups and a number of upwind states from the D.C. Circuit's ruling on EPA's NO<sub>x</sub> SIP rule.

EPA published a proposal that addresses the remanded portion of the NO<sub>x</sub> SIP Call on February 22, 2002 (67

FR 8396). Any additional emissions reductions required as a result of a final rulemaking on that proposal will be reflected in the second phase portion (Phase II) of the State's emission budget. In a memo dated April 11, 2000, EPA adjusted North Carolina's NO<sub>x</sub> emission budget to reflect the Court's decision regarding internal combustion engines and cogeneration facilities. Although the Court did not order EPA to modify North Carolina's budget, the EPA believes these adjustments were consistent with the Court's decision. However, in its SIP revision, North Carolina declined to use the revised budget as set forth in the April 11, 2000 memo and chose to use the more stringent budget set forth in the March 2, 2000, document (65 FR 11222). North Carolina has agreed to revise these reductions if they differ in the final Phase II notice.

### D. What Is EPA's NO<sub>x</sub> Budget and Allowance Trading Program?

EPA's model NO<sub>x</sub> budget and allowance trading rule, 40 CFR part 96, sets forth a NO<sub>x</sub> allowance trading program for large EGUs and non-EGUs. A state can voluntarily choose to adopt EPA's model rule in order to allow sources within its borders to participate in regional allowance trading. The NO<sub>x</sub> SIP Call notice contains a full description of the EPA's model NO<sub>x</sub> budget trading program. See 63 FR 57514–57538 and 40 CFR part 96. Additionally, states can adopt a modified trading rule that will still ensure the budgets are met. North Carolina opted to modify EPA's trading rule consistent with the flexibility offered to the states.

Allowance trading, in general, uses market forces to reduce the overall cost of compliance for pollution sources, such as power plants, while maintaining emission reductions and environmental benefits. One type of market-based program is an emissions budget and allowance trading program, commonly referred to as a "cap and trade" program.

In a cap and trade program, the state (or EPA) sets a regulatory limit, or emissions budget, in mass emissions (budget) from a specific group of sources. The budget limits the total number of allowances for each source covered by the program during a particular control period. When the budget is set at a level lower than the current emissions, the effect is to reduce the total amount of emissions during the control period. After setting the budget, the state (or EPA) then assigns, or allocates, allowances to the participating entities up to the level of

the budget. Each allowance authorizes the emission of a quantity of pollutant, e.g., one ton of airborne NO<sub>x</sub>.

At the end of the control period, each source must demonstrate that its actual emissions during the control period were less than or equal to the number of available allowances it holds. Sources that reduce their emissions below their allocated allowance level may sell their extra allowances. Sources that emit more than the amount of their allocated allowance level may buy allowances from the sources with extra reductions. In this way, the budget is met in the most cost-effective manner.

#### *E. What Guidance Did EPA Use To Evaluate North Carolina's Submittal?*

The final NO<sub>x</sub> SIP Call rule included a model NO<sub>x</sub> budget trading program regulation. See 40 CFR part 96. EPA used the model rule and 40 CFR 51.121–51.122 to evaluate North Carolina's NO<sub>x</sub> reduction and trading program SIP submittal. North Carolina's submittal includes the IC engine requirements, but IC engines are not a part of North Carolina's trading program.

#### *F. What Is the Result of EPA's Evaluation of North Carolina's Program?*

After review of North Carolina's September 18, 2001, NO<sub>x</sub> SIP submittal, EPA has determined that it meets the requirements of the NO<sub>x</sub> SIP Call and is therefore approvable. The North Carolina NO<sub>x</sub> reduction and trading program is consistent with EPA's guidance and meets the requirements of both the Phase I and II NO<sub>x</sub> SIP Call. EPA finds the NO<sub>x</sub> control measures (i.e. required reductions for large EGUs, non-EGUs, and IC engines) in North Carolina's NO<sub>x</sub> reduction and trading program approvable. Also, EPA finds that the submittal contains the necessary information to demonstrate that North Carolina has the legal authority to implement and enforce the control measures and that the State will appropriately distribute the compliance supplement pool. Furthermore, EPA proposes to find that the submittal demonstrates that the requirements concerning compliance dates and schedules, monitoring, recordkeeping, and emission reporting will be met.

## **II. North Carolina's Control of NO<sub>x</sub> Emissions**

#### *A. When Did North Carolina Submit the SIP Revision to EPA in Response to the NO<sub>x</sub> SIP Call?*

On October 30, 2000, NCDENR submitted temporary NO<sub>x</sub> emissions control rules to meet the requirements of the Phase I and Phase II NO<sub>x</sub> SIP Call

and included a schedule for adoption of the final permanent version. On September 18, 2001, NCDENR submitted a revised version of these rules to meet the requirements of the Phase I and Phase II NO<sub>x</sub> SIP Call.

#### *B. What Is the North Carolina's NO<sub>x</sub> Budget Trading Program?*

North Carolina proposes, as in the model rule, to allow large EGUs, boilers and turbines to participate in the multi-state cap and trade program. North Carolina does not have any cement kilns and thus does not include them in the NO<sub>x</sub> SIP Call. North Carolina's SIP revision to meet the requirements of the NO<sub>x</sub> Budget Trading Program includes the adoption of rules 15A NCAC 2D .1401 Definitions, .1402 Applicability, .1403 Compliance Schedules, .1404 Recordkeeping, Reporting, Monitoring, .1409 Stationary Internal Combustion Engines, .1416 Emission Allocations for Utility Companies, .1417 Emission Allocations for Large Combustion Sources, .1418 New Electric Generating Units, Large Boilers, and Large I/C Engines, .1419 Nitrogen Oxide Budget Trading Program, .1420 Periodic Review and Reallocations, .1421 Allocation for New Growth of Major Point Sources, .1422 Compliance Supplement Pool and Early Emission Reduction Credits, and .1423 Large Internal Combustion Engines.

North Carolina's NO<sub>x</sub> budget trading program establishes and requires a NO<sub>x</sub> allowance trading program for large EGUs and non-EGUs. The regulations under section .1400 establish a NO<sub>x</sub> cap and allowance trading program for the ozone control seasons beginning May 1, 2004.

The State of North Carolina has adopted regulations that are consistent with 40 CFR part 96. Therefore, pursuant to 40 CFR 51.121(p)(1), North Carolina's SIP revision is approved as satisfying the State's NO<sub>x</sub> emissions reduction obligations. Under section .1400, North Carolina allocates NO<sub>x</sub> allowances to the EGU and non-EGU units that are subject to the requirements of the trading program. The NO<sub>x</sub> trading program applies to EGUs with a nameplate capacity greater than 25MW that sell electricity to the grid, as well as non-EGUs that have a maximum design heat input greater than 250 mmbtu per hour. Each NO<sub>x</sub> allowance permits a source to emit one ton of NO<sub>x</sub> during the seasonal control period. NO<sub>x</sub> allowances may be bought or sold. Unused NO<sub>x</sub> allowances may be banked for future use, with certain limitations.

Section .1400 sets out the NO<sub>x</sub> budget trading program. This section, for the

most part, incorporates by reference the EPA model rule, 40 CFR part 96, NO<sub>x</sub> Budget Trading Program. However, the section does contain several exceptions to the part 96 rules. These exceptions include the procedures and schedules for submitting and processing permit applications, dates and schedules for complying with monitoring requirements, the provisions on set-asides for new source allocations, and the distribution of the compliance supplement pool. These rules allow sources not covered under the NO<sub>x</sub> SIP Call to opt into the NO<sub>x</sub> Budget Trading Program. As discussed below, the NO<sub>x</sub> budget trading program cannot be used to (1) meet an emission limit if compliance with that emission limit is required as part of the SIP to attain or maintain the ambient air quality standard for ozone; and (2) obtain offsets needed to comply with the offset requirement of the nonattainment area major new source review rule.

In Rule .1403(c)(3), North Carolina deviated from the model rule to require the owner or operator of a source to submit their permit application by October 1, 2003. Rule .1403(c)(3) also requires the owner or operator to install and implement any required monitoring, recordkeeping, and reporting requirements prior to May 1, 2004. EPA has evaluated these deviations and find that they are approvable under the flexibilities provided within the model rule.

Under Rule .1402(h), the State allows a unit that restricts its fuel use to only natural gas or fuel oil and limits its NO<sub>x</sub> emissions to 25 tons (through an operating hours limitation) or less during a control period (through a federally enforceable permit) to be exempted from the requirements of the trading program. The State has clearly required that the unit meet both the fuel use and the operating hours restrictions throughout section .1402. Therefore, EPA believes this section is approvable.

North Carolina rules require that all sources must comply with part 75 monitoring to participate in the trading program. Source owners will monitor their NO<sub>x</sub> emissions by using systems that meet the requirements of 40 CFR part 75, subpart H, and report resulting data to EPA electronically. Each NO<sub>x</sub> budget unit complies with the program by demonstrating at the end of each control period that actual emissions do not exceed the amount of allowances held for that period. However, regardless of the number of allowances a unit holds, it cannot emit at levels that would violate other federal or state limits, for example, reasonably available control technology (RACT), new source

performance standards, and title IV (the Federal Acid Rain Program). North Carolina's regulation .1419(h) requires that NO<sub>x</sub> emission allocations obtained under the NO<sub>x</sub> budget trading program shall not be used to meet the emission limits for a source if compliance with that emission limit is required as part of the SIP to attain or maintain the ambient air quality ozone standard. Sources covered under rule .0531 Nonattainment Area Major Source Review of the North Carolina SIP shall not use the NO<sub>x</sub> budget trading program to comply with the requirements of rule .0531.

Rule .1423, Large Internal Combustion Engines, establishes the emission limits and the monitoring, recordkeeping, and reporting requirements for large internal combustion engines covered under Rule 15A NCAC 2D .1418. A detailed list identifies the sources covered under this Rule and gives the basic emission limitations. The rule allows adjustments to be made to the basic emission limitations to account for engine efficiency and details which monitoring procedures to use. The facilities that contain sources affected by the IC engine rule are Transcontinental Gas Pipeline Company, Station 160, in Rockingham county, Transcontinental Gas Pipeline Company, Station 150, in Iredell county, and Transcontinental

Gas Pipeline Company, Station 155, in Davidson county. The rule requires IC engines to reduce emissions by 90 percent. These IC engines are not part of the NO<sub>x</sub> budget trading program.

North Carolina's submittal demonstrates that the Phase I and II emissions budgets established by EPA in the March 2, 2000, notice (65 FR 11222) will be met. North Carolina's NO<sub>x</sub> budget trading program emissions budget includes reductions based upon an I/M reduction credit. This credit is generated by North Carolina through the implementation of an expanded (I/M) Motor Vehicle Program. With the use of the Mobile 5B model, North Carolina has calculated that it will have a reduction credit to help offset emissions from EGU and non-EGU sources.

North Carolina's SIP submittal demonstrates that the Phase I and Phase II NO<sub>x</sub> emission budgets established by EPA will be met as follows:

To determine its total emissions budget for 2007, North Carolina added the total emissions for affected EGUs, combustion turbines (combustion turbine serving a generator with a nameplate capacity greater than 25 megawatts electrical and selling any amount of electricity), affected non-EGUs (those fossil fuel-fired industrial boilers with a maximum design heat

input greater than 250 million Btu per hour), and internal combustion engines (including (1) rich burn stationary IC engines rated at equal or greater than 2,400 brake horsepower, (2) lean burn stationary IC engines rated at equal or greater than 2,400 brake horsepower, (3) diesel stationary IC engines rated at equal or greater than 3,000 brake horsepower, and (4) dual fuel stationary IC engines rated at equal or greater than 2,400 brake horsepower). North Carolina then subtracted from this sum the I/M reduction credit which was gained from the implementation of its expanded I/M Motor Vehicle Program, incorporating the On-Board Diagnostic testing procedure. The difference between the allocations distributed to the participants in the trading program and the total allocations available is the amount of the allocations available for new sources.

North Carolina then used the totals allocated to the State in the March 2, 2000 **Federal Register** Notice (65 FR 11222) for area sources, nonroad mobile sources, and highway mobile sources. The remaining emissions for North Carolina were classified as non-affected point sources (sources which are not required to implement any controls based on the NO<sub>x</sub> SIP Call)

#### NO<sub>x</sub> EMISSIONS BUDGET

| Source category                       | EPA 2007 NO <sub>x</sub> budget emissions (tons/season) | North Carolina 2007 NO <sub>x</sub> budget emissions (tons/season) |
|---------------------------------------|---------------------------------------------------------|--------------------------------------------------------------------|
| EGUs .....                            | 31,821                                                  | 31,451                                                             |
| Non-EGUs .....                        | 26,434                                                  | 2,205                                                              |
| New Permitted CT's .....              |                                                         | 976                                                                |
| IC Engines .....                      |                                                         | 352                                                                |
| I/M Reduction Credit .....            |                                                         | (4,385)                                                            |
| Credit Available for New Growth ..... |                                                         | 3,306                                                              |
| Non-Affected Point Sources .....      |                                                         | 24,350                                                             |
| Area Sources .....                    | 11,067                                                  | 11,067                                                             |
| Non-road Sources .....                | 22,005                                                  | 22,005                                                             |
| Highway Sources .....                 | 73,695                                                  | 73,695                                                             |
| Total .....                           | 165,022                                                 | 165,022                                                            |

In the event that the North Carolina NO<sub>x</sub> budget is inconsistent with the final budget promulgated by EPA in the Phase II notice, North Carolina will revise its SIP, as clarified in the March 21, 2001 letter.

#### *C. What Is the Compliance Supplement Pool?*

To provide additional flexibility for complying with emission control requirements associated with the NO<sub>x</sub> SIP Call, the final NO<sub>x</sub> SIP Call rule provided each affected state with a

compliance supplement pool. The compliance supplement pool is a quantity of NO<sub>x</sub> allowances that may be used to cover excess emissions from sources that are unable to meet control requirements during the 2004 and 2005 ozone season. Allowances from the compliance supplement pool will not be valid for compliance past the 2005 ozone season. The NO<sub>x</sub> SIP Call included these provisions in order to address commenters' concerns about the possible adverse effect that the control requirements might have on the

reliability of the electricity supply or on other industries required to install controls as the result of a state's response to the NO<sub>x</sub> SIP Call.

A state may issue some or all of the compliance supplement pool via two mechanisms. First, a state may issue some or all of the pool to sources that establish a baseline, monitor according to part 75, and demonstrate NO<sub>x</sub> reductions in an ozone season beyond any applicable requirements of the Clean Air Act after September 30, 1999, and before May 31, 2004, (*i.e.*, early

reduction credits). This allows sources that cannot install controls prior to May 31, 2004, to purchase other sources' early reduction credits in order to comply. Second, a state may issue some or all of the pool to sources that demonstrate a need for an extension of the May 31, 2004, compliance deadline due to undue risk to the electricity supply or other industrial sectors, and where early reductions are not available. See 40 CFR 51.121(e)(3). Carolina Power and Light Co. and Duke Power Co. have opted to participate in the early reduction credit program.

Rule .1422, Compliance Supplement Pool and Early Emission Reduction Credits sets out the procedures for allocating the compliance supplement pool under 40 CFR 51.121(e)(3). Allocations are given based on early reductions. Carolina Power and Light and Duke Power Company are the only sources eligible for these allocations. To receive the compliance supplement pool allocations, the companies must document a reduction in emissions of nitrogen oxides between September 30, 1999 and May 1, 2003. North Carolina's rule gives the allocations to the two companies up front. The two utility companies are required to submit interim reports in 2001 and 2002 containing information related to early reductions. The rule contains procedures used to reduce the allocations for Carolina Power and Light Co. and Duke Power Co. if either or both do not earn enough early reductions to cover the allocated compliance supplement pool credits. The rule also provides procedures for using the credits in 2003, since North Carolina sources are subject to the 126 Rule. However, since EPA has finalized a rule harmonizing the compliance dates for section 126 and the NO<sub>x</sub> SIP Call, this section is moot.

#### *D. What Is the New Source Set-Aside Program?*

North Carolina's SIP provides for new source set-asides. 15A NCAC 2D .1421, Allocation for New Growth of Major Point Sources. The Rule establishes an allocation pool from which emission allocations of nitrogen oxides may be allocated to sources permitted after October 31, 2000. It also establishes procedures for requesting allocations and for approving allocations. Eligible sources are EGUs greater than 25 megawatts electrical non-EGUs with a maximum design heat input greater than 250 million Btu per hour. The request cannot exceed the lesser of the estimated emissions during the ozone season or estimated allowable emissions during the ozone season. This section

includes the procedures for approving a request for allowance allocations and allocating allowances, and describes the procedure for determining preliminary allowance allocations. (The preliminary emission allocation is primarily for the source's planning purposes and is not reported to the EPA.) The procedures for determining the final emission allocations are also included. This determination is made at the end of the season so that the allocation that the source receives offsets its actual emissions. The source receives the lesser of its actual emissions, its allowable emissions, and its preliminary allocation from the new source allocation pool. The Director is required to issue final allocations and to notify the source and EPA of the final allocations issued by November 1, and also to make available credits from the I/M motor vehicle program to the new source allocation pool each year beginning in 2008. Any remaining allowances in the new source allocation pool are carried over to the next ozone season. Once a source has made a request for a new source allocation, it does not have to resubmit that request in following years. However, once a source receives an allowance allocation under 15A NCAC 2D .1420, it is no longer eligible for an allocation under 15A NCAC 2D .1421.

### **III. Proposed Action**

EPA is proposing to approve North Carolina's SIP revision consisting of its NO<sub>x</sub> reduction and trading program, which was submitted on September 18, 2001. EPA finds that North Carolina's submittal is fully approvable because it meets the both the Phase I and Phase II requirements of the NO<sub>x</sub> SIP Call.

#### *What Is the Relationship of Today's Proposal to EPA's Findings Under the Section 126 Rule?*

In the April 30, 2002, **Federal Register** document (67 FR 21522), EPA reset the EGU compliance date and other related dates, such as the monitoring certification date, under 40 CFR part 97, also known as the section 126 rule. The EPA also reset the dates for non-EGU sources to match the new date for EGUs. The new compliance date is May 31, 2004. The purpose of the April 30, 2002, document was to realign the section 126 Rule with the NO<sub>x</sub> SIP Call.

### **IV. 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, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: June 12, 2002.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 02-15876 Filed 6-21-02; 8:45 am]

**BILLING CODE 6560-50-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 02-1344; MB Docket No. 02-141; RM-10428]

#### Radio Broadcasting Services; Belle Haven, Cape Charles, Exmore, VA

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comment on a petition for rulemaking filed on behalf of Commonwealth Broadcasting, LLC, licensee of Station WEXM(FM), Exmore, Virginia, and Sinclair Telecable, d/b/a Sinclair Communications, licensee of Station WROX-FM, Cape Charles, Virginia the proposing the reallocation of Channel 291B from Exmore to Belle Haven, Virginia as the community's first local aural transmission service, and modification of Station WEXM(FM)'s license to reflect the change of community. Station WEXM is licensed on Channel 291A, but was granted a construction permit by one-step application to upgrade to Channel 291B at Exmore (File No. BMPH-20010502AAR). See 66 FR 50576 (October 4, 2001). The petition also requests reallocation of Channel 241B from Cape Charles to Exmore, Virginia and the modification of Station WROX's license to reflect the change of community. Channel 291B can be allotted at Belle Haven at petitioner's requested site 8.5 kilometers (5.3 miles)

west of the community at coordinates NL 37-31-46 and WL 75-54-44. Channel 241B can be allotted at Exmore at a site 29.4 kilometers (18.2 miles) southwest of the community at coordinates NL 37-18-02 and WL 75-59-05.

**DATES:** Comments must be filed on or before July 29, 2002, and reply comments on or before August 13, 2002.

**ADDRESSES:** Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Howard M. Weiss, Allison Shapiro, Fletcher, Heald & Hildreth P.L.C. 1300 North 17th Street, 11th Floor Arlington, VA 22209.

**FOR FURTHER INFORMATION CONTACT:** Victoria M. McCauley, Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02-141, adopted, May 29, 2002, and released June 7, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY-A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-863-2893, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

### PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

#### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Virginia, is amended by adding Belle Haven, Channel 291B, removing Cape Charles, Channel 241B, and removing Channel 291B and adding 241B at Exmore.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Office of Broadcast License Policy, Media Bureau.*

[FR Doc. 02-15669 Filed 6-21-02; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 73 and 76

[MM Docket No. 98-204; DA 02-1025]

#### En Banc Hearing on Broadcast and Cable EEO Rules and Policies

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** On May 3, 2002, the Commission released a public notice announcing the June 24, 2002, *en banc* hearing to discuss issues and views on the Commission's proceeding to promulgate new broadcast and cable equal employment opportunity (EEO) rules. The intended effect of this action is to make the public aware of the Commission's *en banc* hearing.

**DATES:** The *en banc* hearing will convene from 10 a.m. to 1 p.m. on June 24, 2002.

**ADDRESSES:** The hearing will be held at the Federal Communications Commission, 445 12th Street, SW., Washington, DC, in the Commission Meeting Room (Room TW-C305).

**FOR FURTHER INFORMATION CONTACT:** Lewis Pulley, Media Bureau, Policy Division. (202) 418-1450.

#### SUPPLEMENTARY INFORMATION:

1. By Public Notice dated and released May 3, 2002, the Federal Communications Commission announced that it will hold an *en banc* hearing. The purpose of the *en banc* is to assist the Commission in its examination of the EEO rules applicable to broadcast and cable entities. In January 2001, the District of Columbia Circuit Court of Appeals vacated the rules as unconstitutional, finding them insufficiently tailored to address the Commission's efforts to prohibit race and gender discrimination in broadcast and cable employment. Following the court's decision, the Commission

suspended enforcement of its EEO program outreach and dissemination rules.

2. The *en banc* will feature industry professionals representing both small and large broadcasters and cable entities, academicians, as well as representatives from trade associations and the public interest sector.

3. The *en banc* is open to the public and seating will be available on a first come, first served basis. Internet users may listen to the real-time audio feed of the hearing via the Internet in Real Audio/Real Video format <http://www.fcc.gov/realaudio/>.

Federal Communications Commission.

**W. Kenneth Ferree,**

Chief, Media Bureau.

[FR Doc. 02-15894 Filed 6-19-02; 4:18 pm]

BILLING CODE 6712-01-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 020606142-2142-02; I.D. 041802F]

RIN 0648-AP39

#### Pacific Coast Groundfish Fishery; Experimental Setnet Sablefish Landings To Qualify Limited Entry Sablefish-Endorsed Permits for Tier Assignment

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes this rule to revise sablefish tier qualifications for the limited entry, fixed gear, primary sablefish fishery. The proposed rule would amend tier qualifications to include sablefish landings taken under the provisions of an exempted fishing permit (EFP) from 1984-1985 with setnet gear north of 38° N. lat. Setnet EFP landings would be added to the current pot (trap) and longline landings to qualify a sablefish-endorsed permit for its tier assignment. This action is intended to recognize historical sablefish landings made by current primary season participants.

**DATES:** Comments must be submitted in writing by July 24, 2002.

**ADDRESSES:** Send comments to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, 7600 Sand

Point Way NE, Seattle, WA 98115 or Rod McInnis, Acting Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213. Copies of the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) for this action are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220.

#### FOR FURTHER INFORMATION CONTACT:

Yvonne deReynier or Jamie Goen (Northwest Region, NMFS), phone: 206-526-6140; fax: 206-526-6736; and email: [yvonne.dereynier@noaa.gov](mailto:yvonne.dereynier@noaa.gov), [jamie.goen@noaa.gov](mailto:jamie.goen@noaa.gov); or Svein Fougner (Southwest Region, NMFS), phone: 562-980-4040; fax: 562-980-4047; and email: [svein.fougner@noaa.gov](mailto:svein.fougner@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access

This proposed rule is available on the Government Printing Office's website at [http://www.access.gpo.gov/su\\_docs/aces/aces140.html](http://www.access.gpo.gov/su_docs/aces/aces140.html).

NMFS is proposing this rule based on a recommendation of the Pacific Fishery Management Council (Council), under the authority of the Pacific Coast Groundfish Fishery Management Plan (FMP) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The background and rationale for the Council's recommendation are discussed subsequently in this preamble. Additional information is available in the EA/RIR/IRFA prepared by the Council for this action. Detailed information regarding the management history of the limited entry, fixed gear, sablefish-endorsed fishery, including the 3-tier program is available in the preamble to the 3-tier proposed rule at 63 FR 19878, April 22, 1998.

##### Background

The Pacific Coast Groundfish FMP, established in 1982, directs groundfish management in Federal waters off Washington, Oregon and California. The Federal regulations at 50 CFR part 660, subpart G and the annual specifications and management measures published in the **Federal Register** implement the Pacific Coast groundfish FMP. During the last 20 years, groundfish management has been through many changes including allocations of particular stocks, season scheduling, areas fished and gears used.

Sablefish (*Anoplopoma fimbria*), also known as "blackcod," is one of the most

valuable groundfish species on the Pacific Coast. Because of its value, management decisions affecting the harvest of sablefish can be contentious. In the past, the Council has made several sablefish management decisions including allocation among different sectors of the fleet. Within the last decade, NMFS and the Council have made major changes in the allocation structure of the commercial sablefish fishery by creating a limited entry program, sablefish endorsements, and a tiered quota system.

##### Sablefish Setnet EFPs

When the FMP was implemented in 1982, the Council banned the use of setnet gear (a buoyed and anchored gillnet or trammel net) to target any groundfish, including sablefish, north of 38° N. lat. The decision, based on limited scientific data, was made primarily to reduce social conflicts over possible salmon bycatch in the groundfish setnet fisheries. In addition to the Council's concerns about salmon bycatch, the Council was concerned over the lack of information on other incidentally caught species, the ability of setnets to fish indefinitely if lost or unattended, the complications associated with adding another gear type to an already complex fishery, the fact that the fishery is heavily capitalized, and the history of conflict between mobile and fixed gears. When the Council decided to ban setnet gear for groundfish north of 38° N. lat. because of these concerns, NMFS approved the ban but also approved an EFP in that area in 1982 to collect more scientific information about the gear's operations.

The FMP specifies that EFPs may be issued to authorize fishing that would otherwise be prohibited. EFPs gather information intended to promote increased use of underutilized species, realize the expansion potential of the groundfish fishery, and increase the harvest efficiency of the fishery consistent with the Magnuson-Stevens Act and the FMP.

From 1982-1985, NMFS issued EFPs to harvest sablefish with setnet gear, including the use of setnet gear north of 38° N. lat. The purpose of setnet EFPs was to study the use of setnet gear as a possible allowable gear type under the FMP and to explore the validity of the Council's concerns in prohibiting the gear north of 38° N. lat. NMFS issued the permits to get information on the use of setnets to harvest sablefish and to evaluate gear conflicts with other fisheries, gear loss, and incidental harvest of salmon, halibut, other groundfish species, marine mammals

and birds. At the Council's March 1986 meeting, the Council recommended that NMFS not issue setnet EFPs beginning in 1986 because enough information had been gathered on setnets over the 4 years from 1982–1985 to validate their reasons for the ban on setnet gear north of 38° N lat. After considering the Council's recommendation, NMFS decided not to issue any setnet EFPs after 1985.

### Sablefish Allocation

Since 1987, the Council has allocated the annual sablefish harvest between trawl gear and nontrawl gear. In the nontrawl, or fixed gear, sector there are two operationally distinct gear types, pot (trap) and longline, that compete for the nontrawl sablefish harvest allocation. From 1987–1994, both sectors, trawl and nontrawl, continued to be open access fisheries where an unlimited number of vessels could enter the fishery.

The Council created a limited entry program (57 FR 54001, November 16, 1992) beginning in 1994 that split the commercial allocation between open access and limited entry fleets. Limited entry program qualifications were based on vessel catch histories using trawl, longline or pot gear from 1984–1988 (known as the “window period”). Qualifying requirements varied for the gear types, from 5 to 17 separate days of landing at least 500 lb (227 kg) of groundfish during the window period. Depending on landings made and gear types used, limited entry permits were issued with gear endorsements, allowing vessels to participate in the groundfish fisheries with trawl, longline or pot gear. Only trawl, longline and pot gear were eligible for gear endorsements in the limited entry program. Even though setnet gear is a stationary or “fixed gear” like longline and pot gear, NMFS and the Council did not allow setnet gear in the limited entry program because it had been prohibited in the FMP north of 38° N lat. EFP setnet landings were not a major issue when establishing the limited entry program, since most longline and pot vessels with a history in the groundfish fishery easily met the qualifying requirements at some point during the window period.

The Council first considered whether to include sablefish landings under an EFP during Council deliberations in April 1994 on Amendment 8 to the FMP. Amendment 8 was intended to create an individual quota system for West Coast sablefish and halibut. The Council-preferred alternative for Amendment 8 included EFP setnet landings as fixed gear landings, along with landings from longline and pot

gear, to count toward a vessel's fixed gear sablefish catch history. However, the Council tabled Amendment 8 in October 1994.

After Amendment 8 was tabled, the Council created Amendment 9 to restrict participation in the limited entry fixed gear fishery. In 1997, Amendment 9 to the FMP again changed the allocation structure of the fishery (62 FR 34670, June 27, 1997) by requiring that limited entry fixed gear vessels qualify for a sablefish endorsement to participate in the primary sablefish fishery. The sablefish endorsement qualifying criteria were at least 16,000 lb (7,257 kg) of Council-managed sablefish caught with longline or pot gear in any one year from 1984–1994. Again, including landings with setnet gear under the provisions of an EFP as a qualifying requirement was not an issue for sablefish endorsement applicants, since fixed gear vessels with a history of participation in the groundfish fishery easily met the low poundage requirements.

### Sablefish 3-Tier System

Over time, sablefish fleet capitalization increased and the Council needed to set ever-shorter regular seasons to control catch levels. The primary sablefish season in 1996 was only 5 days long, an intense “derby” fishery. A “derby” fishery is a short competition with no trip or cumulative landing limits. The Council considered the sablefish derby to be hazardous because it gave fishers strong incentives to stay on the ocean during bad weather, working at sea with heavy machinery and little or no sleep throughout the season. Amendment 14 (66 FR 41152, August 7, 2001) has recently eliminated the sablefish derby by extending the season to 2.5 months in 2001 and a 7 month season in 2002.

In 1998, the Council further subdivided the allocation structure of the limited entry, fixed gear, sablefish-endorsement primary sablefish fishery into 3 tiers (63 FR 38101, July 15, 1998). The 3-tier system was intended to recognize historical and more recent participation and investment in the fixed gear sablefish fishery while eliminating the traditional derby style management system.

Permit owners were divided into 3 separate tiers based on permit catch history using longline or pot gear between 1984–1994. To qualify for Tier 1, the highest tier, a permit had to be associated with at least 898,000 lb (407,326 kg) of cumulative sablefish landings. To qualify for Tier 2, a permit had to be associated with between 897,999 lb (407,326 kg) and 380,000 lb

(172,365 kg) of cumulative sablefish landings. Permits with cumulative sablefish landings below 380,000 lb (172,365 kg), but which had qualified for sablefish endorsements, were placed in Tier 3. Because the qualifying requirements for the 3-tier system ranked participants for future harvest allocation based on high cumulative landings, participants had an incentive to try to qualify for as high a tier assignment as possible in order to increase their future economic returns from the fishery.

### Setnet Landings as Tier Qualifications

After the 3-tier system was implemented in 1998, the Council realized it had overlooked the setnet issue. For the first time since Amendment 8 was tabled, a permit owner brought the setnet issue to the attention of NMFS and the Council during implementation of the 3-tier program.

NMFS notified sablefish-endorsement permit owners of their tier assignment by a “letter of qualification.” If a permit owner believed that he qualified for a different tier, he had 30 days to submit evidence to NMFS. NMFS then reviewed the evidence and issued a “letter of determination” stating whether the permit owner's tier assignment had been revised.

In this case, a permit owner challenged a tier assignment, stating that the EFP setnet landings should have been included in the fixed gear catch history as had been intended with Amendment 8. NMFS disapproved the permit owner's request because setnet landings were never considered for the 3-tier program. The permit owner then took the issue before the Council in September 1998. The Council members requested a decision package from the Council staff and the Northwest Region (Region) for the setnet issue in June 1999 but, due to the Council's and the Region's busy schedules and agenda priorities, no action was taken on the issue of including EFP setnet landings in the qualification requirements for tier assignment until the June 2001 Council meeting.

In the case of the setnet fishery north of 38° N. lat., fishing under the EFP during 1984–1985 diverted some vessels from historical participation in the pot or longline sablefish fishery. If those vessels had not participated in the setnet EFP and had fished for sablefish with pot or longline gear during 1984–1985 as usual, the vessels may have qualified for a higher tier assignment.

In order to resolve this discrepancy equitably and not discourage future participation in EFPs, the Council

recommended that NMFS include EFP setnet landings from 1984–1987 in the qualifying requirements for tier assignment. However, NMFS did not issue any setnet EFPs after 1985. Therefore, NMFS proposes to amend the regulations at 50 CFR part 660 to include landings of sablefish taken with setnet gear north of 38° N. lat. under the provisions of an EFP issued by NMFS in 1984–1985 when determining tier qualifications for permits that already have a sablefish endorsement.

#### Housekeeping Corrections to 50 CFR Part 660

NMFS proposes a technical correction to 50 CFR part 660 Subpart A, Subpart B, Subpart C, Subpart D, Subpart E, Subpart F, Subpart G, and Subpart H that would correct an outdated title of an agency official.

NMFS proposes technical corrections to the groundfish regulations at 50 CFR part 660. The first correction adds clarifying language to § 660.323(a)(4)(vi) to connect activities authorized under other paragraphs, such that if a whiting reapportionment authorized under § 660.323(a)(4)(iv) were to occur, the re-opening of primary whiting season described at § 660.323(a)(3)(i) is included in the list of Federal actions to be announced at § 660.323(a)(4)(vi). The second correction updates the title of an agency official referenced in § 660.324(d) and § 660.350(b)(3). The third correction amends a cross reference in § 660.324(f), and § 660.325(d)(2) and (e)(1). These housekeeping corrections are technical amendments to the groundfish regulations and will not change the effect of the regulations on fisheries entities or resources.

#### Classification

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

The Council prepared an IRFA that describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action and why it is being considered are contained in the preamble of this proposed rule and in the SUMMARY section of the preamble. A summary of the analysis on the proposed action (preferred alternative follows):

A fish harvesting business is considered a small entity by the Small Business Administration (SBA) if it has annual receipts not in excess of \$3.5 million. All of the permit owners and vessels in the Pacific Coast limited entry, fixed gear fleet are considered small entities under SBA standards. All 164 limited entry, fixed gear, sablefish-

endorsed permits in the fleet are owned by small entities.

Of the 499 limited entry permits in the West Coast groundfish fishery, 164 permits have fixed gear, sablefish endorsements. Among those 164 sablefish-endorsed permits, 2 participated in the setnet EFP for sablefish between 1984–1985. By including setnet landings in the qualifying requirements for tier assignments, 1 of these permits is expected to move up from Tier 2 to Tier 1. Tier 1 has the highest sablefish landing limits of the three tiers. The other permit associated with a vessel that participated in the 1984 1985 setnet EFP fisheries already has a Tier 1 assignment. This proposed rule will not allow new entrants to qualify for the limited entry program or sablefish endorsements. Nor will it change the allocation of the sablefish optimum yield (OY) among the fishery sectors, including the limited entry fixed gear sablefish-endorsed fleet. What will change is the amount of the limited entry fixed gear sablefish-endorsed fleet's OY that each permit in the tier system receives, due to a change in the number of permits in each tier.

Based on expected cumulative limits for 2001 and average prices from 2000, moving 1 permit from Tier 2 up to Tier 1 will increase that permit's cumulative primary sablefish limit by 120 percent and increase the sablefish ex-vessel value for the permit an additional \$51,942. Consequently, the limits for all other 163 tiered permits will decrease by 0.76 percent. The projected change in ex-vessel value of landed sablefish from a 0.76 percent decrease in permit limits are decreases of \$737 for each of the 27 Tier 1 permits, \$335 for each of the 42 Tier 2 permits and \$191 for each of the 94 Tier 3 permits. Overall, the change in permit value due to this proposed rule is expected to be minimal.

In addition, the effect on private sector efficiency is not likely to be significant. Over the long term, in the 3-tier permit stacking system, like individual transferable quotas, permit owners will likely have a tendency to transfer permits to more efficient producers, thus absorbing the inefficiency, if any, that results from one permit shifting tiers. For the public sector, no effect is expected on enforcement and administrative costs, beyond the effort required to make the change in the regulations and alter the tier designations in the data system.

This proposed rule is intended to recognize historical sablefish landings made by current primary season participants. Because of an oversight in qualification criteria during

implementation of the 3-tier program, the 163 permit owners actually have been experiencing benefits from inflated gross revenues for the past 3 years that the program has been in place. The action proposed would equitably distribute the limited entry, fixed gear sablefish-endorsed permit allocation. This proposed rule is also intended to encourage participation in future EFPs by including setnet EFP landings in qualifying requirements for tier limits at a time when some fishers participated in a setnet EFP rather than participating in a regular commercial fishery.

The intermediate alternatives the Council considered but didn't analyze were not reasonable in that there was no rationale behind why they were created. For example, one of the intermediate options was a temporary higher tier. The Council could not come up with a reason why they would consider a temporary higher tier, given that the tier system had been in place since 1998. Temporary regulations or tiers are generally put in place as a way of reducing the negative effects to small businesses of regulatory changes. It doesn't make sense to create a temporary tier in a tier system that is already in place and in which there will be no new entrants. Additionally, creating a temporary higher tier doesn't address, over the long-term, the issue of unfairness to historical fixed gear sablefish fishermen who chose to participate in the setnet EFP instead and were penalized when the tier system was created. Thus, a temporary higher tier might still discourage future participation in EFPs, which is part of what this proposed rule is trying to alleviate. Therefore, the intermediate alternative of a temporary higher tier does not address the purpose and need of the proposed action.

A copy of this analysis is available from the Council (*see ADDRESSES*).

#### List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: June 18, 2002.

**Rebecca Lent,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

# **PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC**

1. The authority citation for part 660 continues to read as follows:

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

2. In § 660.324, paragraph (d) remove the words “Regional Director” and add in their place, “Regional Administrator”, and in Paragraph (f) remove the words “subpart C” and add in their place, “§ 660.331 through § 660.341”.

3. In § 660.334, paragraphs (d)(2) and (3) are redesignated as paragraphs (d)(3) and (4), respectively, a new paragraph (d)(2) is added; the newly redesignated paragraphs (d)(3) and (d)(4) are revised to read as follows:

## **§ 660.334 Limited entry permits—endorsements.**

\* \* \* \* \*

(d) \* \* \*

(2) *Endorsement and tier assignment qualifying criteria.*

(i) *Permit catch history.* Permit catch history will be used to determine whether a permit meets the qualifying criteria for a fixed gear sablefish endorsement and to determine the appropriate tier assignment for endorsed permits. Permit catch history includes the catch history of the vessel(s) that initially qualified for the permit, and subsequent catch histories accrued when the limited entry permit or permit rights were associated with other vessels. The catch history of a permit also includes the catch of any interim permit held by the current owner of the permit during the appeal of an initial NMFS decision to deny the initial issuance of a limited entry permit, but only if the appeal for which an interim permit was issued was lost by the appellant, and the owner's current permit was used by the owner in the 1995 limited entry sablefish fishery. The catch history of an interim permit where the full “A” permit was ultimately granted will also be considered part of the catch history of the “A” permit. If the current permit is the result of the combination of multiple permits, then for the combined permit to qualify for an endorsement, at least one of the permits that were combined must have had sufficient sablefish history to qualify for an endorsement; or the permit must qualify based on catch occurring after it was combined, but taken within the qualifying period. If the current permit is the result of the combination of multiple permits, the combined catch histories of all of the permits that were combined to create a

new permit before March 12, 1998, will be used in calculating the tier assignment for the resultant permit, together with any catch history (during the qualifying period) of the resultant permit. Only sablefish catch regulated by this part that was taken with longline or trap (pot) gear will be considered for the sablefish endorsement, except that vessels qualifying for the sablefish endorsement based on longline or trap (pot) landings may include setnet sablefish landings defined at paragraph (d)(2)(ii)(B) of this section in meeting tier assignment qualifications. Sablefish harvested illegally or landed illegally will not be considered for this endorsement.

(ii) *Sablefish endorsement tier assignments.* Only limited entry, fixed gear permits with sablefish endorsements will receive cumulative trip limit tier assignments.

(A) The qualifying weight criteria for Tier 1 are at least 898,000 lb (407,326 kg) cumulative round weight of sablefish caught over the years 1984-1994. The qualifying weight criteria for Tier 2 are at least 380,000 lb (172,365 kg), but no more than 897,999 lb (407,326 kg) cumulative round weight of sablefish caught over the years 1984-1994. Fixed gear permits with less than 380,000 lb (172,365 kg) cumulative round weight of sablefish caught over the years 1984-1994 qualify for Tier 3. All qualifying sablefish landings must be caught with longline or trap (pot), although setnet landings defined at subparagraph (B) of this section may also be included in tier assignment qualifying landings. Sablefish taken in tribal set aside fisheries does not qualify.

(B) Setnet sablefish landings are included in sablefish endorsement tier assignment qualifying criteria if those landings were made north of 38° N. lat. under the authority of an EFP issued by NMFS in any of the years 1984-1985, by a vessel that landed at least 16,000 lb (7,257 kg) of sablefish with longline or trap (pot) gear in any one year between 1984-1994.

(iii) *Evidence and burden of proof.* A vessel owner (or person holding limited entry rights under the express terms of a written contract) applying for issuance, renewal, replacement, transfer, or registration of a limited entry permit has the burden to submit evidence to prove that qualification requirements are met. The owner of a permit endorsed for longline or trap (pot) gear applying for a sablefish endorsement or a tier assignment under this section has the burden to submit evidence to prove that qualification requirements are met. The following evidentiary standards apply:

(A) A certified copy of the current vessel document (USCG or state) is the best evidence of vessel ownership and LOA.

(B) A certified copy of a state fish receiving ticket is the best evidence of a landing, and of the type of gear used.

(C) A copy of a written contract reserving or conveying limited entry rights is the best evidence of reserved or acquired rights.

(D) Such other relevant, credible evidence as the applicant may submit, or the SFD or the Regional Administrator request or acquire, may also be considered.

(3) *Issuance process for sablefish endorsements and tier assignments.* (i) No new applications for sablefish endorsements will be accepted after November 30, 1998.

(ii) All tier assignments and subsequent appeals processes were completed by September 1998. If, however, a permit owner with a sablefish endorsement believes that his permit may qualify for a change in tier status based on qualifications in paragraph (d)(2)(ii)(B) of this section, SFD will accept applications for a tier change through December 31, 2002. Paragraph (d)(2)(iii) of this section sets out the relevant evidentiary standards and burden of proof.

(iii) After review of the evidence submitted under paragraph (ii), and any additional information the SFD finds to be relevant, the Regional Administrator will issue a letter of determination notifying a permit owner of whether the evidence submitted is sufficient to alter the initial tier assignment. If the Regional Administrator determines the permit qualifies for a different tier, the permit owner will be issued a revised tier assignment certificate once the initial certificate is returned to the SFD for processing.

(iv) If a permit owner chooses to file an appeal of the determination under paragraph (iii) of this section, the appeal must be filed with the Regional Administrator within 30 days of the issuance of the letter of determination. The appeal must be in writing and must allege facts or circumstances, and include credible evidence demonstrating why the permit qualifies for a different tier assignment. The appeal of a denial of an application for a different tier assignment will not be referred to the Council for a recommendation under § 660.340 (e).

(v) Absent good cause for further delay, the Regional Administrator will issue a written decision on the appeal within 30 days of receipt of the appeal. The Regional Administrator's decision is the final administrative decision of

the Department of Commerce as of the date of the decision.

(4) *Ownership requirements and limitations.* (i) No partnership or corporation may own a limited entry permit with a sablefish endorsement unless that partnership or corporation owned a limited entry permit with a sablefish endorsement on November 1, 2000. Otherwise, only individual human persons may own limited entry permits with sablefish endorsements.

(ii) No person, partnership, or corporation may have ownership interest in or hold more than three permits with sablefish endorsements, except for persons, partnerships, or corporations that had ownership interest in more than 3 permits with sablefish endorsements as of November 1, 2000. The exemption from the maximum ownership level of 3 permits only applies to ownership of the particular permits that were owned on November 1, 2000. Persons, partnerships or corporations that had ownership interest in 3 or more permits with sablefish endorsements as of November 1, 2000, may not acquire additional permits beyond those particular permits owned on November 1, 2000. If, at some future time, a person, partnership, or corporation that owned more than 3 permits as of November 1, 2000, sells or otherwise permanently transfers (not leases) some of its originally owned permits, such that they then own fewer than 3 permits, they may then acquire additional permits, but may not have ownership interest in or hold more than 3 permits.

(iii) A partnership or corporation will lose the exemptions provided in paragraphs (d)(4)(i) and (ii) of this section on the effective date of any change in the corporation or partnership from that which existed on November 1, 2000. A "change" in the partnership or corporation means a change in the corporate or partnership membership, except a change caused by the death of a member providing the death did not result in any new members. A change in

membership is not considered to have occurred if a member becomes legally incapacitated and a trustee is appointed to act on his behalf, nor if the ownership of shares among existing members changes, nor if a member leaves the corporation or partnership and is not replaced. Changes in the ownership of publicly held stock will not be deemed changes in ownership of the corporation.

\* \* \* \* \*

5. In § 660.335, paragraphs (d)(1), (d)(2), and (e)(1) are revised to read as follows:

**§ 660.335 Limited entry permits—renewal, combination, stacking, change of permit ownership or permit holdership, and transfer.**

\* \* \* \* \*

(d) \* \* \*

(1) *General.* The permit owner may convey the limited entry permit to a different person. The new permit owner will not be authorized to use the permit until the change in permit ownership has been registered with and approved by the SFD. The SFD will not approve a change in permit ownership for limited entry permits with sablefish endorsements that does not meet the ownership requirements for those permits described at § 660.334 (d)(4).

(2) *Effective date.* The change in ownership of the permit or change in the permit holder will be effective on the day the change is approved by SFD, unless the there is a concurrent change in the vessel registered to the permit. Requirements for changing the vessel registered to the permit are described at paragraph (e) of this section.

\* \* \* \* \*

(e) \* \* \*

(1) *General.* A permit may not be used with any vessel other than the vessel registered to that permit. For purposes of this section, a permit transfer occurs when, through SFD, a permit owner registers a limited entry permit for use with a new vessel. Permit transfer applications must be submitted to SFD with the appropriate documentation

described at paragraph (g) of this section. Upon receipt of a complete application, and following review and approval of the application, the SFD will reissue the permit registered to the new vessel.

\* \* \* \* \*

6. In § 660.350, paragraph (b)(3) remove the term "RA" and add, in its place, the words "Regional Administrator".

7. In addition to the amendments set forth above, in 50 CFR part 660 remove the words "Regional Director" and add, in their place, the words "Regional Administrator" in the following places:

- a. Section 660.12;
- b. Section 660.14 ((a), (b), (c), (e), and (f)(2);
- c. Section 660.15, (e) and (j);
- d. Section 660.17 (a), (c), (d), (e), (e)2), (e)(4) and (k);
- e. Section 660.21 (k), (k)(1), (k)(2), and (k)(3) and (k)(4);
- f. Section 660.23 (a) and (b);
- g. Section 660.27 (e), (f)(1), (f)(2), and (f)(2)(i);
- h. Section 660.28 (b), (g), (h), (h)(i)(1), and (h)(2)(ii);
- i. Section 660.31 (c)(2) and (d)(2);
- j. Section 660.43 (b);
- k. Section 660.50 (c);
- l. Section 660.51 (a), (b), (c)(1), (c)(2), (d), (e), (f), (g)(1), (g)(2), and (j)(2);
- m. Section 660.52 (a), (b)(1) and (b)(3);
- n. Section 660.53 (c)(2) and (d)(2);
- o. Section 660.65 (a) and (d);
- p. Section 660.66 introductory text and (a);
- q. Section 660.67 (c)(1), (c)(2), (c)(4), (d)(2)(iii), and (d)(2)(iv);
- r. Section 660.81 (e);
- s. Section 660.84 (c)(2) and (c)(4);
- t. Section 660.85 (a);
- u. Section 660.302;
- v. Section 660.321 (a);
- w. Section 324 (d);
- x. Section 660.339;
- y. Section 660.402;
- z. Section 660.409 (a)(1) and (b)(1);
- aa. Section 660.411 (c).

[FR Doc. 02-15884 Filed 6-21-02; 8:45 am]

BILLING CODE 3510-22-S

# Notices

Federal Register

Vol. 67, No. 121

Monday, June 24, 2002

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. FV02-966-610 REVIEW]

#### Tomatoes Grown in Florida; Section 610 Review

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice of review and request for comments.

**SUMMARY:** This notice announces that the Agricultural Marketing Service (AMS) plans to review Marketing Order 966 for tomatoes grown in Florida, under the criteria contained in section 610 of the Regulatory Flexibility Act (RFA).

**DATES:** Written comments on this notice must be received by August 23, 2002.

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

**FOR FURTHER INFORMATION CONTACT:** Doris Jamieson, Marketing Specialist, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, Florida 33884; telephone: (863) 324-3375, Fax: (863) 325-8793; E-mail: [Doris.Jamieson@usda.gov](mailto:Doris.Jamieson@usda.gov); or George Kelhart, Technical Advisor, Marketing

Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938; e-mail: [George.Kelhart@usda.gov](mailto:George.Kelhart@usda.gov).

**SUPPLEMENTARY INFORMATION:** Marketing Order No. 966, as amended (7 CFR part 966), regulates the handling of tomatoes grown in Florida. The marketing order is effective under the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601-674).

AMS initially published in the **Federal Register** (63 FR 8014; February 18, 1999), its plan to review certain regulations, including Marketing Order No. 966, under criteria contained in section 610 of the Regulatory Flexibility Act (RFA; 5 U.S.C. 601-612). An updated plan was published in the **Federal Register** on January 4, 2002 (67 FR 525). Because many AMS regulations impact small entities, AMS has decided, as a matter of policy, to review certain regulations which, although they may not meet the threshold requirement under section 610 of the RFA, warrant review.

The purpose of the review will be to determine whether the Florida marketing order for tomatoes should be continued without change, amended, or rescinded (consistent with the objectives of the AMAA) to minimize the impacts on small entities. In conducting this review, AMS will consider the following factors: (1) The continued need for the marketing order; (2) the nature of complaints or comments received from the public concerning the marketing order; (3) the complexity of the marketing order; (4) the extent to which the marketing order overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the marketing order has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the marketing order.

Written comments, views, opinions, and other information regarding the tomato marketing order's impact on small businesses are invited.

Dated: June 18, 2002.

**Barry L. Carpenter,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 02-15864 Filed 6-21-02; 8:45 am]

**BILLING CODE 3410-02-P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Tehama County Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Tehama County Resource Advisory Committee (RAC) will hold its next meeting.

**DATES:** The meeting will be held on July 18, 2002, and will begin at 9 a.m. and end at approximately 12 p.m.

**ADDRESSES:** The meeting will be held at the Lincoln Street School, Conference Room A, 1135 Lincoln Street, Red Bluff, CA.

#### FOR FURTHER INFORMATION CONTACT:

Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 164, Elk Creek, CA 95939, (530) 968-5329; e-mail [ggaddini@fs.fed.us](mailto:ggaddini@fs.fed.us).

**SUPPLEMENTARY INFORMATION:** Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment (4) Election of Officers, (5) Mendocino Priority List, (6) Lassen Priority List, (7) Shasta Trinity Priority List. (8) General Discussion. The meeting is open to the public. Public input opportunity will be provided and individual will have the opportunity to address the Committee at that time.

Dated: June 18, 2002.

**Michael Brenner,**

*Acting Forest Supervisor.*

[FR Doc. 02-15837 Filed 6-21-02; 8:45 am]

**BILLING CODE 3410-11-M**

**DEPARTMENT OF AGRICULTURE****Rural Business-Cooperative Service****Notice of Funds Availability (NOFA)  
Inviting Applications for the Value-  
Added Agricultural Product Market  
Development Grant Program (VADG)  
(Independent Producers)**

**AGENCY:** Rural Business-Cooperative Service, USDA.

**ACTION:** Notice.

**SUMMARY:** The Rural Business-Cooperative Service (RBS) announces the availability of approximately \$33 million in competitive grant funds for fiscal year 2002 to help independent agricultural producers enter into value-added activities. RBS hereby requests proposals from eligible independent producers, agricultural producer groups, farmer or rancher cooperatives, and majority-controlled producer-based business ventures interested in a competitively awarded grant to fund one of the following two activities: (1) Developing feasibility studies or business plans (including marketing plans or other planning activities) needed to establish a viable value-added marketing opportunity for an agricultural product; or (2) acquiring working capital to operate a value-added business venture or an alliance that will allow the producers to better compete in domestic and international markets. In order to provide program benefits to as many eligible applicants as possible, applications can only be for one or the other of these two activities, but not both.

Value-added products are defined as follows: (1) A change in the physical state or form of the product (such as milling wheat into flour or making strawberries into jam); (2) the production of a product in a manner that enhances its value, as demonstrated through a business plan (such as organically produced products); (3) the physical segregation of an agricultural commodity or product in a manner that results in the enhancement of the value of that commodity or product (such as an identity preserved marketing system). As a result of the change in physical state or the manner in which the agricultural commodity or product is produced or segregated, the customer base for the commodity or product is expanded and a greater portion of revenue derived from the marketing, processing, or physical segregation is made available to the producer of the commodity or product. Value-added also includes using any agricultural

product or commodity to produce renewable energy on a farm or ranch.

The maximum award per grant is \$500,000. In order to maximize the distribution of program benefits, smaller grant requests under \$500,000 will receive priority points. Priority is also being given to projects producing energy from biomass or demonstrating profitable use of innovative technologies.

**DATES:** Applications must be completed and submitted to the appropriate State USDA Rural Development office as soon as possible, but no later than 4:00 pm on August 8, 2002. Applications received after August 8, 2002 will not be considered. Late applications will not be accepted and will be returned to the applicant. Applicants must ensure that the service they use to deliver their applications can do so by the deadline. Due to recent security concerns, packages sent to the agency by mail have been delayed several days or even weeks.

**ADDRESSES:** Submit proposals and other required materials to your State USDA Rural Development Office. RBS is strongly encouraging the electronic submission of proposals. If proposals are electronically submitted, signed paper copies of the three required forms, SF-424 "Application for Federal Assistance," SF-424A "Budget Information—Non-Construction Programs," and SF-424B "Assurances—Non-Construction Programs," need to be mailed to the state office. A list of Rural Development State Offices, addresses, e-mail addresses, and telephone numbers follows.

**Note:** Telephone numbers listed are not toll free.

**U.S. Department of Agriculture Rural  
Development State Offices****Alabama**

Chris Harmon, USDA Rural Development,  
Sterling Center, Suite 601, 4121  
Carmichael Road, Montgomery, AL 36106-  
3683, (334) 279-3415,  
[chris.harmon@al.usda.gov](mailto:chris.harmon@al.usda.gov)

**Alaska**

Dean Stewart, USDA Rural Development, 800  
West Evergreen, Suite 201, Palmer, AK  
99645, (907) 761-7722,  
[dstewart@rdmail.rural.usda.gov](mailto:dstewart@rdmail.rural.usda.gov)

**Arizona**

Gary Mack, USDA Rural Development, 3003  
North Central Avenue, Suite 900, Phoenix,  
AZ 85012, (602) 280-8717,  
[gary.mack@az.usda.gov](mailto:gary.mack@az.usda.gov)

**Arkansas**

Tim Smith, USDA Rural Development, 700  
West Capitol Avenue, Room 3416, Little

Rock, AR 72201-3225, (501) 301-3200,  
[tim.smith@ar.usda.gov](mailto:tim.smith@ar.usda.gov)

**California**

Karen Spatz, USDA Rural Development, 430  
G Street, Agency 4169, Davis, CA 95616,  
(530) 792-5829, [karen.spatz@ca.usda.gov](mailto:karen.spatz@ca.usda.gov)

**Colorado**

Leroy W. Cruz, USDA Rural Development,  
655 Parfet Street, Lakewood, CO 80215,  
(720) 544-2926, [leroy.cruz@co.usda.gov](mailto:leroy.cruz@co.usda.gov)

**Delaware-Maryland**

Vincent F. Murphy, USDA Rural  
Development, 4607 South DuPont  
Highway, Camden, DE 19934, (302) 697-  
4323, [vince.murphy@de.usda.gov](mailto:vince.murphy@de.usda.gov)

**Florida/Virgin Islands**

Joe Mueller, USDA Rural Development, 4440  
NW. 25th Place, Gainesville, FL 32606,  
(352) 338-3482, [joe.mueller@fl.usda.gov](mailto:joe.mueller@fl.usda.gov)

**Georgia**

J. Craig Scroggs, USDA Rural Development,  
333 Phillips Drive, McDonough, GA 30253,  
(678) 583-0866, [craig.scroggs@ga.usda.gov](mailto:craig.scroggs@ga.usda.gov)

**Hawaii**

Timothy O'Connell, USDA Rural  
Development, Federal Building, Room 311,  
154 Wai'anuenue Avenue, Hilo, HI 96720,  
(808) 933-8313, [tim.oconnell@hi.usda.gov](mailto:tim.oconnell@hi.usda.gov)

**Idaho**

Dale Lish, USDA Rural Development, 9173  
West Barnes Drive, Suite A1, Boise, ID  
83709, (208) 785-5840, ext. 118,  
[dale.lish@id.usda.gov](mailto:dale.lish@id.usda.gov)

**Illinois**

Cathy McNeal, USDA Rural Development,  
2118 West Park Court, Suite A, Champaign,  
IL 61821, (217) 403-6210,  
[cathy.mcneal@il.usda.gov](mailto:cathy.mcneal@il.usda.gov)

**Indiana**

Jerry Hay, USDA Rural Development, 5975  
Lakeside Boulevard, Indianapolis, IN  
46278, (812) 346-3411, ext. 4,  
[jerry.hay@in.usda.gov](mailto:jerry.hay@in.usda.gov)

**Iowa**

Jeff Jobe, USDA Rural Development, Federal  
Building, Room 873, 210 Walnut Street,  
Des Moines, IA 50309, (515) 284-5192,  
[Jeff.jobe@ia.usda.gov](mailto:Jeff.jobe@ia.usda.gov)

**Kansas**

Larry Carnahan, USDA Rural Development,  
115 West Forth Street, Altamont, KS  
67330, (620) 784-5431,  
[lcarnaha@rdasun2.rurdev.usda.gov](mailto:lcarnaha@rdasun2.rurdev.usda.gov)

**Kentucky**

Jeff Jones, USDA Rural Development, 771  
Corporate Drive, Suite 200, Lexington, KY  
40503, (859) 224-7300,  
[jeff.jones@ky.usda.gov](mailto:jeff.jones@ky.usda.gov)

**Louisiana**

Judy Meche, USDA Rural Development, 3727  
Government Street, Alexandria, LA 71302,  
(318) 473-7960, [judy.meche@la.usda.gov](mailto:judy.meche@la.usda.gov)

**Maine**

Alan C. Daigle, USDA Rural Development,  
967 Illinois Avenue, Suite 4, Bangor, ME  
04402, (207) 990-9168,  
[alan.daigle@me.usda.gov](mailto:alan.daigle@me.usda.gov)

**Massachusetts/Rhode Island/Connecticut**

Richard J. Burke, USDA Rural Development,  
451 West Street, Suite 2, Amherst, MA  
01002, (413) 253-4318,  
[rburke@rurdev.usda.gov](mailto:rburke@rurdev.usda.gov)

**Michigan**

Lee Bambusch, USDA Rural Development,  
3001 Coolidge Road, Suite 200, East  
Lansing, MI 48820, (517) 324-5216,  
[lee.bambusch@mi.usda.gov](mailto:lee.bambusch@mi.usda.gov)

**Minnesota**

Robyn J. Holdorf, USDA Rural Development,  
375 Jackson Street, Suite 410, St. Paul, MN  
55101-1853, (651) 602-7812,  
[robyn.holdorf@mn.usda.gov](mailto:robyn.holdorf@mn.usda.gov)

**Mississippi**

Cecil Williams, USDA Rural Development,  
Federal Building, Suite 831, 100 West  
Capitol Street, Jackson, MS 39269, (601)  
965-5457 [cecil.williams@ms.usda.gov](mailto:cecil.williams@ms.usda.gov)

**Missouri**

Nathan Chitwood, USDA Rural Development,  
601 Business Loop 70 West, Parkade  
Center, Suite 235, Columbia, MO 65203,  
(573) 876-9320,  
[nathan.chitwood@mo.usda.gov](mailto:nathan.chitwood@mo.usda.gov)

**Montana**

William W. Barr, USDA Rural Development,  
900 Technology Blvd., Suite B, Bozeman,  
MT 59717, (406) 585-2545,  
[bill.barr@mt.usda.gov](mailto:bill.barr@mt.usda.gov)

**Nebraska**

Deb Yocum, USDA Rural Development,  
Federal Building, Room 152, 100  
Centennial Mall North, Lincoln, NE 68508,  
(402) 223-3125, ext. 4,  
[debra.yocum@ne.usda.gov](mailto:debra.yocum@ne.usda.gov)

**Nevada**

Dan Johnson, USDA Rural Development,  
2002 Idaho Street, Elko, NV 89801, (775)  
738-8468, ext. 28,  
[dan.johnson@nv.usda.gov](mailto:dan.johnson@nv.usda.gov)

**New Hampshire**

Scott D. Johnson, USDA, Rural Development,  
City Center, 3rd Floor, 80 Main Street,  
Montpelier, VT 05602, (603) 223-6034,  
[scott.johnson@nh.usda.gov](mailto:scott.johnson@nh.usda.gov)

**New Jersey**

Michael P. Kelsey, USDA Rural  
Development, 5th Floor North Tower, Suite  
500, 8000 Midlantic Drive, Mount Laurel,  
NJ 08054, (856) 787-7751,  
[michael.kelsey@nj.usda.gov](mailto:michael.kelsey@nj.usda.gov)

**New Mexico**

Eric Vigil, USDA Rural Development, 6200  
Jefferson Street, NE, Room 255,  
Albuquerque, NM 87109, (505) 761-4952,  
[eric.vigil@nm.usda.gov](mailto:eric.vigil@nm.usda.gov)

**New York**

Robert Pestridge, USDA Rural Development,  
The Galleries of Syracuse, 441 South

Salina Street, Suite 357, Syracuse, NY  
13202, (315) 477-6426,  
[robert.pestridge@ny.usda.gov](mailto:robert.pestridge@ny.usda.gov)

**North Carolina**

Ms. Delane Johnson, USDA Rural  
Development State Office, 4405 Bland  
Road, Suite 260, Raleigh, NC 27609, (919)  
873-2033, [delane.johnson@nc.usda.gov](mailto:delane.johnson@nc.usda.gov)

**North Dakota**

Dennis Rodin, USDA Rural Development,  
Federal Building, Room 211, 220 East  
Rosser Avenue, Bismarck, ND 58501, (701)  
530-2065, [Dennis.rodin@nd.usda.gov](mailto:Dennis.rodin@nd.usda.gov)

**Ohio**

Deborah E. Rausch, USDA Rural  
Development, Federal Building, Room 507,  
200 North High Street, Columbus, OH  
43215, (614) 255-2425,  
[deborah.rausch@oh.usda.gov](mailto:deborah.rausch@oh.usda.gov)

**Oklahoma**

Sally Vielma, USDA Rural Development, 100  
USDA, Suite 108, Stillwater, OK 74074,  
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**Oregon**

Robert F. Haase, USDA Rural Development,  
625 Salmon Avenue, Suite 5, Redmond,  
OR 97756, (541) 926-4358, ext. 124,  
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[linda.hager@pa.usda.gov](mailto:linda.hager@pa.usda.gov)

**Puerto Rico**

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**Vermont/New Hampshire**

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**Virginia**

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**West Virginia**

Mr. John M Comerci, USDA Rural  
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**Wisconsin**

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**Wyoming**

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[janice.stroud@wy.usda.gov](mailto:janice.stroud@wy.usda.gov)

**FOR FURTHER INFORMATION CONTACT:** For  
further information contact your USDA  
State Rural Development Office. You  
may also obtain information from the  
RBS website at: [www.rurdev.usda.gov/rbs/coops/vadg.htm](http://www.rurdev.usda.gov/rbs/coops/vadg.htm).

**SUPPLEMENTARY INFORMATION:****Background**

This solicitation is issued pursuant to  
section 231 of the Agriculture Risk  
Protection Act of 2000 (Pub. L. 106-224)  
as amended by section 6401 of the Farm  
Security and Rural Investment Act of  
2002 (Pub. L. 107-171) authorizing the  
establishment of the Value-Added  
Agricultural Product Market  
Development grants. The Secretary of  
Agriculture has delegated the program's  
administration to USDA's Rural  
Business-Cooperative Service.

The primary objective of this grant  
program is to help eligible independent  
producers of agricultural commodities,  
agricultural producer groups, farmer  
and rancher cooperatives, and majority-  
owned producer-based business  
ventures develop business plans for  
viable marketing opportunities and  
develop strategies to create marketing  
opportunities. Eligible agricultural  
producer groups, farmer and rancher  
cooperatives, and majority-controlled

producer-based business ventures must limit their proposals to emerging markets. These grants will facilitate greater participation in emerging markets and new markets for value-added products. Grants will only be awarded if projects or ventures are determined to be economically viable and sustainable.

This grant program has a matching funds requirement. Applicants must provide matching funds at least equal to the grant. Other Federal grants cannot be used as matching funds. Grant funds and matching funds must be spent proportionately during the timeframe stated in the grant application. Grant funds will be disbursed pursuant to applicable provisions of 7 CFR parts 3015 and 3019. Matching funds must be used to support the overall purpose of the VADG program.

### Definitions

**Agency**—The Rural Business-Cooperative Service (RBS) or its successor.

**Agricultural Producer Group**—Any organization that represents independent producers such as a producer trade association or a state or national commodity group. Agricultural producer groups must propose ventures that are entering into emerging markets.

**Agricultural Product**—Plant and animal products and their by-products to include fish and seafood products and forestry products.

**Emerging Markets**—A new or developing market for the applicant. That is, a market the applicant has not traditionally supplied. The venture must be focused on this new or developing market.

**Farmer or Rancher Cooperative**—A duly recognized farmer or rancher cooperative in good standing under State law. Farmer or rancher owned cooperatives must propose ventures that are entering into emerging markets.

**Independent Producer**—A producer of agricultural commodities or products including those products from aquaculture, fish harvesting, and wood lot enterprises. This can be an individual producer; or a producer owned corporation, LLC, or LLP solely owned by producers. An independent producer can also be a steering committee composed of independent agricultural producers in the process of organizing an association to operate a value-added venture. The venture must be owned and controlled by the independent producers who are supplying agricultural product to the market. An independent producer cannot produce under contract or joint

ownership with any organization other than their own.

**Majority-Controlled Producer-Based Business Ventures**—A corporation, LLC, LLP, or other type of business structure where producers have more than 50 percent of the ownership and control of the entity. No more than 10 percent of the grant funds will be awarded to these ventures. Majority-controlled producer-based business ventures must propose ventures that are entering into emerging markets.

**Matching Funds**—Cash or confirmed funding commitments. Matching funds cannot be from another Federal grant. Matching funds must be at least equal to the grant amount. In-kind contributions as defined at 7 CFR part 3015, subpart G can be used as matching funds. Examples of in-kind contributions include volunteer services furnished by professional and technical personnel, donated supplies and equipment, and donated office space.

**National Office**—The Rural Business-Cooperative Service (RBS) office at USDA headquarters in Washington, DC.

**Planning**—A defined program of economic activities to determine the viability of a potential value-added venture including feasibility studies, marketing plans, business plans, and legal evaluations.

**State Office**—USDA Rural Development offices located in most states.

**Value-Added**—(1) Any agricultural commodity or product that has undergone a change in the physical state or form of the product (such as milling wheat into flour, slaughtering livestock or poultry, or making strawberries into jam.) (2) The production of an agricultural commodity or product in a manner that enhances its value, as demonstrated through a business plan (such as organically produced products.) (3) The physical segregation of an agricultural commodity or product in a manner that results in the enhancement of the value of that commodity or product (such as an identity preserved marketing system.) As a result of the change in physical state or the manner in which the agricultural commodity or product is produced or segregated, the customer base for the commodity or product is expanded and a greater portion of revenue derived from the marketing, processing, or physical segregation is made available to the producer of the commodity or product. Value-added also includes using any agricultural product or commodity to produce renewable energy on a farm or ranch.

**Working Capital**—Funds that are used to operate the venture and pay the

normal expenses associated with the operation of that venture. Funds cannot be used to purchase or build facilities nor purchase or install processing equipment.

### Recipient and Product Eligibility Requirements

Potential recipients of the grant must be an independent producer, agricultural producer group, farmer or rancher cooperative, or majority-controlled producer-based business venture as defined in the "Definitions" section of this NOFA. If the applicant is an agricultural producer group, it must be providing assistance directly to a specifically identified group of independent producers. Grant funds cannot be used to support the organization's general operations. If the applicant is an unincorporated group (steering committee), they must form a legal entity before grant funds can be disbursed.

The project proposed must involve a value-added product as defined in the "Definitions" section of this NOFA.

Applications without sufficient information to determine their eligibility will not be considered.

### Proposal Preparation

A proposal must contain the following:

1. *Form SF-424*, "Application for Federal Assistance."
2. *Form SF-424A*, "Budget Information—Non-Construction Programs."
3. *Form SF-424B*, "Assurances—Non-Construction Programs."
4. *Table of Contents*. For ease of locating information, each proposal must contain a detailed Table of Contents immediately following the required SF-424 forms. The Table of Contents should include page numbers for each component of the proposal. Pagination should begin immediately following the Table of Contents.
5. *Proposal Summary*. A summary of the Project Proposal, not to exceed one page, must include the following: title of the project, description of the project including goals and tasks to be accomplished, names of the individuals responsible for conducting and completing the tasks, and the expected timeframe for completing all tasks (which should normally not exceed one year.) The applicant must also clearly state whether the application is for a planning grant or a working capital grant. The application cannot be for both.
6. *Eligibility*. A detailed discussion, not to exceed two pages, describing how the applicant meets the definition of an

independent producer, agricultural producer group, farmer or rancher cooperative, or majority-controlled producer-based business venture as outlined in the "Recipient Eligibility Requirements" section of this NOFA. If the applicant is an agricultural producer group, it must specifically identify the group of independent producers on whose behalf the work will be done. In addition, the applicant must describe all organizations other than the applicant that are involved in the project. Applicants must state the percentage of the venture that will be owned and controlled by independent producers. No more than 10 percent of program funds can go to ventures that are majority-controlled producer-based business ventures as defined in the "Definitions" section of this NOFA. The applicant must also discuss the value-added product to be produced including the category of value-added as defined in the "Definitions" section of this NOFA.

7. *Proposal Narrative.* The narrative portion of the project proposal, not to exceed 35 pages (Times New Roman, 12 pt.) must include the following:

i. *Project Title.* The title of the proposed project must be brief, not to exceed 75 characters, yet represent the major thrust of the project.

ii. *Information sheet.* A separate one page information sheet which lists each of the evaluation criteria listed in this NOFA under the "Evaluation Criteria" section followed by the page numbers of all relevant material and documentation contained in the proposal which addresses or supports that criteria.

iii. *Goals of the Project.* A clear statement of the ultimate goal of the project must be presented. It must describe the value-added venture to be developed.

iv. *Evaluation Criteria.* Each of the evaluation criteria listed in the "Evaluation Criteria" section of this NOFA must be addressed specifically and individually by category. These criteria should be in narrative form with any specific supporting documentation. Financial statements used to support any evaluation criteria will not count as part of the 35 page limit.

8. *Verification of Matching Funds.* You must furnish a copy of a bank statement if matching funds are in cash or a copy of the confirmed funding commitment from the funding source. If an in-kind match is included, so state and provide verification of all commitments and how those commitments are valued. Matching funds (in-kind and cash) must be included on the SF-424 and SF-424A application forms. Applicants must

certify that matching funds will be available at the same time grant funds are anticipated to be spent and that matching funds will be spent at the same rate as grant funds throughout the duration of the project. Other Federal grant funds cannot be used as matching funds.

#### Grant Amounts

The amount of funds available for VADG grants in FY 2002 is approximately \$33 million. The actual number of grants funded will depend on the quality of proposals received and the amount of funding requested. The maximum amount of Federal funds awarded for any one proposal will be \$500,000. However, priority points will be given to grant requests of less than the maximum.

#### Number of Awards

No one applicant can receive more than one grant for any one purpose. An applicant cannot receive a grant for planning activities and a grant for working capital.

#### Eligible Grant and Matching Funds Uses

Grant funds may be used to pay up to 50 percent of the costs for carrying out relevant projects. Grant funds and the applicant's matching funds must be spent at approximately the same rate. The applicant's matching contribution in cash or in-kind must be in accordance with applicable provisions of 7 CFR parts 3015 and 3019.

For planning projects, grant and the recipient's matching funds may be used for, but are not limited to, hiring personnel including lawyers, accountants and other qualified consultants associated with the following purposes:

1. Conducting a feasibility analysis of a proposed value-added venture to help determine the potential success of the venture;

2. Developing a business operations plan that provides comprehensive details on the management, planning, and other operational aspects of a proposed venture;

3. Developing a business marketing plan for the proposed value-added product or products including the identification of a market window, the identification of potential buyers, a description of the distribution system, and possible promotional campaigns; or

4. Obtaining legal advice and assistance related to the proposed venture.

For working capital projects, grant and recipient's matching funds may be used to establish a working capital

account to fund operations. Funds from this account can be used for, but are not limited to:

1. Hiring an attorney to provide legal advice and to draft articles of incorporation, bylaws, and other legal documents related to the proposed venture;

2. Hiring a Certified Public Accountant or other qualified individuals to design an accounting system for the proposed venture; or

3. Paying salaries, utilities, and other operating costs; financing inventories; purchasing office equipment, computers, and supplies; and financing other related activities necessary to establish alliances or business ventures that allow producers to better compete in domestic or international markets for value-added products.

#### Ineligible Grant Uses

Grant and matching funds cannot be used to:

1. Plan, repair, rehabilitate, acquire, or construct a building or facility (including a processing facility);

2. Purchase, rent, or install fixed equipment including mobile and other processing equipment;

3. Pay for the preparation of the grant application;

4. Pay expenses not directly related to the funded venture;

5. Fund political or lobbying activities;

6. Pay costs incurred prior to receiving this grant;

7. Fund any activities prohibited by 7 CFR parts 3015 and 3019; and

8. Fund architectural or engineering design work for a specific physical facility.

9. Grant and Matching funds cannot be used to pay any expenses related to the production of any commodity or product to which value will be added.

#### Methods for Evaluating and Ranking Applications

State office personnel will initially review applications for eligibility, completeness, and responsiveness to this NOFA. Incomplete or non-responsive applications will be returned to the applicant and not evaluated further. If the submission deadline has not expired and time permits, ineligible applications will be returned to the applicants for possible revision. The State office will then conduct one review of all complete and eligible applications based on the selection criteria specified in the "Evaluation Criteria" section of this NOFA. The National office will then obtain two additional independent reviews. Points will be assigned based on the evaluation

criteria. All scored applications will then be forwarded to the National Office, where the scoring will be reviewed and applications ranked. Applications will be listed in initial rank order and presented, along with funding level recommendations, to the Administrator of RBS, who will award the grants.

#### Evaluation Criteria

Evaluations of proposals will be based on the following criteria. Failure to address any one of the following criteria will disqualify the application. All proposals must be in compliance with this NOFA and applicable statutes.

*Criteria for applications for Planning grants are:*

1. *Nature of the Proposed Venture (Maximum 5 points).* Describe in detail the proposed venture. This must include the value-added activity being proposed, the technology to be used and its availability, and examples of similar ventures. Discuss how the number of end-users for the product will be increased and how more revenue derived from the venture will be available to the producer-owners of the venture. Points will be awarded based on the greatest expansion of markets and increased returns to producers.

2. *Qualifications of Those Doing the Studies (Maximum 5 points).* Describe the education and experience in performing the requested types of studies, and the success rate for those individuals. Points will be awarded based on demonstrated skills and a successful track record.

3. *Project Leadership (Maximum 5 points).* Describe the individuals who are the members of the steering committee or the individual who is leading this effort; provide information on education, business experience, financial experience, knowledge of the venture to be undertaken, and other relevant information. Points will be based on demonstrated relevant leadership skills.

4. *Commitment (Maximum 5 points).* Describe the level of producer commitment including the number of independent producers currently involved, the number of potential producers who could become involved, cash contributions and level of production from the producers. Describe the potential commitment of end-users of the value-added product to be produced including possible markets identified and potential buyers contacted. Describe the commitment from local and state development organizations, commodity associations, and local political institutions including technical assistance support and

financial support. Higher producer commitment, higher end-user commitment, and higher local support will result in more points.

5. *Work Plan/Budget (Maximum 5 points).* Discuss the specific tasks to be completed using grant and matching funds. Each task must be clearly defined and described in detail. The work plan must present the order the tasks will be undertaken and the estimated time for completing each task. If a group of producers want a feasibility study conducted and a business plan drafted, the details of these two tasks must be presented and discussed. The budget must present a detailed breakdown of estimated costs associated with the project and allocate these costs to each of the tasks to be undertaken. Matching funds as well as grant funds must be accounted for in the budget. It is important that reviewers understand what is being proposed. Logical, realistic, and economically efficient plans and budgets will result in higher scores.

6. *Amount Requested.* One half (½) point will be awarded for grant requests between \$450,000 and \$350,001, one (1) point will be awarded for grant requests between \$350,000 and \$250,001, one and one half (1½) points will be awarded to grant requests between \$250,000 and \$150,001, two (2) points will be awarded for grant requests of \$150,000 or less.

7. *Project cost per producer that are owners (Maximum 5 points).* Calculated by dividing the Federal requested funds by the total number of producers that are owners of the venture. Points will be based on the largest number of producers that are owners benefited for the least cost.

8. For those applications proposing ventures that focus on the Presidential initiative of biomass production, five percent of the total score of the above seven criteria will be added to calculate the final score. For example, if an application is proposing to do a bio-energy project and scores a total of 30 points on criteria one through seven, 1.5 additional points (30 x .05) will be added making the final score 31.5.

Administrator priority points—Up to five (5) additional points may be awarded by the Administrator of RBS to recognize innovative technologies, insure geographic distribution of grants, or encourage value-added projects in under-served areas.

*Criteria for applications for Working Capital are:*

1. *Business Viability (Maximum 5 points).* Describe in detail the technical and economic feasibility of the venture. This includes the organizational

structure and operational aspects of the venture. Discuss how the venture will operate efficiently and be sustainable. More points will be awarded to those proposals demonstrating the venture will be efficient and sustainable.

2. *Customer Base/Increased Returns (Maximum 5 points).* Describe in detail how the customer base for the product being produced will expand because of the value-added venture. Provide documented estimates of this expansion. Describe in detail how a greater portion of the revenue derived from the venture will be returned to the producer that are owners of the venture. Provide 3 years of pro forma financial statements, including an explanation of all assumptions such as input prices, finished product prices, and other economic factors used to generate the financial statements. The financial statements must include cash flow statements, income statements, and balance sheets. Income statements and cash flow statements must be monthly for the first year, then annual for the next two years. The balance sheet should be annual for all three years. The financial statements will not count as part of the 35 page limit for the narrative section of the proposal. More points will be awarded to those proposals that demonstrate the greatest expansion of the customer base and increased returns to producers.

3. *Commitment (Maximum 5 points).* Describe in detail producer commitment to the venture including the number of independent agricultural producers who will participate in the venture and their total level of production; financial resources invested in the venture; and any contracts used between the producer that are owners and the venture. Discuss the amount of funds raised from the independent producer that are owners and the use of those funds. Also describe who will purchase the output of the venture; the amount of output to be purchased; markets that have been identified and any completed marketing studies; and any letters of intent or contracts from the potential end-users. Describe the commitment from local and state development organizations, commodity associations, and local political institutions including technical assistance support and financial support. Do not submit specific contracts, letters of intent, or other supporting documents at this time. However, be sure to cite their existence when addressing this criteria. Points will be awarded based on the greatest level of documented commitment.

4. *Management Team/Work Force (Maximum 5 points).* Describe in detail

the qualifications of the individuals who will manage and operate the venture. Discuss the education and experience of the management team, especially their experience in managing similar ventures. Describe in detail the availability and quality of the labor force needed to operate the value-added venture. Points will be awarded based on the greatest demonstrated level of relevant skills and experience.

5. *Work Plan/Budget (Maximum 5 points)*. Discuss the specific tasks to be completed using grant and matching funds. Each task must be clearly defined and described in detail. The work plan must present the order the tasks will be undertaken and the estimated time for completing each task. The budget must present a detailed breakdown of estimated costs associated with the project and allocate these costs to each of the tasks to be undertaken. Matching funds as well as grant funds must be accounted for in the budget. It is important that reviewers understand what is being proposed. Logical, realistic, and economically efficient plans and budgets will result in higher scores.

6. *Amount Requested*. One half (1/2) point will be awarded for grant requests between \$450,000 and \$350,001, one (1) point will be awarded for grant requests between \$350,000 and \$250,001, one and one half (1 1/2) points will be awarded to grant requests between \$250,000 and \$150,001, two (2) points will be awarded for grant requests of \$150,000 or less.

7. *Project cost per producer that are owners (Maximum 5 points)*. Calculated by dividing the Federal requested funds by the total number of independent producers that are owners of the venture. Points will be based on the largest number of producers that are owners benefited for the least cost.

8. For those applications proposing ventures that focus on the Presidential initiative of biomass production, five percent of the total score of the above seven criteria will be added to calculate the final score. For example, if an application is proposing to do a bio-energy project and scores a total of 30 points on criteria one through seven, 1.5 additional points (30 × .05) will be added making the final score 31.5.

Administrator priority points—Up to five (5) points may be awarded by the Administrator of RBS to recognize innovative technologies, to insure geographic distribution of grants, or to encourage value-added projects in under-served areas.

Copies of the score sheets will be posted on the VADG program's web site.

## What and Where To Submit

The Agency is strongly encouraging the electronic submission of proposals to the appropriate USDA Rural Development State Office. Electronic submissions must be in Microsoft Word, WordPerfect, or Rich Text Format (RTF). If proposals are electronically submitted, signed paper copies of the three required forms, SF-424 "Application for Federal Assistance," SF-424A "Budget Information—Non-Construction Programs," and SF-424B "Assurances—Non-Construction Programs," need to be mailed to the state office. For strictly a paper submission, an original and two copies of the proposal, with all required forms, must be submitted in one package to the appropriate USDA Rural Development State Office. Do not submit any feasibility studies, marketing plans, or business plans at this time. Please refer to the list above for the address and e-mail of your State Office. Applications sent by facsimile will not be accepted.

## When To Submit

The deadline for receipt of all applications is August 8, 2002. The Agency will not consider any application received after the deadline.

## Grantee Requirements

*Grantees will be required to do the following:*

1. Sign a Value-Added Agricultural Product Market Development Grant Agreement similar to the one published at the end of this NOFA.

2. Sign required Federal grant-making forms including Form AD-1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Covered Transactions;" Form AD-1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions;" Form AD-1949, "Certification Regarding a Drug-Free Workplace Requirements (Grants);" and Form RD 400-4, "Assurance Agreement (Civil Rights)."

3. If the grant and matching funds are to be used as working capital, submit a feasibility study and business plan demonstrating the new venture is feasible and likely to be economically sustainable. These documents are to be submitted to the appropriate USDA Rural Development State Office. The plans must include 3 years of pro forma financial statements, including an explanation of assumptions used to generate the financial statements. The financial statements must include cash flow statements, income statements, and

balance sheets. Income statements and cash flow statements must be monthly for the first year, then annual for the next two years. The balance sheet should be annual for all three years. These studies are not to be submitted with the application. No funds will be released until these documents have been received and approved.

4. If requested by the USDA Rural Development State Office, submit copies of any contracts, letters of intent, or other documents cited in addressing any of the various "evaluation criteria". If such a request is made, no funds will be released until those documents have been received and approved.

5. Use Standard Form 270, "Request for Advance or Reimbursement" to request advances and reimbursements. Requests are to be submitted on a monthly basis.

6. Submit a Standard Form 269, "Financial Status Report" and list expenditures according to agreed upon budget categories on a semi-annual basis. Reports are due by April 30 and October 30 after the grant is awarded.

7. Submit semi-annual performance reports which compare accomplishments to the objectives; if established objectives are not met, discuss problems, delays, or other problems that may affect completion of the project; establish objectives for the next reporting period; and discuss compliance with any special conditions on the use of awarded funds.

8. Upon completion of each task outlined in the proposal, grant recipients will deliver the results of the study or activity to the appropriate state office, accompanied by all applicable supporting data. These include, but are not limited to, feasibility studies, marketing plans, business plans, articles of incorporation and bylaws, and an accounting of how working capital funds were spent. All items delivered to the state offices will be held in confidence to the extent permitted by law.

9. Maintain a financial management system that is acceptable to the Agency.

10. Collect and maintain data on race, sex, and national origin of Grantee's membership/ownership.

11. Submit a final project performance report.

## Other Federal Statutes and Regulations That Apply

Several other Federal statutes and regulations apply to proposals considered for review and to grants awarded. These include but are not limited to:

7 CFR part 15, subpart A—Nondiscrimination in Federally-

Assisted Programs of the Department of Agriculture-Effectuation of Title VI of the Civil Rights Act of 1964;

7 CFR part 3015—Uniform Federal Assistance Regulations;

7 CFR part 3017—Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants);

7 CFR part 3018—New Restrictions on Lobbying;

7 CFR part 3019—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations; and

7 CFR part 3052—Audits of States, Local Governments, and Non-Profit Organizations.

### Paperwork Reduction Act

The reporting requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under Control Number 0570-0039.

Dated: June 19, 2002.

**John Rosso,**

*Administrator, Rural Business-Cooperative Service.*

United States Department of Agriculture  
Rural Business-Cooperative Service  
Value-Added Agricultural Product Market  
Development Grant Agreement (VADG)

This Grant Agreement (Agreement) dated \_\_\_\_\_, between \_\_\_\_\_ (Grantee), and the United States of America, acting through the Rural Business-Cooperative Service of the Department of Agriculture (Grantor), for \$ \_\_\_\_\_ in grant funds under the VADG program, delineates the agreement of the parties.

NOW, THEREFORE, in consideration of the grant;

The parties agree that:

1. All the terms and provisions of the VADG NOFA and application submitted by the Grantee for this VADG grant, including any attachments or amendments, are incorporated and included as part of this Agreement. Any changes to these documents or this agreement must be approved in writing by the Grantor.

2. As a condition of the Agreement, the Grantee certifies that it is in compliance with and will comply in the course of the Agreement with all applicable laws, regulations, Executive Orders, and other generally applicable requirements, including those contained in 7 CFR 3015.205(b), which are incorporated into this agreement by reference, and such other statutory provisions as are specifically contained herein. The Grantee will comply with title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and Executive Order 12250.

3. The provisions of 7 CFR part 3015, "Uniform Federal Assistance Regulations" and part 3019, "Uniform Administrative

Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations," as applicable are incorporated herein and made a part hereof by reference.

FURTHER, the Grantee agrees that it will:

1. Not use grant funds or matching funds to plan, repair, rehabilitate, acquire, or construct a building or facility (including a processing facility); or to purchase, rent, or install fixed equipment.

2. Use Grant Funds and matching funds only for the purposes and activities specified in the proposal approved by the Agency including the approved budget. Any uses not provided for in the approved budget must be approved in writing by the Agency in advance of obligation by the Grantor.

3. Submit a feasibility study, business operations plans, and other studies and plans required by the Grantor if any part of the grant will be used to establish a working capital account.

4. Deliver the results of a study or activity to the Grantor upon completion of each task outlined in the proposal. These include, but are not limited to, feasibility studies, marketing plans, business operations plans, articles of incorporation and bylaws, and accounting of how working capital funds were spent. All items delivered to the Grantor will be held in confidence to the extent provided by law.

5. Request any cash advances in the minimum amount needed and timed to the actual, immediate cash requirements for carrying out the grant purpose. Standard Form 270, "Request for Advance or Reimbursement," will be used for this purpose.

6. Submit a Standard Form 269, "Financial Status Report" and list expenditures according to agreed upon budget categories on a semi-annual basis. Reports are due by April 30 and October 30 after the grant is awarded.

7. Provide periodic reports as required by the Grantor. A financial status report and a project performance report will be required on a semi-annual basis (due April 30 and October 30). The financial status report must show how grant funds and matching funds have been used to date and project the funds needed and their purposes for the next quarter. A final report may serve as the last semi-annual report. Grantees shall constantly monitor performance to ensure that time schedules are being met and projected goals by time periods are being accomplished. The project performance reports shall include the following:

a. A comparison of actual accomplishments to the objectives for that period.

b. Reasons why established objectives were not met, if applicable.

c. Reasons for any problems, delays, or adverse conditions which will affect attainment of overall program objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular objectives during established time periods. This disclosure shall be accomplished by a statement of the action taken or planned to resolve the situation.

d. Objectives and timetables established for the next reporting period.

e. The final report will also address the following:

(i) What have been the most challenging or unexpected aspects of this program?

(ii) What advice you would give to other organizations planning a similar program. These should include strengths and limitations of the program. If you had the opportunity, what would you have done differently?

(iii) If an innovative approach was used successfully, the grantee should describe their program in detail so that other organizations might consider replication in their areas.

8. Collect and maintain data on race, sex, and national origin of Grantee's membership/ownership.

9. Provide Financial Management Systems which will include:

a. Records that identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

b. Effective control over and accountability for all funds, property, and other assets. Grantees shall adequately safeguard all such assets and shall ensure that they are used solely for authorized purposes.

c. Accounting records supported by source documentation.

d. Grantee tracking of fund usage and records that show matching funds and grant funds are used in equal proportions. The grantee will provide verifiable documentation regarding matching fund usage, i.e., bank statements or copies of funding obligations from the matching source.

10. Retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least 3 years after grant closing, except that the records shall be retained beyond the 3-year period if audit findings have not been resolved. Microfilm or photocopies or similar methods may be substituted in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee's which are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts, and transcripts.

11. Not encumber, transfer or dispose of the equipment or any part thereof, acquired wholly or in part with Grantor funds without the written consent of the Grantor.

12. Not duplicate other program purposes for which monies have been received, are committed, or are applied to from other sources (public or private).

Grantor agrees to make available to Grantee for the purpose of this Agreement funds in an amount not to exceed the Grant Funds. The funds will be reimbursed or advanced based on submission of Standard Form 270.

IN WITNESS WHEREOF, Grantee has this day authorized and caused this Agreement to be executed by—

Attest

By \_\_\_\_\_

(Grantee)

(Title)

UNITED STATES OF AMERICA

RURAL BUSINESS-COOPERATIVE SERVICE

By \_\_\_\_\_

(Grantor) (Name) (Title)

[FR Doc. 02-15910 Filed 6-21-02; 8:45 am]

BILLING CODE 3410-XY-P

## ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

### Meeting

**AGENCY:** Architectural and Transportation Barriers Compliance Board.

**ACTION:** Notice of meeting.

**SUMMARY:** The Architectural and Transportation Barriers Compliance Board (Access Board) has scheduled its regular business meetings to take place in Washington, DC on Tuesday and Wednesday, July 9-10, 2002, at the times and location noted below.

**DATES:** The schedule of events is as follows:

*Tuesday, July 9, 2002*

1:30 p.m.-5—Committee of the Whole Briefing on ADA/ABA Final Rule (Closed Session)

*Wednesday, July 10, 2002*

9 a.m.-Noon—Technical Programs Committee

1:30 p.m.-3—Board Meeting

**ADDRESSES:** The meetings will be held at the Marriott at Metro Center Hotel, 775 12th Street, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** For further information regarding the meetings, please contact Lawrence W. Roffee, Executive Director, (202) 272-0001 (voice) and (202) 272-0082 (TTY).

**SUPPLEMENTARY INFORMATION:** At the Board meeting, the Access Board will consider the following agenda items.

### Open Meeting

- Executive Director's report
- Approval of the minutes of the May 2002 Board meeting
- Technical Programs Committee Report

### Closed Meeting

- ADA and ABA Accessibility Guidelines

All meetings are accessible to persons with disabilities. Sign language interpreters and an assistive listening system are available at all meetings.

Persons attending Board meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants.

**James J. Raggio,**

*General Counsel.*

[FR Doc. 02-15843 Filed 6-21-02; 8:45 am]

BILLING CODE 8150-01-P

## DEPARTMENT OF COMMERCE

### Submission for OMB Review: Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance of the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104-13

#### International Trade Administration

*Title:* Survey of International Air Travelers.

*Agency Form Number:* N/A.

*OMB Number:* 0625-0227.

*Type of Request:* Regular Submission.

*Burden:* 24,840 hours.

*Number of Respondents:* 165,000.

*Avg. Hours per Response:* 15 minutes.

*Needs and Uses:* The International Trade Administration, Tourism Industries office "Survey of International Air Travelers" is the only source for estimating international travel and passenger fare exports and imports for this country. This program also supports the U.S. Department of Commerce, Bureau of Economic Analysis mandate to collect and report this type of information which is used to calculate Gross Domestic Product for the United States. This project also serves as the core data source for Tourism Industries. Numerous reports and analyses are developed to assist businesses in increasing U.S. exports in international travel. An economic impact of international travel on state economies, visitation estimates, traveler profiles, presentations and reports are generated by Tourism Industries to help the federal government agencies and the travel industry better understand the international market. It is also a service that the U.S. Department of Commerce provides to travel industry businesses seeking to increase international travel and passenger fare exports for the country, as well as U.S. outbound travel. It provides the only comparable estimates of nonresident visitation to the states and cities within the U.S., as well as U.S. resident travel abroad. Traveler characteristics data are also collected to help travel related businesses better understand the

international travelers to and from the U.S. so they can develop targeted marketing and other planning related materials.

*Affected Public:* Individuals or households.

*Frequency:* Monthly.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* David Rostker, (202) 395-3897.

Copies of the above information collection can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482-3129, Department of Commerce, Room 6608, 14th & Constitution Avenue, NW, Washington, DC 20230 or via the Internet at [MClayton@doc.gov](mailto:MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: June 18, 2002.

**Madeleine Clayton,**

*Departmental Paperwork Clearance Officer,  
Office of the Chief Information Officer.*

[FR Doc. 02-15785 Filed 6-21-02; 8:45 am]

BILLING CODE 3510-DR-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Notice of Availability of Environmental Assessment; Request for Comments

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

**ACTION:** Notice of availability of a Draft Damage Assessment and Restoration Plan and Environmental Assessment for natural resource injuries and service losses associated with the Fort Lauderdale mystery oil spill in Florida; Request for Comments.

**SUMMARY:** Notice is hereby given that a document entitled, "Draft Damage Assessment and Restoration Plan and Environmental Assessment for the Fort Lauderdale Mystery Oil Spill" (Draft DARP/EA), is available for public review and comment. This document has been prepared by the state and federal natural resource trustee agencies (Florida Department of Environmental Protection, FDEP, and the National Oceanic and Atmospheric Administration, NOAA) to address natural resource injuries and resource services losses resulting from a mystery

oil spill in Fort Lauderdale, Florida. This Draft DARP/EA presents the trustees' assessment of the natural resource injuries and service losses and their proposed plan to compensate for those losses by restoring natural resources and services. The trustees will consider comments received during the public comment period before finalizing the DARP/EA.

**DATES:** Comments on the Draft DARP/EA must be submitted in writing on or before July 24, 2002.

**ADDRESSES:** Requests for and written comments on the Draft DARP/EA should be directed to Catherine Porthouse of FDEP, 3900 Commonwealth Blvd, MS #659, Tallahassee, FL 32399, e-mail: [catherine.porthouse@dep.state.fl.us](mailto:catherine.porthouse@dep.state.fl.us), or Tony Penn of NOAA, 1305 East West Highway, Station 10218, Silver Spring, MD 20910, e-mail: [tony.penn@noaa.gov](mailto:tony.penn@noaa.gov). The Draft DARP/EA is also available electronically at <http://www.darp.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** For further information contact: Catherine Porthouse at (850) 488-2974, e-mail: [catherine.porthouse@dep.state.fl.us](mailto:catherine.porthouse@dep.state.fl.us), or Tony Penn, at (301) 713-3038 x197, e-mail: [tony.penn@noaa.gov](mailto:tony.penn@noaa.gov).

**SUPPLEMENTARY INFORMATION:** On Tuesday morning, August 8, 2000, oil tar balls and oil mats were observed on beaches in the area of Fort Lauderdale, Florida. Within the next few days, approximately 20 miles of high-use recreational beaches, from North Miami Beach northward to near Pompano Beach (primarily Broward County beaches), were oiled; some were closed for cleaning. The origin of the oil is unknown. The United States Coast Guard, the lead response agency for the incident, classified the spill as medium, and the trustees have estimated the amount of oil stranded on the shoreline to be approximately 15,000 gallons.

Natural resources or their services impacted as a result of the incident include threatened and endangered sea turtles and their habitats, marine surface waters and their biota including fish, birds, and recreational use of beaches. Response actions removed the majority of the shoreline oil within a few days of oiling. These response actions did not prevent natural resource impacts from occurring nor did these actions restore or rehabilitate natural resource and service injuries that resulted from the incident.

Natural resource trusteeship authority is designated according to § 1006(b) of OPA, Executive Order 12777, October 22, 1991 (56 FR 54757), and subpart G of the National Oil and Hazardous

Substances Pollution Contingency Plan, 40 CFR part 300. Federal trustees are designated by the President, and state trustees by the Governor. Acting on behalf of the public as trustees for the living and non-living resources in the coastal and marine environments of Florida, the United States National Oceanic and Atmospheric Administration and the Florida Department of Environmental Protection, are responsible for assessing injuries to trust resources resulting from oil spill incidents, and for developing and implementing a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of injured natural resources and their services.

Pursuant to Section 1002(a) of OPA, each party responsible for a vessel or facility from which oil is discharged, or which poses a substantial threat of a discharge of oil, into or upon the navigable waters of the United States or adjoining shorelines, is liable for natural resource damages from incidents that involve such actual or threatened discharges of oil. The measure of damages to natural resources is the cost of restoring, rehabilitating, replacing or acquiring the equivalent of the injured natural resources, compensation for the diminution in value of those natural resources pending restoration, and the reasonable costs of assessing such damages. All recoveries for the first two elements are to be spent implementing a restoration plan developed by the trustees.

In this case, there is not an identified responsible party to pay damages. When there is not a responsible party, the Federal Oil Spill Liability Trust Fund is available to pay claims for the costs of assessing natural resource damages and for developing and implementing restoration plans.

The trustees quantified injury to sea turtles, fish and invertebrates, seabirds, and recreational beaches for inclusion in a claim for restoration costs. Subject to public comment, the trustees determined that their preferred alternative to address injuries and losses of sea turtles is a combination of active primary restoration (to return sea turtle resources and services to baseline) and compensatory restoration (to compensate for interim losses pending recovery to baseline). The recommended primary restoration would consist of augmenting lighting ordinance enforcement activities that would return sea turtles to baseline by preventing mortality of turtle hatchlings due to disorientation. The recommended compensatory restoration would also augment lighting ordinance

enforcement, which would provide additional turtle hatchlings to compensate for the interim turtle losses. The compensatory component of the enforcement project would be of sufficient scale to provide compensatory ecological services approximately equivalent to those that will be lost from the injured turtles pending recovery to baseline.

No primary restoration actions are considered necessary for the fish and invertebrate, and seabird injuries. However, the trustees have identified projects as compensation for an acute kill of fish, invertebrates, and seabirds. The trustees would create mangrove habitat in order to provide the fish and invertebrate biomass that was lost.

To replace the estimated bird losses, the trustees have identified projects aimed at saving birds from future injury. The trustees would install signs at a fishing pier advising anglers not to cut their lines and demonstrating how to free birds from fishing lines and hooks, which would prevent entanglement and provide seabird rescue in the event of entanglement.

The impacted recreational beaches were returned to baseline conditions through incident response actions, however there was a period of lost use during the response phase. The recommended compensatory restoration projects are to plant sea oats to build dunes, construct dune walkovers, provide handicapped carts, and provide shade areas that together would maintain beaches for future use, provide access to the beach, and improve the quality of the beach experience.

Dated: June 12, 2002.

**Jamison S. Hawkins,**

*Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.*

[FR Doc. 02-15866 Filed 6-21-02; 8:45 am]

**BILLING CODE 3510-JE-P**

## DEPARTMENT OF COMMERCE

### Census Bureau

#### Annual Retail Trade Survey

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before August 23, 2002.

**ADDRESSES:** Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at [mclayton@doc.gov](mailto:mclayton@doc.gov)).

**FOR FURTHER INFORMATION CONTACT**  
Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Scott A. Scheleur, U.S. Census Bureau, Room 2626-FOB 3, Washington, DC 20223-6500, (301) 457-2713.

#### SUPPLEMENTARY INFORMATION

##### I. Abstract

The Annual Retail Trade Survey (ARTS) provides a sound statistical basis for the formation of policy by other government agencies. It provides continuing and timely national statistics on retail trade and accommodation and food services, augmenting the period between economic censuses, and is a continuation of similar retail trade surveys conducted each year since 1951 (except 1954). The data collected—annual sales and operating receipts, e-commerce sales and receipts, purchases, end-of-year inventories, and accounts receivables—are applicable to a variety of public and business needs. Data items collected for accommodation and food services are annual receipts and e-commerce receipts. The estimates of purchased merchandise will be used to estimate trade margins on commodities sold in calculating the personal consumption portion of the Gross Domestic Product (GDP) by the Bureau of Economic Analysis (BEA). Accounts receivable balances are used by the Federal Reserve Board in measuring consumer credit. Businesses use these estimates to determine market share and to perform other analysis.

The ARTS sample consists of all firms operating retail establishments within the U.S. whose probability of selection is determined by sales size, as reported in the Monthly Retail Trade Survey (MRTS). An additional panel of cases who report only in the annual survey are also canvassed. Estimates developed in the ARTS are used to benchmark the monthly sales and inventories series and the firms canvassed in this survey are not required to maintain additional records since carefully prepared estimates are acceptable if book figures are not available.

ARTS will convert its collection instrument from printing respondent information on pre-stocked report forms

to a print-on-demand system referred to as DocuPrint. DocuPrint offers more flexibility in selecting and combining various images with variable questions and messages depending on changing coverage and kind of business and allows us to tailor survey questions to a specific respondent. The key benefit of this system is its ability to print a specific document or set of related documents (when requested), and overlay variable data, bar code and address label information in predetermined locations throughout the document(s), all in one pass when the images and messages are summoned to the printer. This process reduces the time and cost of preparing mailout packages that contain unique variable data, while improving the look and quality of the products produced.

##### II. Method of Collection

We will collect this information by mail, FAX and telephone follow-up.

##### III. Data

*OMB Number:* 0607-0013.

*Form Number:* SA-44, SA-44A, SA-44C, SA-44E, SA-44N, SA-44S, SA-45, SA-45C, and SA-721.

*Type of Review:* Regular Submission.

*Affected Public:* Retail Businesses.

*Estimated Number of Respondents:* 22,977.

*Estimated Time Per Response:* 24.3 minutes.

*Estimated Total Annual Burden Hours:* 9,299.

*Estimated Total Annual Cost:* The cost to the respondent for fiscal year 2003 is estimated to be \$194,442, based on an annual response burden of 9,299 hours and a rate of \$20.91 per hour to complete the form.

*Respondent's Obligation:* Mandatory.

*Legal Authority:* Title 13, U.S.C., Sections 182, 224, and 225.

##### IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or

included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 18, 2002.

**Madeleine Clayton,**

*Departmental Paperwork Clearance Officer,  
Office of the Chief Information Officer.*

[FR Doc. 02-15784 Filed 6-21-02; 8:45 am]

BILLING CODE 3510-07-P

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

#### Materials Technical Advisory Committee; Notice of Closed Meeting

The Materials Technical Advisory Committee will meet on July 11, 2002, at 10:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street and Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Industry and Security with respect to technical questions which affect the level of export controls applicable to materials and related technology.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 6, 2002, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portion of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

For more information, call Lee Carpenter at (202) 482-2583.

Dated: June 19, 2002.

**Lee Ann Carpenter,**

*Committee Liaison Officer.*

[FR Doc. 02-15832 Filed 6-21-02; 8:45 am]

BILLING CODE 3510-JT-M

**DEPARTMENT OF COMMERCE****International Trade Administration**

[C-489-502]

**Certain Welded Carbon Steel Pipe and Tube from Turkey: Rescission of Countervailing Duty Administrative Review**

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

**ACTION:** Notice of Rescission of Countervailing Duty Administrative Review.

**SUMMARY:** On April 24, 2002, in response to a timely request from the respondent (Borusan Boru Birlesik Fabrikalari Mannesmann Boru), the Department of Commerce (the Department) initiated an administrative review of the countervailing duty order on certain welded carbon steel pipe and tube from Turkey. The review covers the period January 1, 2001 through December 31, 2001. See Initiation of Antidumping and Countervailing Duty Administrative Reviews, 67 FR 20089 (April 24, 2002).

In accordance with 19 CFR 351.213(d)(1), the Department is now rescinding this review because the respondent has withdrawn its request for review and no other interested party had requested the review.

**EFFECTIVE DATE:** June 24, 2002.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Moore, Office of AD/CVD Enforcement VI, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482-3692.

**SUPPLEMENTARY INFORMATION:****Applicable Statute and Regulations**

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

**Background**

On March 29, 2002, the Department received a request for an administrative review of the countervailing duty order on certain welded carbon steel pipe and tube from Turkey for the period January 1, 2001 through December 31, 2001. On April 24, 2002, the Department published in the **Federal Register** (64

FR 67846) a notice of initiation of the antidumping and countervailing duty administrative review on certain welded carbon steel pipe and tube from Turkey with respect to the respondent.

**Rescission of Review**

On June 4, 2002, the respondent timely withdrew its request for review. The applicable regulation, 19 CFR 351.213(d)(1), states that if a party that requested an administrative review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review, the Secretary will rescind the review. In this case, the respondent has withdrawn its request for the review within the 90-day period. No other party requested a review and we have received no other submissions regarding the respondent's withdrawal of its request for the review. Therefore, we are rescinding this review of the countervailing duty order on certain welded carbon steel pipe and tube from Turkey covering the period January 1, 2001 through December 31, 2001.

This notice is issued and published in accordance with 19 CFR 351.213(d)(4) and 777(i) of the Act.

DATED: June 14, 2002

**Bernard Carreau,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 02-15786 Filed 6-21-02; 8:45 am]

BILLING CODE 3510-DS-S

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration**

[I.D. 061902A]

**Extension of Public Comment Period for a Proposed Information Collection of Social Science Data for Alaska Fisheries**

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

**ACTION:** Notice.

**SUMMARY:** On April 17, 2002, the Department of Commerce published a **Federal Register** notice that solicited public comment on a proposed information collection entitled "Social Science Data for Alaska Fisheries". The solicitation of public comment is required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3506(c)(2)(A)). The Department has received a request to extend the original deadline for comments from June 17, 2002, to July 1, 2002. This notice extends the comment period to that

date. All comments received from the original closing date until the close of business July 1, 2002, will be considered timely.

**DATES:** Written comments must be submitted on or before July 1, 2002.

**ADDRESSES:** Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6608, 14th and Constitution Avenue NW, Washington DC 20230 (or via the Internet at MClayton@doc.gov).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Jennifer Sepez, Anthropologist, Alaska Fisheries Science Center, 7600 Sand Point Way NE, Seattle, WA 98115-0070 (Jennifer.Sepez@noaa.gov).

Dated: June 18, 2002.

**Madeleine Clayton,**

*Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 02-15886 Filed 6-21-02; 8:45 am]

BILLING CODE 3510-22-S

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration**

[I.D. 030702A]

**Small Takes of Marine Mammals Incidental to Specified Activities; Seismic Reflection Data off Southern California**

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

**ACTION:** Notice of issuance of an incidental harassment authorization.

**SUMMARY:** In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) has been issued to the U.S. Geological Survey (USGS) to take small numbers of marine mammals by harassment incidental to collecting marine seismic reflection data while investigating the landslide and earthquake hazards off Southern California.

**DATES:** This authorization is effective from June 13, 2002, through September 30, 2002.

**ADDRESSES:** A copy of the application, which includes a list of references used in this document, and other documents referenced herein may be obtained by writing to Donna Wieting, Chief, Marine

Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225 or by telephoning one of the contacts listed below.

**FOR FURTHER INFORMATION CONTACT:** Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055, ext 128.

**SUPPLEMENTARY INFORMATION:**

**Background**

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined “negligible impact” in 50 CFR 216.103 as “an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.”

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The MMPA defines “harassment” as:

any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

Subsection 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

**Summary of Request**

The USGS plans to conduct a high-resolution seismic-reflection survey offshore from southern California for two weeks during June 2002. The USGS will collect this seismic-reflection data to investigate the hazards posed by landslides, tsunamis, and potential earthquake faults in the nearshore region from Ventura to Santa Barbara, CA. This task is part of a multiyear hazard analysis that requires high-resolution, seismic-reflection data using several acoustic sources. In addition, a few days of survey time will be used to conduct a seafloor imaging survey in support of environmental studies in the area offshore Pt. Conception.

The USGS plans to collect seismic-reflection data using three basic instrument systems:

(1) A Hunttec or a Geopulse boomer sound-source to collect high-resolution seismic-reflection data of the sub-seafloor;

(2) A high-resolution multi-channel system for which the primary source will be a 2-kilo-Joule (kJ) sparker system for shallow water and a small GI airgun in deeper water. The type of sparker to be used will depend on the results of a sparker feasibility study completed earlier this year in the Seattle, Washington area. A 250-m-long (820-ft) hydrophone streamer is used for both multi-channel sources.

(3) A Klein side-scan sonar for the environmental survey off Pt. Conception, CA.

The high-resolution Hunttec boomer system uses an electrically powered sound source that is towed behind the ship at depths between 30 m (98.4 ft) and 160 m (525 ft) below the sea surface. The hydrophone arrays for listening are attached to the tow vehicle that houses the sound source. The USGS plans to use the Hunttec system primarily in water depths greater than 300 m (984.2 ft). The system is triggered at 0.5- to 1.25-second intervals, depending upon the source tow depth. This system provides detailed information about stratified sediment, so that dates obtained from fossils in sediment samples can be correlated with episodes of fault offset. The sound pressure level (SPL) for the Hunttec unit is 205 dB re 1 microPa-m (root-mean-squared (RMS)). The output-sound bandwidth is 0.5 kHz to 8 kHz, with the main peak at 4.5 kHz.

The USGS plans to use the surface-towed Geopulse boomer system in the shallow water parts of the survey area, typically in water depths from 20 m to 300 m (65.6 to 984.2 ft). The sound source consists of two Geopulse 5813A

boomer plates mounted on a catamaran sled. The catamaran is towed just behind the vessel, while the 5-m long (16.4-ft) hydrophone streamer is usually towed from a boom on one side of the vessel. The SPL for the Geopulse is 204 dB re 1 microPa-m (RMS), and its effective bandwidth is about 0.75 to 3.5 kHz. The firing rate is generally 0.5 to 1 sec. interval.

The primary sound source for the high-resolution multi-channel system will be a 2.0 kJ sparker system such as the SQUID 2000 minisparker system manufactured by Applied Acoustic Engineering, Inc. This minisparker includes electrodes that are mounted on a small pontoon sled. The electrodes simultaneously discharge electric current through the seawater to an electrical ground. This discharge creates an acoustic signal. The pontoon sled that supports the minisparker is towed on the sea surface, approximately 5 m (16.4 ft) behind the ship.

Source characteristics of the SQUID 2000 provided by the manufacturer show an SPL of 209 dB re 1 microPa-m (RMS). The amplitude spectrum of this pulse indicates that most of the sound energy lies between 150 Hz and 1700 Hz, and the peak amplitude is at 900 Hz. The output sound pulse of the minisparker has a duration of about 0.8 ms. When operated at sea for the proposed multichannel seismic-reflection survey, the minisparker will be discharged every 1 to 4 seconds.

The second source for the multi-channel system is a small airgun of special type called a generator-injector, or GI gun (trademark of Seismic Systems, Inc., Houston, TX). This type of airgun consists of two small airguns within a single steel body. The two small airguns are fired sequentially, with the precise timing required to nullify the bubble oscillations that typify sound pulses from a single airgun of common type. These oscillations impede detailed analysis of fault structure. For arrays consisting of many airguns, bubble oscillations are cancelled by careful selection of airgun sizes. The GI gun is a mini-array that is carefully adjusted to achieve the desired bubble cancellation. Airguns and GI guns with similar chamber sizes have similar peak output pressures. The GI gun for this survey has two chambers of equal size (35 in<sup>3</sup>) and the gun will be fired every 12 seconds. Compressed air delivered to the GI gun will have a pressure of about 3000 psi. The gun will be towed 5 meters (16.4 ft) behind the vessel and suspended from a float to maintain a depth of about 1 m (3.2 ft).

The manufacturer's literature indicates that a GI gun of the size the

USGS will use has an SPL of about 220 dB re 1 microPa-m (RMS). The GI gun's output sound pulse has a duration of about 10 ms. The amplitude spectrum of this pulse, as shown by the manufacturer's data, indicates that most of the sound energy is at frequencies below 500 Hz. Field measurements by USGS personnel indicates that the GI gun produces low-sound-amplitudes at frequencies above 500 Hz. Thus high-amplitude sound from this source is at frequencies that are outside the main hearing band of most odontocetes and pinnipeds (Richardson *et al.*, 1995).

The environmental survey off Pt. Conception will be accomplished with side-scan sonar surveying. The Klein 2000 side-scan sonar uses an electrically powered sound source. In operation, the sound source, or "fish", is towed behind the research vessel at depths of 1 to 10 m (3.2 to 32.8 ft) below the sea surface. The unit emits a short pulse of sound about every 0.25 second; the interval depends on the swath width (i.e., the area of seafloor to be imaged). The side-scan sonar system measures the return time and intensity of echoes to create a high-resolution image of the seafloor that is similar to an air photo on land. The side-scan system has an SPL of about 210 dB re 1 microPa-m (RMS). The output sound pulse is very short, with a time duration of less than 0.1 ms. The dual-frequency bandwidth of the outgoing signal is 100 kHz or 500 kHz.

The work is planned for June 10-29, 2002. The primary work area (70 percent of the time) is between Pt. Dume and offshore Gaviota, CA, in the western Santa Monica Basin and Santa Barbara Channel. The secondary work area is offshore between Pt. Conception and Pt. Arguello (but staying within 30 km (18.6 mi) of the coast). Some work might be attempted during transit between the two work areas.

### Comments and Responses

A notice of receipt of the application and proposed authorization was published on April 1, 2002 (67 FR 15360), and a 30-day public comment period was provided on the application and proposed authorization. Comments were received from the Marine Mammal Commission (MMC).

**Comment 1:** The MMC believes that NMFS' preliminary determinations that the short-term impact of the proposed activities will result, at most in a temporary modification in behavior of certain species of marine mammals and that any behavioral modifications made by these species are expected to have no more than a negligible impact on the reproduction or survival of these species are reasonable, provided that NMFS is

satisfied that the proposed monitoring and mitigation measures are adequate to detect and minimize disturbance to affected marine mammal species. In regard to the previous statement, the MMC notes that it is unclear whether night-time operations will be carried out in other than shallow water. If so, the MMC questions whether the planned night-time observations would be capable of assuring that the proposed activities have the least practicable adverse impact on marine mammals.

**Response:** The USGS will be capable of conducting the monitoring program required under the IHA for this activity. As determined by the California Coastal Commission (CCC), the shutdown zones are 100 m (328 ft) for the GI-airgun and 30 m (98 ft) for the other acoustic systems. The GI airgun will be used only during daylight hours. Monitoring these safety zones during daylight and night-time is practical.

**Comment 2:** The MMC recommends that NMFS consult with the applicant to address this concern, in order to ensure that any marine mammals approaching or entering the designated safety zone around the source(s) during night-time activities can be detected in time to stop operations to ensure that animals are not adversely affected.

**Response:** See response to comment 1.

**Comment 3:** The MMC notes that NMFS does not plan to require the shutdown of the acoustic source if pinnipeds approach the source and enter the safety zone. The MMC recommends that NMFS require such approaches to be monitored and that the source be shut down if the animal(s) show signs of distress.

**Response:** NMFS concurs and has made that recommendation a part of the IHA. Acoustic source transmissions will be suspended whenever the vessel approaches a pinniped and marine mammal behavior observations will be made during these periods. However, it should be understood that seals and sea lions will also actively approach a vessel while transmitting (the vessel itself moving forward at about 3-5 knots) from the side of the vessel or the stern, meaning that the animal is voluntarily approaching a noise source that is increasing in strength as the animal gets closer. Therefore, if a pinniped approaches the USGS vessel, the IHA requires the USGS to monitor the interaction to ensure the animal does not show signs of distress. If the pinniped(s) show obvious distress, the USGS is to suspend operations until the pinniped moves outside of the safety zone and to continue to conduct observations on effects on all pinnipeds

after the acoustic source is again powered up.

**Comment 4:** The MMC recommends that the applicant be required to include in the initial and final reports, the species and numbers of marine mammals observed approaching and entering the designated safety zones during both day and night.

**Response:** NMFS concurs. The USGS will employ trained biologists to monitor marine mammals in and around the vicinity of the acoustic source and record behavioral activities. These observations will be provided to NMFS and the public under the reporting requirements contained in the IHA.

### Description of Habitat and Marine Mammals Affected by the Activity

The Southern California Bight supports a diverse assemblage of 29 species of cetaceans (whales, dolphins and porpoises) and 6 species of pinnipeds (seals and sea lions). The species of marine mammals that are likely to be present in the seismic research area include the bottlenose dolphin (*Tursiops truncatus*), common dolphin (*Phocoena phocoena*), killer whale (*Orcinus orca*), Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), northern right whale dolphin (*Lissodelphis borealis*), Risso's dolphin (*Grampus griseus*), pilot whale (*Globicephala macrorhynchus*), Dall's porpoise (*Phocoenoides dalli*), sperm whale (*Physeter macrocephalus*), humpback whale (*Megaptera novaengliae*), gray whale (*Eschrichtius robustus*), blue whale (*Balaenoptera musculus*), minke whale (*Balaenoptera acutorostrata*), fin whale (*Balaenoptera physalus*), harbor seal (*Phoca vitulina*), elephant seal (*Mirounga angustirostris*), Steller sea lion (*Eumetopias jubatus*), California sea lion (*Zalophus californianus*), northern fur seal (*Callorhinus ursinus*) and sea otter (*Enhydra lutris*). General information on these species can be found in the USGS application and in Forney *et al.* (2001). Forney *et al.* (2001) is available at the following URL: [http://www.nmfs.noaa.gov/prot\\_res/PR2/Stock\\_Assessment\\_Program/sars.html](http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/sars.html) Please refer to these documents for information on these species in California waters.

### Potential Effects of Marine Seismic Reflection Studies on Marine Mammals

#### Discussion

Disturbance by acoustic noise is the principal means of taking incidental to this activity. Vessel noise may provide a secondary source. Also, the physical presence of vessels could lead to some

non-acoustic effects involving visual or other cues.

The effects of underwater sounds on marine mammals are highly variable, and can be categorized as follows: (1) The sounds may be too weak to be heard at the location of the animal (i.e. lower than the prevailing ambient noise level, the hearing threshold of the animal at relevant frequencies, or both); (2) the sounds may be audible but not strong enough to elicit any overt behavioral response; (3) the sounds may elicit behavioral reactions of variable conspicuousness and variable relevance to the well being of the animal; these can range from subtle effects on respiration or other behaviors (detectable only by statistical analysis) to active avoidance reactions; (4) upon repeated exposure, animals may exhibit diminishing responsiveness (habituation), or disturbance effects may persist (the latter is most likely with sounds that are highly variable in characteristics, unpredictable in occurrence, and associated with situations that the animal perceives as a threat); (5) any sound that is strong enough to be heard has the potential to reduce (mask) the ability of marine mammals to hear natural sounds at similar frequencies, including calls from conspecifics and/or echolocation sounds, and environmental sounds such as storms and surf noise; and (6) very strong sounds have the potential to cause either a temporary or a permanent reduction in hearing sensitivity (i.e., temporary threshold shift (TTS) or permanent threshold shift (PTS), respectively). In addition, intense acoustic or explosive events may cause trauma to tissues associated with organs vital for hearing, sound production, respiration and other functions. This trauma may include minor to severe hemorrhage.

Few data on the effects of non-explosive sounds on hearing thresholds of marine mammals have been obtained. However, in terrestrial mammals (and presumably in marine mammals), received sound levels must far exceed the animal's hearing threshold for there to be any TTS and must be even higher for there to be risk of PTS (Richardson *et al.*, 1995).

Depending upon ambient conditions and the sensitivity of the receptor, underwater sounds produced by seismic operations may be detectable some substantial distance away from the activity. Any sound that is detectable is (at least in theory) capable of eliciting a disturbance reaction by a marine mammal or masking a signal of comparable frequency. Harassment is presumed to occur when marine

mammals in the vicinity of the acoustic source (or vessel) show a significant behavioral response to the generated sounds or visual cues.

Seismic pulses are known to cause some species of whales, including gray and bowhead whales, to behaviorally respond within a distance of several kilometers (Richardson *et al.*, 1995). Although some limited masking of low-frequency sounds is a possibility for those species of whales using low frequencies for communication, the intermittent nature of the acoustic pulses created by the planned survey's instruments will limit the extent of masking. Bowhead whales, for example, are known to continue calling in the presence of seismic survey sounds, and their calls can be heard between seismic pulses (Richardson *et al.*, 1986).

When the received levels of noise exceed some behavioral reaction threshold, cetaceans will show disturbance reactions. The levels, frequencies, and types of noise that will elicit a response vary between and within species, individuals, locations and season. Behavioral changes may be subtle alterations in surface-diver-respiration cycles. More conspicuous responses include changes in activity or aerial displays, movement away from the sound source, or complete avoidance of the area. The reaction threshold and degree of response are related to the activity of the animal at the time of the disturbance. Whales engaged in active behaviors such as feeding, socializing or mating are less likely than resting animals to show overt behavioral reactions, unless the disturbance is directly threatening.

Hearing damage is not expected to occur during the project. While it is not known whether a marine mammal very close to one of the acoustic devices would be at risk of temporary or permanent hearing impairment, TTS is a theoretical possibility for animals within a few hundred meters (Richardson *et al.*, 1995), if the SPL of an acoustic source is of sufficient intensity, such as with large seismic airgun arrays. However, considering the low intensity of the proposed acoustic devices, and the planned monitoring and mitigation measures (described later in this document), which are designed to detect marine mammals occurring near the acoustic sources and to avoid, to the greatest extent practicable, exposing them to sound pulses that have any possibility of causing hearing damage, neither TTS nor PTS are likely.

#### *Maximum Sound-Exposure Levels for Marine Mammals*

The adverse effects of underwater sound on mammals have been documented for exposure times that for up to several minutes, but adverse effects have not been documented for the brief pulses typical of the minisparker (0.8 ms) and the Huntex system (typically 0.3 ms).

For impulse noise, NMFS has previously established that activities should avoid, to the greatest extent practicable, exposing mysticetes and sperm whales to an SPL of 180 dB re 1 microPa-m (RMS) or higher. For odontocetes and pinnipeds, activities should avoid, to the greatest extent practicable, exceeding a level of 190 dB re 1 microPa-m (RMS). These determinations were based on findings at the High-Energy Seismic Workshop held at Pepperdine University in 1997 as updated by the NMFS' Acoustics Workshop held in Silver Spring, MD in 1998. In 1999 however, the CCC limited this maximum sound-exposure level to 180 dB re 1 microPa-m (RMS) for all marine mammals, including pinnipeds, within the coastal zone of California and as expected the CCC is requiring similar limitations for this action.

However, current scientific consensus indicates that a safe level for impulse sounds for pinnipeds that avoids TTS is higher than the level indicated for cetaceans (e.g., 180 dB). As a result, although scientists have preliminarily established an SPL of 190 dB re 1 microPa-m (RMS) as a safe level for pinnipeds underwater, and while NMFS adopts this information as the best scientific information available, the USGS has agreed to abide by the conditions contained in its CCC consistency determination.

NMFS notes moreover, that the recent precautionary application of a 180-dB safety zone for protecting marine mammals does not necessarily mean that animals entering that zone will be adversely affected. It simply means that animals have the potential to incur a temporary elevation in hearing threshold (i.e., TTS), lasting, at worst, for a few minutes at the 180 dB sound pressure level.

The USGS has provided an estimate of how close marine mammals can approach each sound source before it needs to be shut off. This estimate follows the procedure required by the CCC in 1999, in that underwater sound is assumed to attenuate with distance according to 20log(R), and the maximum SPL to which marine mammals can be exposed is 180 dB re 1 microPa-m (RMS). The alternative

estimate of safe distance is proposed for operations in shallow water.

The zone of impact for the sound sources is a circle whose radius is the distance from the source to where the SPL is reduced to 180 dB re 1 microPa-m (RMS). In water deeper than 50 m (164 ft), for a 20log(R) sound attenuation, the zone of impact for a 209-dB (RMS) minisparker source has a radius of 28 m (92 ft). The 204 dB Geopulse and 205 dB Hunttec boomers yield radii of 16 and 18 m (52.5 and 59 ft) respectively. The 210 dB Klein side-scan yields a safety radius of 32 m (105 ft), and the 220 dB GI gun yields a safety radius of 100 m (328 ft). In its application, the USGS proposed that safety zones of 30 m (98 ft) around the boomers, minisparker, side-scan fish, and of 100 m (328 ft) around the airgun be used in water deeper than 50 m (164 ft). Although sound is expected to attenuate faster in shallow water, the CCC determined that the appropriate safety zones for this activity would be 100 m (328 ft) for the airgun and 50 m (164 ft) for the other sources.

#### *Potential Level of Taking by Harassment of Marine Mammals*

The following summary is from a report by Calambokidis and Chandler (2001) that was submitted in compliance with an IHA issued to the USGS on June 5, 2000 (65 FR 39871, June 28, 2000). During a similar acoustic survey in early June, 2000, there were a total of 241 marine mammal sightings (not including re-sightings), representing at least 11 species and 4,792 marine mammals. (Sighting a marine mammal should not be interpreted to mean that the animal was being harassed.) Small cetaceans were the most numerous and accounted for 54 percent of the sightings and 96 percent of the animals. Common dolphins made up 74 sightings and 3,764 of the 4,792 sighted animals. Risso's dolphins, bottlenose dolphins and Dall's porpoises were seen in smaller numbers. Pinnipeds accounted for 98 sightings and these were predominantly California sea lions. Smaller numbers of harbor seals and a single elephant seal were also sighted. Four species of large cetaceans were sighted in small numbers. Blue whales were most common with 5 sightings of single animals. Fin, humpback and minke whales were each sighted once or twice. Sighting rates versus acoustic source appeared to be related to habitat of operations and not to the sound source itself.

The sound source was shutdown a total of 40 times (22 daylight and 18 nighttime). Shutdowns were in response

to five different species. Common dolphins triggered a shutdown in 29 instances; Risso's dolphin, bottlenose dolphins and California sea lions each resulted in 3 to 4 shutdowns each. The only shutdown for a large whale was for a sighting of a blue whale which, although still outside the 250-m (820-ft) mitigation zone, was prompted as precautionary measure.

The high proportion of shutdowns caused by common dolphins was a result both of their being one of the most common species in the area and their tendency to approach the ship. Common dolphins accounted for 31 percent of marine mammal sightings but were responsible for 72 percent of the shutdowns. California sea lions, which accounted for 36 percent of the sightings were responsible for only 7 percent of the shutdowns. Although other dolphin species were less common, both Risso's and bottlenose dolphins had shutdown rates that were similar to common dolphins. Overall, 30 percent of small cetacean sightings made while the sound source was operational led to shutdowns compared to only 4 percent of pinniped sightings. A low proportion of large whale sightings led to shutdowns. The 11 sightings of whales made during sound source operations led to only a single precautionary shutdown.

Behavioral observations were made both while the sources were on and when they were off. For small dolphins and pinnipeds there did not appear to be a difference in behavior between the two operational modes. There was also no apparent difference in the orientation (direction of swimming) of these animals in relation to transmissions. Breaching was observed in two cases for large cetaceans; a minke whale and a group of two humpback whales. Sound transmissions were occurring only during the minke whale sighting.

#### *24-hour Seismic Operations*

The USGS requested that the IHA allow for 24-hour operations, specifically for the minisparker and/or boomers or side-scan. The reasons for around-the-clock operation that benefit the environment are: (1) When the sound sources cease to operate, marine mammals might move back into the survey area and incur an increased potential for harm when operations resume, and (2) daylight-only operations prolong activities in a given area, thus increasing the likelihood that marine mammals will be harassed.

The 2002 survey will require only 2 weeks, and the ship will be moving continuously through the Santa Barbara Channel, so no single area will see long-

term activity. The USGS believes that the best course is to complete the survey as expeditiously as possible. Delays could require scheduling additional surveys in future years to complete the missed work. However, recently, the CCC determined that the GI-airgun source could only be used during daylight hours. As a result, the IHA will prohibit use of the GI-airgun during night-time operations.

#### **Mitigation**

Several mitigation measures to reduce the potential for marine mammal harassment will be implemented by USGS as part of their proposed activity. These include:

- (1) The survey is planned for June, when gray whales are not migrating.
- (2) The smallest possible acoustic sources have been selected to minimize the chances of incidental harassment.
- (3) To avoid potential incidental injury to marine mammals, safety zones will be established and monitored continuously. Whenever the seismic source(s) approaches a marine mammal closer than the assigned safe distance the USGS will shut them down.
- (4) For mysticetes and sperm whales, the marine mammal species near the survey area that are considered to be most sensitive to the frequency and intensity of sound that will be emitted by the seismic sources, operations will cease when members of these species approach within 250 m (820 ft) around the GI-airgun source and 100 m (328 ft) around the other sound sources.
- (5) For other odontocetes, with their lower sensitivity to low frequency sound, operations will cease when these animals approach a safety zone of 30 m (98.4 ft) from the boomer, minisparker, or side-scan fish, and a zone of 100 m (328 ft) from the airgun.
- (6) For pinnipeds (seals and sealions): whenever the research vessel approaches a pinniped, a safety radius of 30 m (98.4 ft) around the boomer, minisparker, or side-scan sonar and 100 m (328 ft) around the GI-airgun will be maintained from the animal(s). However, if a pinniped (except for the Steller sea lion) approaches the towed airgun array during airgun transmissions, the USGS will not be required to shutdown the airguns, unless the animal(s) shows signs of distress. However, if a pinniped approaches the USGS vessel, the IHA requires the USGS to monitor the interaction to ensure the animal does not show signs of distress. If the pinniped(s) show obvious distress, the USGS is to suspend airgun operations until the pinniped moves outside of the safety zone and to continue to conduct

observations on effects on all pinnipeds after the airgun is again powered up. However, for Steller sea lions, these safety zones must be applied continuously.

Experience indicates that pinnipeds will come from great distances to scrutinize seismic-reflection operations. Seals have been observed swimming within airgun bubbles, 10 m (33 ft) away from active arrays. More recently, Canadian scientists, who were using a high-frequency seismic system that produced sound closer to pinniped hearing than will the USGS sources, describe how seals frequently approached close to the seismic source, presumably out of curiosity. Therefore, because pinnipeds indicate no adverse reaction to seismic noise, the above-mentioned mitigation plan is proposed. In addition, the USGS will gather information on how often pinnipeds approach the sound source(s) on their own volition, and what effect the source(s) appears to have on them.

(7) During seismic-reflection survey operations, the ship's speed will be 4 to 5 knots so that when the seismic sources are being discharged, nearby marine mammals will have gradual warning of the ship's approach and can move away.

(8) The USGS will have marine biologists onboard the seismic vessel who will have the authority to stop seismic operations whenever a mammal enters the safety zone. These observers will monitor the safety zone to ensure that no marine mammals enter the zone, and record observations on marine mammal abundance and behavior.

(9) If observations are made, or if NMFS notifies the USGS, that one or more marine mammals of any species are attempting to beach themselves when the seismic source is operating in the vicinity of the beaching, the seismic sources will be immediately shut off and NMFS contacted.

(10) Upon notification by a local stranding network that a marine mammal has stranded where the acoustic sources had recently been operated, NMFS will investigate the stranding to determine whether a reasonable chance exists that the seismic survey caused the animal's death. If NMFS determines, based upon a necropsy of the animal(s), that the death was likely due to the seismic source, the survey shall cease until procedures are altered to eliminate the potential for future deaths.

### Monitoring

Monitoring of marine mammals while the sparker or airgun sound sources are active will be conducted continuously. Trained marine mammal observers will

be onboard the vessel to mitigate the potential environmental impact from either of the two systems and to gather data on the species, number, and reaction of marine mammals to the sources. Each observer will use equipment, such as Tasco 7x50 binoculars with internal compasses and reticules, to record the horizontal and vertical angle to sighted mammals. Night-time operations in shallow water will be conducted with a spotlight to illuminate the radius of influence around the authorized acoustic sources and observers will have night-vision goggles.

Monitoring data to be recorded during seismic-reflection operations include which observer is on duty and what the weather conditions are like, such as Beaufort Sea state, wind speed, cloud cover, swell height, precipitation and visibility. For each mammal sighting the observer will record the time, bearing and reticule readings, species, group size, and the animal's surface behavior and orientation. Observers will instruct geologists to shut all active seismic sources whenever a marine mammal enters a safety zone.

### Reporting

The USGS will provide an initial report to NMFS within 120 days of the completion of the marine seismic reflection survey project. This report will provide dates and locations of seismic operations, details of marine mammal sightings, and estimates of the amount and nature of all takes by harassment. A final technical report will be provided by USGS within 1 year of completion of the project. The final technical report will contain a description of the methods, results, and interpretation of all monitoring tasks.

### National Environmental Policy Act (NEPA)

In conjunction with the promulgation of regulations implementing section 101(a)(5)(D) of the MMPA, NMFS completed an Environmental Assessment (EA) on May 9, 1995, that addressed the impacts on the human environment from issuance of IHAs and the alternatives to that action. NMFS' analysis resulted in a Finding of No Significant Impact (FONSI). In addition, this seismic reflection survey will use acoustic instruments that are significantly less intense and thereby have a significantly lower impact on the marine environment than acoustic sources used in other surveys for which EAs and resulting FONSI have been prepared previously. Accordingly, this proposed action qualifies for a categorical exclusion under NEPA and,

therefore, a new EA will not be prepared. A copy of relevant previous EAs are available (see **ADDRESSES**).

### Consultation

Under section 7 of the ESA, NMFS has completed consultation on the issuance of this IHA. NMFS has concluded that this action is unlikely to affect listed marine mammals because those species of whales that are listed under the ESA are rare in these waters, and are unlikely to be affected by these acoustic sources unless fairly close to the source. To ensure that listed marine mammals are not affected, NMFS is requiring the USGS to establish a safety zone of 250 m (820 ft) around the GI-airgun source and 100 m (328 ft) around the other sources with appropriate shutdown procedures imposed if a listed marine mammal enters or is about to enter the safety zone appropriate for the acoustic source.

### Conclusions

NMFS has determined that the short-term impact of collecting marine seismic reflection data to investigate the landslide and earthquake hazards off Southern California by the USGS during June, 2002 will result, at worst, in a temporary modification in behavior by certain species of pinnipeds, and possibly some individual cetaceans. While behavioral modifications may be occur in certain species of marine mammals to avoid the resultant noise from airgun arrays, this behavioral change is expected to result in the harassment of only small numbers of each of several species of marine mammals and would have no more than a negligible impact on the affected species or stocks of marine mammals.

In addition, no take by injury and/or death is anticipated and takes by harassment will be at the lowest level practicable due to incorporation of the mitigation measures mentioned previously. No known rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals occur within or near the planned area of operations during the season of operations.

### Authorization

As a result of these determinations, NMFS has issued an IHA to the USGS for the possible harassment of small numbers of several species of marine mammals incidental to collecting marine seismic reflection data to investigate the landslide and earthquake hazards off Southern California by the USGS during June, 2002, provided the above-mentioned mitigation,

monitoring, and reporting requirements are incorporated.

Dated: June 13, 2002.

**David Cottingham**

*Deputy Director, Office of Protected Resources, National Marine Fisheries Service.*  
[FR Doc. 02-15883 Filed 6-21-02; 8:45 am]

BILLING CODE 3510-22-S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 061402C]

#### Gulf of Mexico Fishery Management Council; Public Meetings

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The Gulf of Mexico Fishery Management Council (Council) will convene public meetings.

**DATES:** The meetings will be held on July 8-12, 2002.

**ADDRESSES:** These meetings will be held at the Hyatt Sarasota Hotel, 1000 Boulevard of the Arts, Sarasota, FL 34236; telephone: 941-953-1234.

*Council address:* Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

**FOR FURTHER INFORMATION CONTACT:** Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 228-2815.

#### SUPPLEMENTARY INFORMATION:

##### Council

##### July 10

8:30 a.m.—Convene.

8:45 a.m.—12 noon—Receive public testimony on the Secretarial Reef Fish Amendment 1/Draft Supplemental Environmental Impact Statement (DSEIS).

1:30 p.m.—5 p.m.—Continue public testimony if necessary.

##### July 11

8:30 a.m.—11:30 a.m.—Continue public testimony if necessary.

1 p.m.—1:15 p.m.—Receive the report of the Spiny Lobster Management Committee.

1:15 p.m.—2 p.m.—Receive a report of the Habitat Protection Committee.

2 p.m.—2:30 p.m.—Receive a report of the Shrimp Management Committee.

2:30 p.m.—5 p.m.—Receive a report of the Reef Fish Management Committee.

##### July 12

8:30 a.m.—10 a.m.—Continue the report of the Reef Fish Management Committee, if necessary.

10 a.m.—10:15 a.m.—Receive a report of the Council Chairmen's meeting.

10:15 a.m.—10:30 a.m.—Receive the South Atlantic Fishery Management Council Liaison Report.

10:30 a.m.—10:45 a.m.—Receive a report of the Stock Assessment Workshop meeting.

10:45 a.m.—11 a.m.—Receive the International Commission for the Conservation of Atlantic Tunas Advisory Committee report.

11 a.m.—11:15 a.m.—Receive Enforcement Reports.

11:15 a.m.—11:30 a.m.—Receive the NMFS Regional Administrator's Report.

11:30 a.m.—11:45 a.m.—Receive Director's Reports.

11:45 a.m.—12 noon—Other Business.

#### Committees

##### July 8

9 a.m.—12 noon—Convene the Habitat Protection Committee to review a Preliminary Draft of the Programmatic Environmental Impact Statement (PEIS) for the Generic Essential Fish Habitat (EFH) Amendment.

1:30 p.m.—5:30 p.m.—Convene the Shrimp Management Committee to review a preliminary Options Paper for Shrimp Amendment 13, to hear presentations on the status of the condition of shrimp stocks, on the evaluation of the Tortugas shrimp fishery, and the recommendations of the Shrimp Stock Assessment Panel for criterion to assess the status of each shrimp stock.

##### July 9

8:30 a.m.—12 noon—Convene the Reef Fish Management Committee to hear a progress report of the Ad Hoc Red Snapper Advisory Panel (AP) on development of individual fishing quota (IFQ) profile. They will then review and make recommendations for the full Council for final action on the Draft Secretarial Amendment 1 for Red Grouper/SEIS. The full Council will consider these recommendations on Thursday afternoon and Friday morning. The Committee will also review the first draft of an amendment for a rebuilding program for amberjack.

1:30 p.m.—3:30 p.m.—Continue the Reef Fish Management Committee.

3:30 p.m.—5 p.m.—Convene the Spiny Lobster Management Committee to review the proposed Florida Fish and Wildlife Conservation Commission (FFWCC) rule on increasing the possession limit for undersized lobster.

Although non-emergency issues not contained in the agenda may come before the Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the MSFCMA, provided the public has been notified of the Council's intent to take final action to address the emergency. A copy of the Committee schedule and agenda can be obtained by calling (813) 228-2815.

#### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see ADDRESSES) by July 1, 2002.

Dated: June 14, 2002.

**Richard W. Surdi,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. 02-15885 Filed 6-21-02; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 061902B]

#### New England Fishery Management Council; Public Meetings

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

**ACTION:** Notice of public meetings.

**SUMMARY:** The New England Fishery Management Council (Council) is scheduling a public meeting of its Groundfish Oversight Committee, Scallop Advisory Panel and Oversight Committee, Habitat Oversight Committee and a joint meeting of its Herring Oversight and Advisory Panels with the Atlantic States Marine Fisheries Commission Herring Section in July, 2002 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** The meetings will be held between July 8, 2002 and July 11, 2002.

See **SUPPLEMENTARY INFORMATION** for specific dates and times.

**ADDRESSES:** The meetings will be held in Wakefield and Plymouth, MA and Warwick, RI. See **SUPPLEMENTARY INFORMATION** for specific locations.

*Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465-0492.

#### **SUPPLEMENTARY INFORMATION:**

#### **Meeting Dates and Agendas**

*Monday, July 8, 2002 at 9:30 a.m.—* Groundfish Oversight Committee Meeting.

Location: Sheraton Colonial, One Audubon Road, Wakefield, MA 01880; telephone: (781) 245-9300.

The Groundfish Oversight Committee will meet to review management alternatives for Amendment 13 to the Northeast Multispecies Fishery Management Plan (FMP). Alternatives are being developed based on the broad strategies of area management, sector allocation, a quota or  $\geq$  total allowable catch (TAC), and modifications to the settlement agreement among certain parties in the case of the Conservation Law Foundation, Inc. et. A. v. Donald Evans, et.al. Management measures will address all requirements of the Magnuson-Stevens Act. These alternatives may include (but are not limited to) measures such as changes to the days-at-sea program, revised year-round or seasonal closed areas, gear modifications, additional reporting requirements, and measures to control recreational fishing. Other issues will be considered as well, such as measures that will reduce regulatory discards, improvements in monitoring of recreational catch through use of a recreational permit, providing access to Closed Area II to target yellowtail flounder, an exemption from the groundfish closed areas for tuna purse seine vessels, and changes to the days out requirement for the dayboat gillnet fleet. The report of the Capacity Committee will also be reviewed, and the Oversight Committee will make recommendations on incorporating the alternatives from that report into Amendment 13. The Oversight Committee will review the alternatives and develop recommendations that will be considered by the full Council at the July 23-25, 2002 Council Meeting in Portland, ME. After approval by the Council in July, a draft FMP and supplemental environmental impact

statement will be prepared. Public hearings will be held on the alternatives when that work is completed, following which the Council will make final choices for management measures before submitting the amendment to the National Marine Fisheries Service for approval.

*Monday, July 8, 2002 at 10 a.m.—* Scallop Advisory Panel Meeting.

Location: Crowne Plaza, 801 Greenwich Ave., Warwick, RI 02886; telephone: (401) 732-6000.

The Advisory panel will review analyses of potential impacts associated with Draft Amendment 10 alternatives and develop recommendations for preferred alternatives to be presented at the Oversight Committee meeting on July 9th.

*Tuesday, July 9, 2002, at 9 a.m.—* Scallop Oversight Committee Meeting.

Location: Crowne Plaza, 801 Greenwich Ave., Warwick, RI 02886; telephone: (401) 732-6000.

The Oversight Committee will review analyses of potential impacts associated with Draft Amendment 10 alternatives, consider recommendations from the Advisory Committee, and select preferred alternatives for approval by the Council. The committee may recommend additional analyses or revisions to the alternatives when the Council approves the documents for public hearing. Planning for the annual framework adjustment process may also be discussed. Due to scheduling conflicts for some Oversight Committee members, the committee meeting on July 9 may run late into the evening.

*Wednesday, July 10, 2002, at 9:30 a.m.—*Habitat Oversight Committee Meeting.

Location: Sheraton Inn, 180 Water Street, Plymouth, MA 02360; (508) 747-4900.

The Committee will continue development and review of habitat alternatives for Monkfish Amendment 2. They will also review, and possibly approve, habitat alternatives for Groundfish Amendment 13 to be forwarded to the Council for inclusion in the Draft Social Environmental Impact Statement (DSEIS). The agenda will also include discussion and possible preferred alternative choice for Scallop Amendment 10 habitat alternatives to be forwarded to the Council for discussion at its July 23-25, 2002 Council Meeting.

*Thursday, July 11, 2002 at 9:30 a.m.—* Joint Meeting of the Herring Oversight Committee, Advisory Panel and Atlantic States Herring Section.

Location: Crowne Plaza, 801 Greenwich Ave., Warwick, RI 02886; telephone: (401) 732-6000.

The meeting will be held jointly with the Atlantic States Marine Fisheries Commission (ASMFC) Herring Section. The committee and advisors will review the annual Stock Assessment and Fishery Evaluation (SAFE) Report for the 2001 fishing year, and recommendations from the Herring Plan Development Team (PDT) for 2003 fishing year specifications for optimum yield (OY) from the fishery, total allowable foreign fishing and joint venture processing (TALFF and JVP), and total allowable catch (TACs) for each management area. The committee and advisors, in consultation with the ASMFC Herring Section, will develop recommendations to the Council on the 2003 specifications. Following the conclusion of the specifications portion of the meeting, the ASMFC Herring Section will address matters pertaining to the ASMFC Herring Management Plan.

Although non-emergency issues not contained in this agenda may come before these groups for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

#### **Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: June 19, 2002.

**Richard W. Surdi,**

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

[FR Doc. 02-15893 Filed 6-21-02; 8:45 am]

**BILLING CODE 3510-22-S**

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## **CORPORATION FOR NATIONAL AND COMMUNITY SERVICE**

### **Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Disseminated Information**

**AGENCY:** Corporation for National and Community Service.

**ACTION:** Notice of proposed guidelines and request for comments.

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**SUMMARY:** The notice dated June 18, 2002, at 67 FR 41406 (FR Doc. 02-15355 Filed 6-17-02) incorrectly listed the web site address for the location of the Corporation's Information Quality Guidelines. That notice is hereby withdrawn and is replaced by this notice. The Corporation for National and Community Service (hereinafter the "Corporation") is seeking comments on its draft Information Quality Guidelines. These Information Quality Guidelines describe the Corporation's pre-dissemination information quality control and an administrative mechanism for requests for correction of information publicly disseminated by the Corporation. The proposed Information Quality Guidelines are posted on the Corporation's Web site: <http://www.nationalservice.org/about/policies.html>.

**DATES:** Written comments regarding the Corporation's Information Quality Guidelines are due by August 8, 2002.

**ADDRESSES:** Send written comments to David Spevacek, Chief Information Officer, Corporation for National and Community Service, 1201 New York Ave., NW, Eighth Floor, Washington, DC 20525. Alternatively, comments may be sent by electronic mail to [infoquality@cns.gov](mailto:infoquality@cns.gov).

**FOR FURTHER INFORMATION CONTACT:** David Spevacek, Chief Information Officer, Corporation for National and Community Service, 1201 New York Ave., NW, Eighth Floor, Washington, DC 20525, telephone (202) 606-5000, ext. 339 or [dspevacek@cns.gov](mailto:dspevacek@cns.gov). T.D.D. (202) 565-2799.

Dated: June 17, 2002.

**David Spevacek,**  
Chief Information Officer.

[FR Doc. 02-15887 Filed 6-21-02; 8:45 am]

BILLING CODE 6050-SS-P

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before August 23, 2002.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested

Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 19, 2002.

**John Tressler,**  
Leader, Regulatory Information Management,  
Office of the Chief Information Officer.

### Office of Postsecondary Education

*Type of Review:* New.

*Title:* Final Performance Report Guidelines for the Learning Anytime Anywhere Partnerships (LAAP) Program.

*Frequency:* One time only, at conclusion of funded project.

*Affected Public:* Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

Responses: 15.

Burden Hours: 525.

*Abstract:* The Learning Anytime Anywhere Partnerships (LAAP) is a grant program that supports partnerships among colleges and universities and/or other organizations to develop online distance education programs, especially those that promote

access to underserved learners. From 1999 to 2001, this program funded three cohorts of individual projects, each lasting for three to five years.

Requests for copies of the proposed information collection request may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 2068. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202-4651 or to the e-mail address [vivian\\_reese@ed.gov](mailto:vivian_reese@ed.gov). Requests may also be electronically mailed to the internet address [http://OCIO\\_RIMG@ed.gov](mailto:http://OCIO_RIMG@ed.gov) or faxed to 202-708-9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708-9266 or via his internet address [http://Joe.Schubart@ed.gov](mailto:http://Joe.Schubart@ed.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. 02-15867 Filed 6-21-02; 8:45 am]

BILLING CODE 4000-01-P

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before August 23, 2002.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address [Karen\\_F\\_Lee@omb.eop.gov](mailto:Karen_F_Lee@omb.eop.gov).

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of

1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: June 19, 2002.

**John D. Tressler,**

*Leader, Regulatory Information Management  
Office of the Chief Information Officer.*

#### **Office of Special Education and Rehabilitative Services**

*Type of Review:* Revision.

*Title:* National Longitudinal  
Transition Study—2 (NLTS2).

*Frequency:* One time.

*Affected Public:* Individuals or  
household; Not-for-profit institutions.

*Reporting and Recordkeeping Hour  
Burden:*

*Responses:* 17,347.

*Burden Hours:* 8,765.

*Abstract:* NLTS2 will provide nationally representative information about youth with disabilities in secondary school and in transition to adult life, including their characteristics, programs and services and achievements in multiple domains (e.g., employment, postsecondary education). The study will inform special education policy development and support the Individuals with Disabilities Education Act (IDEA) reauthorization.

Requests for copies of the submission for OMB review; comment request may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 2008. When you access the information collection,

click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202-4651 or to the e-mail address [vivan.reese@ed.gov](mailto:vivan.reese@ed.gov). Requests may also be electronically mailed to the internet address [http://OCIO-RIMG@ed.gov](mailto:http://OCIO-RIMG@ed.gov) or faxed to 202-708-9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708-6287 or via her internet address [Sheila.Carey@ed.gov](mailto:Sheila.Carey@ed.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. 02-15868 Filed 6-21-02; 8:45 am]

BILLING CODE 4000-01-P

#### **DEPARTMENT OF ENERGY**

##### **Annual Report of Closed Advisory Committee Meetings; Availability**

In accordance with section 10(d) of the Federal Advisory Committee Act (FACA), Public Law 92-463, and section 102-3.175(c) of the General Services Administration's (GSA) Final Rule on Federal Advisory Committee Management, of July 19, 2001, the Department of Energy's 2001 Annual Report of Closed Advisory Committee meetings has been issued. The report covers three closed meetings of the National Nuclear Security Administration Advisory Committee held June 26-27, 2001, in Washington, DC, August 15, 2001, in Albuquerque, NM, and October 19-20, 2001, in McLean Virginia.

The report is available for public review and copying at the Department of Energy's Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between 9 a.m. and 4 p.m.; Monday through Friday, except Federal holidays. For further information contact me at the U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC, 20585.

Issued in Washington, DC, on June 18, 2002.

**Rachel Samuel,**

*Deputy Advisory Committee, Management  
Officer.*

[FR Doc. 02-15856 Filed 6-21-02; 8:45 am]

BILLING CODE 6450-01-P

#### **DEPARTMENT OF ENERGY**

[Docket No. EA-206-A]

##### **Application To Export Electric Energy; Frontera Generation Limited Partnership and TECO EnergySources, Inc. for Transfer of Authorization**

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of application.

**SUMMARY:** Frontera Generation Limited Partnership (Frontera and TECO EnergySource, Inc. (TES) have jointly applied to transfer, from Frontera to TES, Frontera's authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act.

**DATES:** Comments, protests or requests to intervene must be submitted on or before July 9, 2002.

**ADDRESSES:** Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE-27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585-0350 (FAX 202-287-5736).

**FOR FURTHER INFORMATION CONTACT:** Steven Mintz (Program Office) 202-586-9506 or Michael Skinker (Program Attorney) 202-586-6667.

**SUPPLEMENTARY INFORMATION:** Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On July 12, 1999, in Presidential Permit PP-206, the Office of Fossil Energy (FE) of the Department of Energy (DOE) authorized Frontera to construct, operate, maintain and connect electric transmission facilities across the U.S. border with Mexico. At full build-out, the authorized facilities are to consist of approximately 2.0 miles of double circuit 230-kV electric transmission line. However, the Order authorized Frontera to construct the facilities using a phased approach consisting initially of a single circuit 138-kV transmission line (current existing facilities). In a related proceeding, on July 20, 1999, in Docket EA-206, FE authorized Frontera to transmit electric energy from the United States to Mexico using the electric transmission facilities authorized in PP-206.

At that time Frontera, and its general partner, CSW Frontera GP II, were wholly-owned subsidiaries of CSW Energy, Inc., a Texas corporation, involved in the non-regulated generation and sale of electric power. On March 15, 2001, the partnership

interests of Frontera were transferred from CSW Frontera GP II, Inc. and CSW Frontera LP II, Inc. to TPS Tejas GP, LLC and TPS Tejas LP, LLC; these entities are in turn each wholly owned subsidiaries of TPS Holdings, Inc., a Florida corporation which itself is a wholly owned subsidiary of TECO Power Services Corporation. TES is also a wholly-owned subsidiary of TPS.

On May 21, 2002, Frontera and TES jointly filed to have Frontera's authority to export electric energy generated at the Frontera powerplant in Mission, Texas, to Comision Federal de Electricidad (CFE), the national electric utility of Mexico) transferred to TES. The applicants made this request because they contemplate retail sales of electric energy to one or more entities in Mexico which TES, but not Frontera, may make. The requested transfer of authorization is to enable TES to export electricity to Mexico using the transmission facilities that were authorized by Presidential Permit PP-206.

The applicants have requested expedited processing of its application so that electric power exports currently being negotiated can meet the condition precedent to the power sales, that is, DOE approval of authorization transfer. Accordingly, DOE has set a 15-day comment period for this proceeding.

#### Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with section 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the application to transfer the export authorization from Frontera to TES should be clearly marked with Docket EA-268. Additional copies are to be filed directly with David A. Crabtree, Director, Market Design and Regulatory Analysis, TECO EnergySource, Inc., P.O. Box 111, 702 North Franklin Street, Tampa, FL 33602 AND Glenn J. Berger, Skadden, Arps, Slate, Meagher, Flom LLP, 1440 New York Avenue, NW, Washington, DC 20005-2111.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the

reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at <http://www.fe.de.gov>. Upon reaching the Fossil Energy Home page, select "Electricity Regulation," and then "Pending Procedures" from the options menus.

Issued in Washington, DC, on June 19, 2002.

**Anthony J. Como,**

*Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.*

[FR Doc. 02-15858 Filed 6-21-02; 8:45 am]

BILLING CODE 6450-01-P

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Idaho National Engineering and Environmental Laboratory

**AGENCY:** Department of Energy.

**ACTION:** Notice of Open Meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho National Engineering and Environmental Laboratory. The Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Monday, July 8, 2002, 10 a.m.

This meeting will be conducted via conference call. To participate in the conference call, interested individuals are invited to call (208) 522-1662 to obtain the pass code. The public will be given an opportunity for comments.

**FOR FURTHER INFORMATION CONTACT:** Ms. Wendy Lowe, Idaho National Engineering and Environmental Laboratory (INEEL) Citizens' Advisory Board (CAB) Facilitator, Jason Associates Corporation, 477 Shoup Avenue, Suite 205, Idaho Falls, ID 83402, Phone (208) 522-1662 or visit the Board's Internet home page at <http://www.ida.net/users/cab>.

#### SUPPLEMENTARY INFORMATION:

**Purpose of the Board:** The purpose of the Board is to make recommendations to DOE and its regulators in the areas of future use, cleanup levels, waste disposition and cleanup priorities at the INEEL.

**Tentative Agenda:** This meeting will focus on one topic only: the Draft Performance Management Plan, which

describes implementation of accelerated cleanup at the Idaho National Engineering and Environmental Laboratory. The draft Performance Management Plan was written to implement a previously signed letter of intent with the State of Idaho and the Environmental Protection Agency. (Copies of the draft Performance Management Plan are available on the INEEL Internet home page at <http://www.inel.gov>. It can also be obtained by calling Brad Bugger, DOE-ID stakeholder involvement coordinator, at (208) 526-0833, or by e-mail at [buggerbp@id.doe.gov](mailto:buggerbp@id.doe.gov).) The Board's DOE Budget Committee will develop the draft recommendation considered by the INEEL CAB.

**Public Participation:** This meeting is open to the public. Written statements may be filed with the Board facilitator either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact the Board Chair at the address or telephone number listed above. Request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Jerry Bowman, Assistant Manager for Laboratory Development, Idaho Operations Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Every individual wishing to make public comment will be provided equal time to present their comments. Additional time may be made available for public comment during the presentations.

**Minutes:** The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday except Federal holidays. Minutes will also be available by writing to Ms. Wendy Lowe, INEEL CAB Facilitator, Jason Associates Corporation, 477 Shoup Avenue, Suite 205, Idaho Falls, ID 83402 or by calling (208) 522-1662.

Issued at Washington, DC, on June 18, 2002.

**Rachel Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 02-15857 Filed 6-21-02; 8:45 am]

BILLING CODE 6450-01-P

**DEPARTMENT OF ENERGY****Commission on Fire Safety and Preparedness****AGENCY:** Department of Energy.**ACTION:** Notice of Open Meeting.

**SUMMARY:** This notice announces the Final Public meeting of the Commission on Fire Safety and Preparedness. The Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), requires that public notice of the meetings be announced in the **Federal Register**.

**DATES:** Tuesday, July 9, 2002, 9 a.m. to 12:30 p.m.

**ADDRESSES:** Department of Energy, 1000 Independence Avenue, SW., Room 1E-245 Washington, DC 20585. Please call (301) 903-1114 to register in advance for the meeting and on the meeting date, please arrive at 8:30 a.m. for registration confirmation and building access.

**FOR FURTHER INFORMATION CONTACT:**

Frank Russo, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, telephone number 301-903-1114, e-mail: frank.russo@eh.doe.gov.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Meeting:* To provide a forum for a review and discussion of the recommendations of the Department of Energy (DOE) Fire Safety and Preparedness Commission for enhancements to the Department's site and Headquarters fire safety programs. The meeting will also provide an opportunity for DOE representatives to respond to the Commission's suggestions and to allow the public to comment on the Commission's recommendations.

*Tentative Agenda*

Welcome Remarks

Overview of the Scope of the

Responsibilities of the DOE Fire Safety and Preparedness Commission

Review of the Accomplishments of the Four Commission Subcommittees

Discussion of the Recommendations of the Commission to the Secretary of Energy

DOE Representatives Response Public Comment Period

*Public Participation:* The meeting is open to the public on a first-come, first-served basis because of limited seating. Written statements may be filed with the Commission before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Frank Russo at the number above. Requests to make oral statements must be made and

received five days prior to the meeting; reasonable provision will be made to include the statement in the agenda. The Chair of the Commission is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

*Minutes:* The minutes of this meeting will be available for public review and copying at the Freedom of Information Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, on June 18, 2002.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 02-15855 Filed 6-21-02; 8:45 am]

**BILLING CODE 6450-01-P**

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. EC02-74-000, et al.]

**Madison Windpower LLC, et al.;  
Electric Rate and Corporate Regulation Filings**

June 17, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

**1. Madison Windpower LLC**

[Docket No. EC02-74-000]

Take notice that on June 12, 2002, Madison Windpower LLC (Madison), tendered for filing, pursuant to Section 203 of the Federal Power Act, 16 U.S.C. § 824b (1994), and Part 33 of the Commission's regulations, 18 CFR Part 33, an application to authorize a change in Madison's upstream ownership resulting from a proposed intra-corporate reorganization whereby Madison will become a direct, wholly-owned subsidiary of San Geronio Power Corporation.

*Comment Date:* July 3, 2002.

**2. PSEG Power Cross Hudson Corporation**

[Docket No. EL02-98-000]

Take notice that on June 12, 2002, PSEG Power Cross Hudson Corporation (Cross Hudson) filed with the Federal Energy Regulatory Commission (Commission) a Petition for Declaratory Order pursuant to 18 CFR 385.207. The declaration that Cross Hudson seeks is required to prevent a conflict between

the Commission's open-access policies on generator interconnections and state regulation that threatens imminently to encroach upon and conflict with those policies.

*Comment Date:* July 8, 2002.

**3. Baja California Power, Inc.**

[Docket No. EL02-99-000]

Take notice that on June 7, 2002, Baja California Power, Inc. (BCP) filed a request for waiver of the requirements of Order No. 888 and Order No. 889 pursuant to 18 CFR 35.28(d) of the Federal Energy Regulatory Commission's (the Commission) Regulations.

*Comment Date:* July 10, 2002.

**4. Sprague Energy Corp.**

[Docket No. ER02-1499-0014]

Take notice that on June 7, 2002, Sprague Energy Corp. filed with the Federal Energy Regulatory Commission a compliance filing in response to the Commission's May 22, 2002 order in the above-referenced proceeding. On June 13, 2002, a copy correcting typographical errors was submitted. Copies of the filings were served on each person on the Secretary's official service list in this proceeding.

*Comment Date:* June 28, 2002.

**5. Oncor Electric Delivery Company**

[Docket No. ER02-1654-001]

Take notice that on June 10, 2002, Oncor Electric Delivery Company (Oncor) tendered for filing its: Eighth Revised Tariff for Transmission Service To, From and Over Certain Interconnections to modify the tariff to include Oncor's Valley Switching Station as a point of interconnection for which Oncor provides wholesale transmission service under the tariff; and the ERCOT Standard Generation Interconnection Agreement between Oncor and Kiowa Power Partners, LLC modified as directed by the Commission, this filing is being made in compliance with the Commission's May 31, 2002 order in Docket No. ER02-1654-000 99 FERC ¶ 61,251.

Oncor states that this filing has been served upon each party to Docket No. ER02-1654-000 and the Public Utility Commission of Texas.

*Comment Date:* July 1, 2002.

**Standard Paragraph**

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211

and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at <http://www.ferc.gov> using the "RIMS" link, select "Docket #" and follow the instructions (call 202-208-2222 for assistance). 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.,**

*Deputy Secretary.*

[FR Doc. 02-15820 Filed 6-21-02; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Sunshine Act Meeting

June 19, 2002.

The following notice of meeting is published pursuant to section 3(A) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C 552B:

**AGENCY HOLDING MEETING:** Federal Energy Regulatory Commission.

**DATE AND TIME:** June 26, 2002, 10 a.m.

**PLACE:** Room 2C, 888 First Street, NE., Washington, DC 20426.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Agenda.

**\*Note:** Items listed on the Agenda may be deleted without further notice.

**CONTACT PERSON FOR MORE INFORMATION:** Magalie R. Salas, Secretary, (202) 208-0400. For a recording listing items stricken from or added to the meeting, call (202) 208-1627.

This is a list of matter to be considered by the commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

#### 797TH—Meeting June 26, 2002; Regular Meeting 10 a.m.

##### Administrative Agenda

A-1.

Docket# AD02-1, 000, Agency Administrative Matters

A-2.

Docket# AD02-7, 000, Customer Matters, Reliability, Security and Market Operations

A-3.

Docket# AD02-19, 000, Market Performance Reports from ISO New England Inc., New York Independent System Operator, Inc., PJM Interconnection, L.L.C. and California Independent System Operator, Inc.

A-4.

Docket# RM01-12, 000, Electricity Market Design and Structure  
Other#s RT01-2, 000, PJM Interconnection, L.L.C., Allegheny Electric Cooperative, Inc., Atlantic City Electric Company, Baltimore Gas & Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, PECO Energy Company, Pennsylvania Electric Company, PPL Electric Utilities Corporation, Potomac Electric Power Company, Public Service Electric & Gas Company and UGI Utilities, Inc.

RT01-2, 001, PJM Interconnection, L.L.C., Allegheny Electric Cooperative, Inc., Atlantic City Electric Company, Baltimore Gas & Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, PECO Energy Company, Pennsylvania Electric Company, PPL Electric Utilities Corporation, Potomac Electric Power Company, Public Service Electric & Gas Company and UGI Utilities, Inc.

RT01-2, 002, PJM Interconnection, L.L.C., Allegheny Electric Cooperative, Inc., Atlantic City Electric Company, Baltimore Gas & Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, PECO Energy Company, Pennsylvania Electric Company, PPL Electric Utilities Corporation, Potomac Electric Power Company, Public Service Electric & Gas Company and UGI Utilities, Inc.

RT01-2, 003, PJM Interconnection, L.L.C., Allegheny Electric Cooperative, Inc., Atlantic City Electric Company, Baltimore Gas & Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, PECO Energy Company, Pennsylvania Electric Company, PPL Electric Utilities Corporation, Potomac Electric Power Company, Public Service Electric & Gas Company and UGI Utilities, Inc.

RT01-98, 000, PJM Interconnection, L.L.C.

RT01-87, 000, Midwest Independent System Operator

EL02-65, 000, Alliance Companies, Ameren Services Company (on behalf of: Union Electric Company and Central Illinois Public Service Company),

American Electric Power Service Corporation (on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company), The Dayton Power and Light Company, Exelon Corporation (on behalf of: Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc.) FirstEnergy Corp. (on behalf of: American Transmission Systems, Inc., The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company and The Toledo Edison Company), Illinois Power Company and Northern Indiana Public Service Company

EL02-65, 002, Alliance Companies, Ameren Services Company (on behalf of: Union Electric Company and Central Illinois Public Service Company), American Electric Power Service Corporation (on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company), The Dayton Power and Light Company, Exelon Corporation (on behalf of: Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc.) FirstEnergy Corp. (on behalf of: American Transmission Systems, Inc., The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company and The Toledo Edison Company), Illinois Power Company and Northern Indiana Public Service Company

EL02-65, 003, Alliance Companies, Ameren Services Company (on behalf of: Union Electric Company and Central Illinois Public Service Company), American Electric Power Service Corporation (on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company), The Dayton Power and Light Company, Exelon Corporation (on behalf of: Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc.) FirstEnergy Corp. (on behalf of: American Transmission Systems, Inc., The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company and The Toledo Edison Company), Illinois Power Company and Northern Indiana Public Service Company

EL02-65, 004, Alliance Companies, Ameren Services Company (on behalf of: Union Electric Company and Central Illinois Public Service Company), American Electric Power Service Corporation (on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan

- Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company), The Dayton Power and Light Company, Exelon Corporation (on behalf of: Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc.) FirstEnergy Corp. (on behalf of: American Transmission Systems, Inc., The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company and The Toledo Edison Company), Illinois Power Company and Northern Indiana Public Service Company
- EL02-65, 005, Alliance Companies, Ameren Services Company (on behalf of: Union Electric Company and Central Illinois Public Service Company), American Electric Power Service Corporation (on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company), The Dayton Power and Light Company, Exelon Corporation (on behalf of: Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc.) FirstEnergy Corp. (on behalf of: American Transmission Systems, Inc., The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company and The Toledo Edison Company), Illinois Power Company and Northern Indiana Public Service Company
- EL02-65, 006, Alliance Companies, Ameren Services Company (on behalf of: Union Electric Company and Central Illinois Public Service Company), American Electric Power Service Corporation (on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company), The Dayton Power and Light Company, Exelon Corporation (on behalf of: Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc.) FirstEnergy Corp. (on behalf of: American Transmission Systems, Inc., The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company and The Toledo Edison Company), Illinois Power Company and Northern Indiana Public Service Company
- Markets, Tariffs and Rates—Electric**
- E-1. Omitted
- E-2. Docket# ER02-1767, 000, Midwest Independent Transmission System Operator, Inc.  
Other#s ER01-3142, 007, Midwest Independent Transmission System Operator, Inc.
- E-3. Docket# ER02-1663, 000, Tampa Electric Company
- E-4. Omitted
- E-5. Omitted
- E-6. Docket# ER02-1755, 000, New England Power Pool
- E-7. Docket# ER02-1177, 000, Tampa Electric Company
- E-8. Omitted
- E-9. Omitted
- E-10. Docket# ER02-597, 000, PJM Interconnection, L.L.C.
- E-11. Docket# ER00-1969, 009, New York Independent System Operator, Inc.  
Other#s ER00-1969, 012, New York Independent System Operator, Inc.  
ER00-3591, 008, New York Independent System Operator, Inc.  
ER00-3591 010, New York Independent System Operator, Inc.
- E-12. Docket# ER02-1706, 000, PJM Interconnection, L.L.C.
- E-13. Docket# ER02-613, 001, San Diego Gas & Electric Company
- E-14. Docket# ER02-1710, 000, Southwest Power Pool, Inc.
- E-15. Docket# ER01-3009, 005, New York Independent System Operator, Inc.  
Other#s EL00-90, 005, New York Independent System Operator, Inc.  
EL00-90, 007, New York Independent System Operator, Inc.  
ER01-3009, 007, New York Independent System Operator, Inc.  
ER01-3153, 005, New York Independent System Operator, Inc.  
ER01-3153, 007, New York Independent System Operator, Inc.
- E-16. Docket# OA96-194, 008, Niagara Mohawk Power Corporation  
Other#s OA96-194, 009, Niagara Mohawk Power Corporation
- E-17. Docket# ER02-1266, 001, Niagara Mohawk Power Corporation
- E-18. Docket# ER02-637, 002, Pacific Gas & Electric Company
- E-19. Docket# TX97-8, 001, PECO Energy Company  
Other#s TX97-8, 000, PECO Energy Company
- E-20. Docket# ER99-230, 003, Alliant Services Company
- E-21. Docket# ER02-1021, 001, Ontario Energy Trading International Corporation
- E-22. Docket# EL02-11, 001, Central Maine Power Company
- E-23. Omitted
- E-24. Docket# ER97-2353, 003, New York State Electric & Gas Corporation
- E-25. Docket# EL01-19, 001, H.Q. Energy Services (U.S.), Inc. v. New York Independent System Operator, Inc.  
Other#s EL02-16, 001, PSEG Energy Resource & Trade LLC v. New York Independent System Operator, Inc.
- E-26. Docket# ER01-3149, 001, Nevada Power Company
- E-27. Omitted
- E-28. Docket# EL00-62, 043, ISO New England  
Other#s ER98-3853, 012, New England Power Pool  
ER98-3853, 013, New England Power Pool  
EL00-62, 044, ISO New England
- E-29. Docket# ER02-977, 001, Wisconsin Power & Light Company
- E-30. Docket# EL02-85, 000, Central Illinois Generation, Inc.
- E-31. Docket# EL02-63, 000, Constellation Power Source, Inc. v. California Power Exchange Corporation
- E-32. Docket# EL02-80, 000, PacifiCorp v. Reliant Energy Services, Inc., Morgan Stanley Capital Group, Inc., Williams Energy Marketing & Trading Company, El Paso Merchant Energy, L.P. and Enron Power Marketing, Inc.  
Other#s EL02-81, 000, PacifiCorp v. Reliant Energy Services, Inc., Morgan Stanley Capital Group, Inc., Williams Energy Marketing & Trading Company, El Paso Merchant Energy, L.P. and Enron Power Marketing, Inc.  
EL02-82, 000, PacifiCorp v. Reliant Energy Services, Inc., Morgan Stanley Capital Group, Inc., Williams Energy Marketing & Trading Company, El Paso Merchant Energy, L.P. and Enron Power Marketing, Inc.  
EL02-83, 000, PacifiCorp v. Reliant Energy Services, Inc., Morgan Stanley Capital Group, Inc., Williams Energy Marketing & Trading Company, El Paso Merchant Energy, L.P. and Enron Power Marketing, Inc.  
EL02-84, 000, PacifiCorp v. Reliant Energy Services, Inc., Morgan Stanley Capital Group, Inc., Williams Energy Marketing & Trading Company, El Paso Merchant Energy, L.P. and Enron Power Marketing, Inc.
- E-33. Docket# EL02-89, 000, Tenaska Power Services Company v. Southwest Power Pool, Inc.
- E-34. Docket# EG02-127, 000, CED Rock Springs, Inc.  
Other#s EG02-129, 000, Rock Springs Generation, L.L.C.
- E-35. Docket# ER97-1523, 011, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power

- Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and New York Power Pool  
 Other#s OA97-470, 010, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and New York Power Pool  
 OA97-470, 017, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and New York Power Pool  
 OA97-470, 018, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and New York Power Pool  
 ER97-1523, 018, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and New York Power Pool  
 ER97-1523, 019, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and New York Power Pool  
 ER97-4234, 008, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and New York Power Pool  
 ER97-4234, 015, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and New York Power Pool  
 ER97-4234, 016, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and New York Power Pool  
 E-36.
- Docket# ER02-136, 003, Allegheny Power  
 Other#s ER02-454, 000, Allegheny Power  
 ER02-454, 001, Allegheny Power  
 ER02-454, 002, Allegheny Power  
 ER02-454, 003, Allegheny Power  
 E-37.  
 Docket# ER02-1422, 000, Midwest Independent Transmission System Operator, Inc.  
 Other#s ER02-1422, 001, Midwest Independent Transmission System Operator, Inc.  
 ER02-1422, 002, Midwest Independent Transmission System Operator, Inc.  
 ER02-1842, 000, Midwest Independent Transmission System Operator, Inc.  
 E-38.  
 Docket# EL01-94, 000, Rumford Power Associates, L.P. v. Central Maine Power Company  
 Other#s EL01-94, 001, Rumford Power Associates, L.P. v. Central Maine Power Company  
 E-39.  
 Omitted  
 E-40.  
 Docket# EC02-49, 000, The Cleveland Electric Illuminating Company, The Toledo Edison Company, FirstEnergy Ventures Corporation and Bay Shore Power Company  
 Other#s EL02-96, 000, NRG Northern Ohio Generating LLC, NRG Ashtabula Generating LLC and NRG Lakeshore Generating LLC
- Miscellaneous Agenda**  
 M-1.  
 Omitted
- Markets, Tariffs and Rates—Gas**  
 G-1.  
 Docket# RP02-259, 000, Algonquin Gas Transmission Company  
 G-2.  
 Docket# RP02-260, 000, Algonquin LNG, Inc.  
 G-3.  
 Docket# RP02-356, 000, Canyon Creek Compression Company  
 G-4.  
 Docket# RP02-252, 000, Columbia Gulf Transmission Company  
 G-5.  
 Omitted  
 G-6.  
 Docket# RP02-246, 000, Dominion Transmission, Inc.  
 G-7.  
 Docket# RP02-262, 000, East Tennessee Natural Gas Company  
 G-8.  
 Docket# RP02-264, 000, Egan Hub Partners, L.P.  
 G-9.  
 Docket# RP02-233, 000, Florida Gas Transmission Company  
 G-10.  
 Docket# RP02-237, 000, Kern River Gas Transmission Company  
 G-11.  
 Docket# RP02-265, 000, Maritimes & Northeast Pipeline, L.L.C.  
 G-12.  
 Docket# RP02-319, 000, National Fuel Gas Supply Corporation
- G-13.  
 Docket# RP02-279, 000, Tennessee Gas Pipeline Company  
 G-14.  
 Docket# RP02-263, 000, Texas Eastern Transmission, LP  
 G-15.  
 Docket# RP02-307, 000, Texas Gas Transmission Corporation  
 G-16.  
 Docket# RP02-236, 000, Transwestern Pipeline Company  
 G-17.  
 Docket# RP02-347, 000, Williston Basin Interstate Pipeline Company  
 G-18.  
 Docket# RP96-389, 052, Columbia Gulf Transmission Company  
 G-19.  
 Docket# RP02-254, 000, Columbia Gas Transmission Corporation  
 G-20.  
 Omitted  
 G-21.  
 Docket# RP91-203, 072, Tennessee Gas Pipeline Company  
 Other#s RP92-132, 060, Tennessee Gas Pipeline Company  
 G-22.  
 Docket# PR02-1, 000, Acacia Natural Gas Corporation  
 Other#s PR02-1, 001, Acacia Natural Gas Corporation  
 G-23.  
 Docket# RP98-430, 002, Transcontinental Gas Pipe Line Corporation  
 G-24.  
 Docket# GP02-3, 000, Railroad Commission of Texas  
 G-25.  
 Docket# CP00-6, 004, Gulfstream Natural Gas System, L.L.C.  
 Other#s CP00-6, 005, Gulfstream Natural Gas System, L.L.C.  
 G-26.  
 Docket# RP00-333, 000, Crossroads Pipeline Company  
 Other#s RP00-333, 001, Crossroads Pipeline Company  
 RP01-51, 001, Crossroads Pipeline Company  
 RP01-51, 000, Crossroads Pipeline Company  
 G-27.  
 Docket# RP00-474, 000, Maritimes & Northeast Pipeline, L.L.C.  
 Other#s RP01-17, 000, Maritimes & Northeast Pipeline, L.L.C.  
 RP01-17, 002, Maritimes & Northeast Pipeline, L.L.C.  
 G-28.  
 Docket# RP02-346, 000, CMS Trunkline Gas Company, L.L.C.  
 G-29.  
 Docket# RP00-346, 000, Dauphin Island Gathering Partners  
 Other#s RP01-16, 000, Dauphin Island Gathering Partners  
 G-30.  
 Docket# RP02-235, 000, Northern Natural Gas Company  
 G-31.  
 Omitted  
 G-32.  
 Docket# RP02-345, 000, Tennessee Gas Pipeline Company

- G-33.  
Docket# RP00-459, 000, TransColorado Gas Transmission Company  
Other#s RP01-32, 000, TransColorado Gas Transmission Company  
RP01-477, 000, TransColorado Gas Transmission Company  
RP02-5, 000, TransColorado Gas Transmission Company
- G-34.  
Docket# RP02-339, 000, Transcontinental Gas Pipe Line Corporation
- G-35.  
Docket# RP97-288, 020, Transwestern Pipeline Company
- G-36.  
Docket# RP00-494, 000, Williams Gas Pipelines Central, Inc.  
Other#s RP01-13, 000, Williams Gas Pipelines Central, Inc.  
RP01-13, 001, Williams Gas Pipelines Central, Inc.
- G-37.  
Docket# RP00-475, 000, CMS Trunkline Gas Company, LLC  
Other#s RP96-126, 000, CMS Trunkline Gas Company, LLC  
RP00-609, 000, CMS Trunkline Gas Company, LLC  
RP00-609, 001, CMS Trunkline Gas Company, LLC
- G-38.  
Omitted
- G-39.  
Omitted
- G-40.  
Docket# OR01-6, 000, West Shore Pipe Line Company
- G-41.  
Omitted
- G-42.  
Docket# RP02-118, 002, High Island Offshore System, L.L.C.  
Other#s RP02-118, 001, High Island Offshore System, L.L.C.
- G-43.  
Docket# RP00-341, 003, Egan Hub Partners, L.P.  
Other#s RP01-48, 002, Egan Hub Partners, L.P.
- G-44.  
Docket# RM96-1, 021, Standards for Business Practices of Interstate Natural Gas Pipelines
- G-45.  
Docket# OR97-1, 000, Rio Grande Pipeline Company
- G-46.  
Docket# OR95-7, 002, Longhorn Partners Pipeline, L.P.

#### Energy Project—Hydro

- H-1.  
Docket# P-184, 087, El Dorado Irrigation District  
Other#s P-184, 086, EL Dorado Irrigation District
- H-2.  
Docket# P-2077, 022, USGen New England, Inc.
- H-3.  
Docket# P-11873, 001, Symbiotics, LLC
- H-4.  
Docket# P-11911, 001, Symbiotics, LLC
- H-5.  
Docket# P-2869, 010, Village of Potsdam, New York

- H-6.  
Docket# P-2114, 107, Pat Kelleher v. Public Utility District No. 2 of Grant County, Washington
- H-7.  
Docket# EL99-26, 002, Hydro Investors, Inc. v. Trafalgar Power Inc., Christine Falls of New York, Inc., Franklin Industrial Complex, Inc., Aetna Life Insurance Company, Algonquin Power Corporation, Algonquin Power Income Fund and Algonquin Power Fund (Canada)  
Other#s EL02-10 001 Hydro Investors, Inc. v. Trafalgar Power Inc., Christine Falls of New York, Inc., Franklin Industrial Complex, Inc., Aetna Life Insurance Company, Algonquin Power Corporation, Algonquin Power Income Fund and Algonquin Power Fund (Canada)  
P-4900, 070, Trafalgar Power, Inc.  
P-5000, 066, Trafalgar Power, Inc.  
P-6878, 011, Trafalgar Power, Inc.  
P-9685, 027, Trafalgar Power, Inc.  
P-9709, 058, Trafalgar Power, Inc.  
P-9821, 098, Trafalgar Power, Inc.  
P-4639, 028, Christine Falls of New York, Inc.  
P-3760, 012, Franklin Industrial Complex, Inc.

#### Energy Projects—Certificates

- C-1.  
Docket# CP02-46, 000, Tennessee Gas Pipeline Company  
Other#s CP02-44, 000, Dominion Transmission, Inc.  
CP02-47, 000, Dominion Transmission, Inc. and Tennessee Gas Pipeline Company  
CP02-48, 000, National Fuel Gas Supply Corporation and Tennessee Gas Pipeline Company  
CP02-53, 000, National Fuel Gas Supply Corporation and Tennessee Gas Pipeline Company
- C-2.  
Docket# CP02-24, 000, PG&E Gas Transmission, Northwest Corporation
- C-3.  
Docket# CP02-32, 000, Texas Eastern Transmission, LP
- C-4.  
Docket# CP01-1, 001, Colorado Interstate Gas Company
- C-5.  
Docket# CP02-56, 000, Southern Natural Gas Company  
Other#s CP02-57, 000, SCG Pipeline, Inc.  
CP02-58, 000, SCG Pipeline, Inc.  
CP02-59, 000, SCG Pipeline, Inc.
- C-6.  
Docket# CP01-427, 001, Dominion Transmission, Inc.
- C-7.  
Docket# CP02-4, 001, Northwest Pipeline Corporation  
Other#s CP02-4, 000, Northwest Pipeline Corporation
- C-8.

Docket# CP97-319, 004, ANR Pipeline Company

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02-15957 Filed 6-20-02; 8:45 am]

**BILLING CODE 6717-01-P**

#### ENVIRONMENTAL PROTECTION AGENCY

[FRL-7236-9]

#### California State Motor Vehicle Pollution Control Standards; LEVII Amendments, 1999 ZEV Amendments, and 2001 ZEV Amendments; Correction Notice Regarding Hearing Date

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of opportunity for public hearing and comment.

**SUMMARY:** The California Air Resources Board has notified EPA that it has adopted amendments to its Low-Emission Vehicle (LEV) regulations including amendments to its exhaust emission standards, evaporative emission standards, its certification requirements, and to its Zero-Emission-Vehicle (ZEV) program (collectively the "LEVII amendments"; the ZEV amendments are to be referred to as the "1999 ZEV amendments"). On May 21, 2002 EPA announced an opportunity for public hearing and comment on the LEVII and 1999 ZEV amendments (67 FR 35809). Within this announcement EPA scheduled a tentative hearing for June 20, 2002 and the written comment period is scheduled to close on July 22, 2002. By today's notice EPA is announcing that the June 20, 2002 hearing has been rescheduled to July 11, 2002 and the written comment period will now close on August 12, 2002. In a related matter, CARB notified EPA that it has adopted additional amendments to its ZEV program referred to as the "2001 ZEV amendments." On June 5, 2002 EPA announced an opportunity for public hearing and comment on the 2001 ZEV amendments (67 FR 38652). Within this later announcement EPA scheduled a tentative hearing to also take place on June 20, 2002 and the written comment period is also scheduled to close on July 22, 2002. By today's notice EPA is announcing that the June 20, 2002 hearing has been rescheduled to July 11, 2002 (for the 2001 ZEV amendments along with the LEVII and 1999 ZEV amendments) and the written comment period will now close on August 12, 2002 (for the 2001 ZEV amendments

along with the LEVII and 1999 ZEV amendments).

**DATES:** EPA has scheduled a public hearing concerning the 1999 ZEV amendments, the LEVII amendments, and the 2001 ZEV amendments on July 11, 2002 beginning at 10 a.m. It is not necessary to request a hearing regarding any of these matters. Any party may submit written comment concerning the 1999 ZEV amendments, the LEVII amendments, and the 2001 ZEV amendments by August 12, 2002.

**ADDRESSES:** EPA will make available for public inspection at the Air and Radiation Docket and Information Center written comments received from interested parties, in addition to any testimony given at the public hearing. The Air Dockets is open during working hours from 8 a.m. to 4 p.m. at EPA, Air Docket (6102), Room M-1500, Waterside Mall, 401 M St., SW, Washington, DC 20460. The reference number for this docket is A-2002-11. EPA will hold the public hearing on July 11, 2002 in room 1153, 1200 Constitution Ave, NW (referred to as "EPA East"), Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** David Dickinson, Certification and Compliance Division (6405J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave, NW, Washington, DC 20460. Telephone: (202)564-9256, Fax: (202)565-2057, e-mail address: [Dickinson.David@EPA.GOV](mailto:Dickinson.David@EPA.GOV).

Dated: June 18, 2002.

**Robert Brenner,**

*Acting Assistant Administrator for Air and Radiation.*

[FR Doc. 02-15875 Filed 6-21-02; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

**Office of Research and Development**  
[FRL-7236-4]

### Ambient Air Monitoring Reference and Equivalent Methods: Designation of a New Reference Method for CO and a New Equivalent Method for O<sub>3</sub>

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of designation of new reference and equivalent methods for ambient air monitoring.

**SUMMARY:** Notice is hereby given that the Environmental Protection Agency (EPA) has designated, in accordance with 40 CFR part 53, a new reference method for measuring concentrations of CO in ambient air and a new equivalent

method for measuring concentrations of O<sub>3</sub> in ambient air.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Hunike, Human Exposure and Atmospheric Sciences Division (MD-D205-03), National Exposure Research Laboratory, U.S. EPA, Research Triangle Park, North Carolina 27711, Phone: (919) 541-3737, e-mail: [Hunike.Elizabeth@epa.gov](mailto:Hunike.Elizabeth@epa.gov).

**SUPPLEMENTARY INFORMATION:** In accordance with regulations at 40 CFR part 53, the EPA evaluates various methods for monitoring the concentrations of those ambient air pollutants for which EPA has established National Ambient Air Quality Standards (NAAQSs), set forth in 40 CFR part 50. Monitoring methods that are determined to meet specific requirements for adequacy are designated by the EPA as either reference methods or equivalent methods (as applicable), thereby permitting their use under 40 CFR part 58 by States and other agencies for determining attainment of the NAAQSs.

The EPA hereby announces the designation of one new reference method for measuring concentrations of carbon monoxide (CO) in ambient air and one new equivalent method for measuring concentrations of ozone (O<sub>3</sub>) in ambient air. These designations are made under the provisions of 40 CFR part 53, as amended on July 18, 1997 (62 FR 38764).

The new reference method for CO is an automated method that utilizes the measurement principle based on non-dispersive infra-red absorption photometry (combined with gas filter correlation) and the calibration procedure specified in appendix C of 40 CFR part 50. The newly designated reference method is identified as follows: RFCA-0206-147, "Environnement S.A Model CO12M Gas Filter Correlation Carbon Monoxide Analyzer," operated with a full scale range of 0-50 ppm, at any temperature in the range of 10 °C to 35 °C, on a nominal power line voltage of 115 Vac (50 or 60 Hz) or 230 Vac (50 Hz), with a 5-micron PTFE sample particulate filter, with response time ON, and with the automatic "ZERO-REF" cycle either ON or OFF.

An application for a reference method determination for this method was received by the EPA on February 8, 2002. The method is available commercially from the applicant, Environnement S.A, 111, Boulevard Robespierre, 78304 Poissy, France (<http://www.environnement-sa.com>).

The new equivalent method for O<sub>3</sub> is an automated method that utilizes a

measurement principle based on non-dispersive ultraviolet absorption photometry. The newly designated reference method is identified as follows:

EQOA-0206-148, "Environnement S.A Model O<sub>3</sub>42M UV Photometric Ozone Analyzer," operated with a full scale range of 0-500 ppb, at any temperature in the range of 10 °C to 35 °C, on a nominal power line voltage of 115 Vac (50 or 60 Hz) or 230 Vac (50 Hz), with a 5-micron PTFE sample particulate filter, with response time setting of 11 (Automatic response time), and with or without any of the following options:

- (a) Internal ozone generator,
- (b) Span external control (zero/span solenoid valve).

An application for an equivalent method determination for this method was received by the EPA on November 13, 2001. The method is available commercially from the applicant, Environnement S. A., 111, Boulevard Robespierre, 78304 Poissy, France (<http://www.environnement-sa.com>).

Test analyzers representative of each of these methods have been tested by the applicant in accordance with the applicable test procedures specified in 40 CFR part 53 (as amended on July 18, 1997). After reviewing the results of those tests and other information submitted by the applicant, EPA has determined, in accordance with part 53, that these methods should be designated as a reference method and an equivalent method, respectively. The information submitted by the applicant will be kept on file, either at EPA's National Exposure Research Laboratory, Research Triangle Park, North Carolina 27711 or in an approved archive storage facility, and will be available for inspection (with advance notice) to the extent consistent with 40 CFR part 2 (EPA's regulations implementing the Freedom of Information Act).

As a designated reference or equivalent method, each of these methods is acceptable for use by states and other air monitoring agencies under the requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the operation or instruction manual associated with the method and subject to any specifications and limitations (e.g., configuration, sample period, or temperature range) specified in the applicable designation method description (see the identification of the methods above). Use of the method should also be in general accordance with the guidance and recommendations of applicable sections

of the "Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II, EPA/600/R-94/0386."

Vendor modifications of a designated reference or equivalent method used for purposes of part 58 are permitted only with prior approval of the EPA, as provided in part 53. Provisions concerning modification of such methods by users are specified under section 2.8 of appendix C to 40 CFR part 58 (Modifications of Methods by Users).

In general, a method designation applies to any sampler or analyzer which is identical to the sampler or analyzer described in the application for designation. In some cases, similar samplers or analyzers manufactured prior to the designation may be upgraded or converted (e.g., by minor modification or by substitution of the approved operation or instruction manual) so as to be identical to the designated method and thus achieve designated status. The manufacturer should be consulted to determine the feasibility of such upgrading or conversion.

Part 53 requires that sellers of designated reference or equivalent method analyzers or samplers comply with certain conditions. These conditions are specified in 40 CFR 53.9 and are summarized below:

(a) A copy of the approved operation or instruction manual must accompany the sampler or analyzer when it is delivered to the ultimate purchaser.

(b) The sampler or analyzer must not generate any unreasonable hazard to operators or to the environment.

(c) The sampler or analyzer must function within the limits of the applicable performance specifications given in 40 CFR parts 50 and 53 for at least one year after delivery when maintained and operated in accordance with the operation or instruction manual.

(d) Any sampler or analyzer offered for sale as part of a reference or equivalent method must bear a label or sticker indicating that it has been designated as part of a reference or equivalent method in accordance with part 53 and showing its designated method identification number.

(e) If such an analyzer has two or more selectable ranges, the label or sticker must be placed in close proximity to the range selector and indicate which range or ranges have been included in the reference or equivalent method designation.

(f) An applicant who offers samplers or analyzers for sale as part of a reference or equivalent method is required to maintain a list of ultimate purchasers of such samplers or

analyzers and to notify them within 30 days if a reference or equivalent method designation applicable to the method has been canceled or if adjustment of the sampler or analyzer is necessary under 40 CFR 53.11(b) to avoid a cancellation.

(g) An applicant who modifies a sampler or analyzer previously designated as part of a reference or equivalent method is not permitted to sell the sampler or analyzer (as modified) as part of a reference or equivalent method (although it may be sold without such representation), nor to attach a designation label or sticker to the sampler or analyzer (as modified) under the provisions described above, until the applicant has received notice under 40 CFR 53.14(c) that the original designation or a new designation applies to the method as modified, or until the applicant has applied for and received notice under 40 CFR 53.8(b) of a new reference or equivalent method determination for the sampler or analyzer as modified.

(h) An applicant who offers PM<sub>2.5</sub> samplers for sale as part of a reference or equivalent method is required to maintain the manufacturing facility in which the sampler is manufactured as an ISO 9001-certified facility.

(i) An applicant who offers PM<sub>2.5</sub> samplers for sale as part of a reference or equivalent method is required to submit annually a properly completed Product Manufacturing Checklist, as specified in part 53.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, Human Exposure and Atmospheric Sciences Division (MD-E205-01), National Exposure Research Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of these reference and equivalent methods is intended to assist the States in establishing and operating their air quality surveillance systems under 40 CFR part 58. Questions concerning the commercial availability or technical aspects of either of the methods should be directed to the applicant.

Dated: June 12, 2002.

**Jewel F. Morris,**

*Acting Director, National Exposure Research Laboratory.*

[FR Doc. 02-15877 Filed 6-21-02; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[OPP-2002-0116; FRL-7184-1]

### Systems Integration Group, Inc. and Micrographics Specialties, Inc.; Transfer of Data

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be transferred to Systems Integration Group, Inc. and its subcontractor, Micrographics Specialties, Inc., in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). Systems Integration Group, Inc. and its subcontractor, Micrographics Specialties, Inc., have been awarded a contract to perform work for OPP, and access to this information will enable Systems Integration Group, Inc. and its subcontractor, Micrographics Specialties, Inc., to fulfill the obligations of the contract.

**DATES:** Systems Integration Group, Inc. and its subcontractor, Micrographics Specialties, Inc., will be given access to this information on or before July 1, 2002.

**FOR FURTHER INFORMATION CONTACT:** By mail: Erik R. Johnson, FIFRA Security Officer, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305-7248; e-mail address: johnson.erik@epa.gov.

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this Action Apply to Me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>. To access this document, on the Home Page select "Laws and Regulations" "Regulations and Proposed Rules," and then look up the entry for this document under the "Federal Register—Environmental Documents." You can also go directly to the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>.

## II. Contractor Requirements

Under Contract No. GS-35F-4713G, Order Number: 2W-0808-NBSX, Systems Integration Group, Inc. and its subcontractor, Micrographics Specialties, Inc., will perform the following:

The Pesticide Document Management System (PDMS) and the Pesticide Product Information System (PPIS) both consist of an ADP index and a collection of images either on microfiche or in electronic form. The ADP index for each system is maintained under a separate contract. The purpose of this task order is to: (1) Provide image production support for both PDMS and PPIS. This support involves the creation of images of registrant submitted studies, other selected pesticide documents, as well as pesticide labels, and associated label accepted memoranda; (2) provide image printing, fiche blowback, fiche reproduction, and photocopying services for both PDMS and PPIS, and to provide inventory control over microfiche and image collections; and (3) provide image production for supplementary documents such as toxicology reviews, incident reports, maintenance fee records, and docket documents.

OPP has determined that access by Systems Integration Group, Inc. and its subcontractor, Micrographics Specialties, Inc., to information on all pesticide chemicals is necessary for the performance of this contract.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with Systems Integration Group, Inc. and its subcontractor, Micrographics Specialties, Inc., prohibits use of the information for any purpose not

specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, Systems Integration Group, Inc. and its subcontractor, Micrographics Specialties, Inc., are required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to Systems Integration Group, Inc. and its subcontractor, Micrographics Specialties, Inc., until the requirements in this document have been fully satisfied. Records of information provided to Systems Integration Group, Inc. and its subcontractor, Micrographics Specialties, Inc., will be maintained by EPA Project Officers for this contract. All information supplied to Systems Integration Group, Inc. and its subcontractor, Micrographics Specialties, Inc., by EPA for use in connection with this contract will be returned to EPA when Systems Integration Group, Inc. and its subcontractor, Micrographics Specialties, Inc., have completed their work.

## List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: June 13, 2002.

**Linda Vlier Moos,**

*Acting Director, Information Resources and Services Division, Office of Pesticide Programs.*

[FR Doc. 02-15880 Filed 6-21-02; 8:45 am]

**BILLING CODE 6560-50-S**

## ENVIRONMENTAL PROTECTION AGENCY

[OPP-2002-0032; FRL-7184-3]

### 1, 4-Bis(bromoacetoxy)-2-butene; Notice of Receipt of Request to Amend Certain Pesticide Products

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of a request from Buckman Laboratories International, Inc., the sole registrant, to

amend its registration of products containing 1, 4-bis(bromoacetoxy)-2-butene (Bis-2) to terminate use as a preservative in water-based coatings and paints as well as the use as an anti-coagulant in oil field, oil secondary (enhanced) recovery systems. EPA intends to grant the request to amend the registrations to terminate these uses at the end of the 30-day comment period initiated by this Notice unless the Agency receives substantive comments that would merit further review of this request. Upon acceptance of the request to amend the registrations to terminate uses, any sale, distribution, or use of products listed in this notice will be permitted only if distribution, sale, or use is consistent with the terms as described in this notice.

**DATES:** Comments must be received on or before July 24, 2002.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the

**SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify the docket ID number OPP-2002-0032 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Killian Swift, Antimicrobial Division (7510C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Office location for commercial courier delivery, telephone number, and e-mail address: Room 308, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202; (703) 308-6346; e-mail: [swift.killian@epa.gov](mailto:swift.killian@epa.gov).

**SUPPLEMENTARY INFORMATION:** This announcement consists of five parts. The first part contains general information. The second part discusses the registrant's request for registration amendments to terminate uses of the affected products. The third part describes the action taken by this notice. The fourth part describes the Agency's legal authority for the action announced in this notice. The fifth part proposes existing stocks provisions that the Agency intends to authorize.

## I. General Information

### A. Does this Action Apply to Me?

This action is directed to the public in general. You potentially may be affected by this action if you use water-based coating or paints or work with oil field, oil secondary (enhanced) recovery systems. The Congressional Review Act U.S.C. 801 *et seq.*, as added by the Small

Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3). Since other entities also may be interested, the Agency has not attempted to describe all specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Electronically.* You may obtain electronic copies of this document, and certain 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 also can go to the **Federal Register** listings directly at <http://www.epa.gov/fedrgrstr/>.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to [opp-docket@epa.gov](mailto:opp-docket@epa.gov), or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/9.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPP–2002–0032. Electronic comments also may be filed online at many Federal Depository Libraries.

*C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0032 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: [opp-docket@epa.gov](mailto:opp-docket@epa.gov), or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/9.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPP–2002–0032. Electronic comments also may be filed online at many Federal Depository Libraries.

*D. How Should I Handle CBI that I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line of your response. You also may provide the name, date, and **Federal Register** citation.

**II. Background on the Receipt of Request to Amend Registrations to Terminate Uses**

The sole registrant of 1, 4-bis(bromoacetoxy)-2-butene (Bis-2), has voluntarily requested EPA to amend the registration of the Bis-2 Technical Grade Active Ingredient, "BBAB" (EPA Registration No. 1447–374) and its End Use Product "Busan 1210" (EPA Registration No. 1448–353) to terminate two of their three uses. The letter from Buckman Laboratories International, Inc. was dated March 22, 2002 and was received by EPA on March 27, 2002. The letter included a waiver of the 180-day comment period. The letter requested that the Agency amend the registrations to terminate the use of Bis-2 products as preservatives in water-based coatings and paints as well as the use as anti-coagulants in oil field, oil secondary (enhanced) recovery systems. The registrant did not request an existing stocks provision. Bis-2 products would remain registered for use as an anti-coagulant in pulp and paper mill systems process (cleaning) water.

**III. What Action is the Agency Taking?**

This notice announces receipt by the Agency, under section 6(f)(1) of FIFRA from the sole registrant of Bis-2 pesticide products of a request to amend its Bis-2 registrations to terminate the use of Bis-2 products as preservatives in water-based coatings and paints as well as anti-coagulants in oil field, oil secondary (enhanced) recovery systems.

## REGISTRATIONS INVOLVED IN THE REQUEST FOR AMENDMENTS TO TERMINATE USES

| Registration Number                          | Product Name                       |
|----------------------------------------------|------------------------------------|
| 1448-353 (End-use product)                   | Busan 1210 (80% active ingredient) |
| 1448-374 (Technical grade active ingredient) | BBAB (95% active ingredient)       |

**IV. The Agency's Authority for Taking this Action**

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that a pesticide registration of the registrant be canceled or amended to terminate one or more uses. The Act further provides that before acting on the request, EPA must publish a notice of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

**V. Provisions for Disposition of Existing Stocks**

In any order in response to this request for amendment to terminate uses, the Agency proposes to include the following provisions for treatment of any existing stocks of the products identified in the Table above:

All distribution, sale, or use by the registrant of existing stocks of affected manufacturing use and end-use products that bear the terminated uses will be unlawful under FIFRA effective 1 year from the Agency's receipt of the request for amendments to terminate uses. Any stocks of such products not in the hands of the registrant may continue to be sold, distributed, and used until such stocks are exhausted. For purposes of the cancellation order that the Agency intends to issue at the close of the comment period for this announcement, the term "existing stocks" will be defined, pursuant to EPA's existing stocks policy at 56 FR 29362, Wednesday, June 26, 1991, as those stocks of a registered pesticide product which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation or amendment. Any distribution, sale, or use of existing stocks after the effective date of the cancellation order that is not consistent with the terms of that order will be considered a violation of section 12(a)(2)(K) and/or 12(a)(1)(A) of FIFRA, unless it is for purposes of shipping

such stocks for relabeling, repackaging, export consistent with the requirements of section 17 of FIFRA, or disposal.

**List of Subjects**

Environmental protection, Pesticides and pests.

Dated: June 17, 2002.

**Frank Sanders,**

*Director, Antimicrobial Division, Office of Pesticide Programs.*

[FR Doc. 02-15879 Filed 6-21-02; 8:45 am]

BILLING CODE 6560-50-S

**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-7236-7]

**Notice of Proposed Purchaser Agreement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; request for public comment.

**SUMMARY:** In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. 9601-9675, notice is hereby given that a proposed purchaser agreement ("Purchaser Agreement") associated with the Franklin Smelting Site in Philadelphia, Pennsylvania was executed by the Environmental Protection Agency and the Department of Justice and is now subject to public comment, after which the United States may modify or withdraw its consent if comments received disclose facts or considerations which indicate that the Purchaser Agreement is inappropriate, improper, or inadequate. The Purchaser Agreement would resolve certain potential EPA claims under section 107 of CERCLA, 42 U.S.C. 9607, against PIDC Local Development Corporation ("Purchaser"). The settlement would require the Purchaser to, among other things, pay the sum of \$5,000 to the EPA Hazardous Substance Superfund, provide an irrevocable right of access to EPA, and record notice of the agreement in the local land records. This Purchaser Agreement was negotiated and signed by the proposed purchaser prior to the enactment, in January 2002, of Public Law 107-118, the Small Business

Liability Relief and Brownfields Revitalization Act.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed Purchaser Agreement. The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

**DATES:** Comments must be submitted on or before July 24, 2002.

**ADDRESSES:** The proposed Purchaser Agreement and additional background information relating to the proposed Purchaser Agreement are available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103. A copy of the proposed Purchaser Agreement may be obtained from Andrew S. Goldman (3RC41), U.S. Environmental Protection Agency, 1650 Arch Street Philadelphia, PA 19103. Comments should reference the "Franklin Smelting Site Prospective Purchaser Agreement" and "EPA Docket No. CERCLA-03-2001-0270," and should be forwarded to Andrew S. Goldman at the address below or through electronic mail at [goldman.andrew@epa.gov](mailto:goldman.andrew@epa.gov).

**FOR FURTHER INFORMATION CONTACT:**

Andrew S. Goldman (3RC41), Sr. Assistant Regional Counsel, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103, Phone: (215) 814-2487.

Dated: June 17, 2002.

**Thomas C. Voltaggio,**

*Acting Regional Administrator, Region III.*

[FR Doc. 02-15878 Filed 6-21-02; 8:45 am]

BILLING CODE 6560-50-U

**FEDERAL EMERGENCY MANAGEMENT AGENCY**

[FEMA-1418-DR]

**Indiana; Major Disaster and Related Determinations**

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Indiana (FEMA-1418-DR), dated June 13, 2002, and related determinations.

**EFFECTIVE DATE:** June 13, 2002.

**FOR FURTHER INFORMATION CONTACT:** Rich Robuck, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency,

Washington, DC 20472, (202) 646-2705 or *Rich.Robuck@fema.gov*.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated June 13, 2002, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121-5206 (Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Indiana, resulting from severe storms, tornadoes and flooding beginning April 28, 2002, through June 7, 2002, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5206 (Stafford Act). I, therefore, declare that such a major disaster exists in the State of Indiana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas, and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and the Individual and Family Grant program will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Gracia Szczech of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Indiana to have been affected adversely by this declared major disaster:

Dubois, Gibson, Hamilton, Marion, Martin, Pike, Posey, and Vigo Counties for Individual Assistance.

Brown, Crawford, Dearborn, Dubois, Franklin, Gibson, Greene, Jackson, Jefferson, Johnson, Knox, Martin, Montgomery, Ohio, Orange, Owen, Parke, Pike, Posey, Putnam, Sullivan, Switzerland, Union, Vermillion, Vigo, and Washington Counties for Public Assistance.

All counties within the State of Indiana are eligible to apply for

assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

**Joe M. Allbaugh,**  
*Director.*

[FR Doc. 02-15811 Filed 6-21-02; 8:45 am]

**BILLING CODE 6718-02-P**

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA-1411-DR]**

### Virginia; Amendment No. 3 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the Commonwealth of Virginia, (FEMA-1411-DR), dated May 5, 2002, and related determinations.

**EFFECTIVE DATE:** June 17, 2002.

**FOR FURTHER INFORMATION CONTACT:** Rich Robuck, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705 or *Rich.Robuck@fema.gov*.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the Commonwealth of Virginia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 5, 2002: The counties of Halifax, Pittsylvania, Prince George, Scott and Wise, and the independent City of Emporia for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing

Program; 83.548, Hazard Mitigation Grant Program.)

**Joe M. Allbaugh,**  
*Director.*

[FR Doc. 02-15810 Filed 6-21-02; 8:45 am]

**BILLING CODE 6718-02-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 July 8, 2002.

**A. Federal Reserve Bank of Dallas**  
(W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Conger Family Partnership, Ltd.*, Houston, Texas, and Sidney B. and Jean C. Conger, Houston, Texas, as general partners; to retain voting shares of Paris Bancshares, Inc., Paris, Texas, and thereby indirectly retain voting shares of Liberty National Bank, Paris, Texas.

Board of Governors of the Federal Reserve System, June 18, 2002.

**Robert deV. Frierson,**  
*Deputy Secretary of the Board.*

[FR Doc. 02-15809 Filed 6-21-02; 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/](http://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 July 18, 2002.

**A. Federal Reserve Bank of Philadelphia** (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. *Berkshire Financial Holdings, Inc.*, Collegeville, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of USABancshares.com, Inc., Philadelphia, Pennsylvania.

Board of Governors of the Federal Reserve System, June 18, 2002.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 02–15808 Filed 6–21–02; 8:45 am]

**BILLING CODE 6210–01–S**

## FEDERAL TRADE COMMISSION

### Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires

persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

| Transaction No.                                          | Acquiring person                         | Acquired person                         | Acquired entities                                                                                            |
|----------------------------------------------------------|------------------------------------------|-----------------------------------------|--------------------------------------------------------------------------------------------------------------|
| <b>Transactions Granted Early Termination—05/28/2002</b> |                                          |                                         |                                                                                                              |
| 20020702 .....                                           | Performance Food Group Company .....     | Don and Carolyn Kirkpatrick .....       | Quality Foods, Inc.                                                                                          |
| 20020713 .....                                           | Kroll Inc .....                          | ONTRACK Data International, Inc .....   | ONTRACK Data International, Inc                                                                              |
| 20020738 .....                                           | UnitedHealth Group Incorporated .....    | GeoAccess, Inc .....                    | GeoAccess, Inc                                                                                               |
| 20020743 .....                                           | John Hancock Financial Services, Inc ... | International Paper Company .....       | Sustainable Forest, L.L.C.                                                                                   |
| 20020754 .....                                           | Providence Equity Partners IV, L.P. .... | AT&T Corp .....                         | AT&T Broadband of Colorado, LLC.<br>AT&T Broadband, LLC.<br>United Cable Television of Western Colorado, Inc |
| 20020757 .....                                           | Goodman Company, Ltd .....               | Avantec Vascular Corporation .....      | Avantec Vascular Corporation.                                                                                |
| 20020763 .....                                           | ASSA ABLOY AB .....                      | AB INDUSTRIVARDEN .....                 | BESAM AB.                                                                                                    |
| 20020764 .....                                           | Bethlehem Steel Corporation .....        | LTV Corporation (Debtor-in-Possession)  | Columbus Processing Company.<br>Columbus Coatings Company.                                                   |
| 20020765 .....                                           | Royal Bank of Canada .....               | Assicurazioni Generali S.p.A .....      | Business Men's Assurance Company of America.<br>Jones & Babson Inc<br>Transocean Holding Corporation.        |
| 20020766 .....                                           | Headwaters Incorporated .....            | Larry E. Koenig .....                   | H Briquetters, Ltd.<br>I Briquetters, Ltd.<br>P Briquetters, Ltd.                                            |
| 20020767 .....                                           | Headwaters Incorporated .....            | Startec, Inc .....                      | H Briquetters, Ltd.<br>I Briquetters, Ltd.<br>P Briquetters, Ltd.                                            |
| 20020770 .....                                           | Grande Communications Holdings, Inc      | ClearSource, Inc .....                  | ClearSource, Inc,                                                                                            |
| 20020772 .....                                           | Bank of Montreal .....                   | Morgan Stanley Dean Witter & Co .....   | Morgan Stanley DW Inc.                                                                                       |
| 20020774 .....                                           | Kellwood Company .....                   | Gerber Childrenswear, Inc .....         | Gerber Childrenswear, Inc.                                                                                   |
| 20020779 .....                                           | Nordstrom.com, Inc .....                 | Nordstrom, Inc .....                    | Nordstrom.com, Inc.                                                                                          |
| 20020785 .....                                           | John A. Catsimatidis .....               | Marks & Spencer p.l.c .....             | Kings Super Markets, Inc.                                                                                    |
| 20020787 .....                                           | United Rentals, Inc .....                | National Equipment Services, Inc .....  | National Equipment Services, Inc.                                                                            |
| 20020791 .....                                           | Cardinal Health, Inc .....               | Boron, Lepore and Associates, Inc ..... | Boron, Lepore and Associates, Inc.                                                                           |
| <b>Transactions Granted Early Termination—05/30/2002</b> |                                          |                                         |                                                                                                              |
| 20020760 .....                                           | Berkshire Hathaway Inc .....             | Lumbermens Mutual Casualty Company      | Kemper Insurance Group, Inc                                                                                  |
| 20020773 .....                                           | Liberty Media Corporation .....          | Naspers, Ltd .....                      | OpenTV Corp.                                                                                                 |

| Transaction No.                                          | Acquiring person                              | Acquired person                             | Acquired entities                                                                                                                                                                                                                       |
|----------------------------------------------------------|-----------------------------------------------|---------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Transactions Granted Early Termination—06/03/2002</b> |                                               |                                             |                                                                                                                                                                                                                                         |
| 20020784 .....                                           | Cumulus Media Inc .....                       | Wicks Communications & Media Partners, L.P. | Wilks Broadcasting LLC.                                                                                                                                                                                                                 |
| 20020792 .....                                           | Welsh, Carson, Anderson & Stowe IX, L.P.      | SpectraSite Holdings, Inc .....             | SpectraSite Holdings, Inc.                                                                                                                                                                                                              |
| 20020793 .....                                           | Welsh, Carons, Anderson & Stowe VIII, L.P.    | SpectraSite Holdings, Inc .....             | SpectraSite Holdings, Inc.                                                                                                                                                                                                              |
| 20020799 .....                                           | Olin Corporation .....                        | Chase Industries Inc .....                  | Chase Industries Inc.                                                                                                                                                                                                                   |
| 20020801 .....                                           | Hicks, Muse, Tate & Furst Equity Fund V, L.P. | ConAgra Foods, Inc .....                    | Australia Meat Holdings Pty, Ltd.<br>ConAgra Beef Company.<br>ConAgra Refrigerated Foods, S.A. de C.V.<br>kabushiki Kaisha ConAgra Japan.<br>Monfort Finance Company, Inc.<br>S&C Holdco, Inc.<br>Swift & Company.<br>Chart House, Inc. |
| 20020807 .....                                           | Landry's Restaurants, Inc .....               | Chart House Enterprises, Inc .....          | Castle Park.<br>Jazzland.<br>Mountain Creek/Water World.<br>N-Ovation Park Management, LLC.<br>Raging Waters—San Dimas.<br>Raging Waters—San Jose.<br>Silver Springs/Wild Waters.<br>Wet'N Wild Las Vegas                               |
| 20020810 .....                                           | Windward Capital Partners II, L.P .....       | Apostolos G. Allamanis .....                | Nouvelle bioMerieux Alliance S.A .....                                                                                                                                                                                                  |
| 20020813 .....                                           | Mr. Alian Merieux .....                       | Nouvelle bioMerieux Alliance S.A .....      | Nouvelle bioMerieux Alliance S.A.                                                                                                                                                                                                       |
| 20020814 .....                                           | Mr. Pierre Fabre .....                        | bioMerieux Pierre Fabre S.A .....           | bioMerieux Pierre Fabre S.A.                                                                                                                                                                                                            |
| <b>Transactions Granted Early Termination—06/04/2002</b> |                                               |                                             |                                                                                                                                                                                                                                         |
| 20020788 .....                                           | Affiliated Computer Services, Inc .....       | FleetBoston Financial Corporation .....     | AFSA Data Corporation.                                                                                                                                                                                                                  |
| 20020805 .....                                           | STMicroelectronics N.V .....                  | Alcatel .....                               | Alcatel Microelectronics.                                                                                                                                                                                                               |
| 20020815 .....                                           | Vallourec .....                               | Cargill, Incorporated .....                 | North Star Steel Company.<br>Universal Tubular Services, Inc.                                                                                                                                                                           |

**FOR FURTHER INFORMATION CONTACT:**

Sandra M. Peay, or Chandra L. Kennedy,  
Contact Representatives.

Federal Trade Commission, Premerger  
Notification Office, Bureau of  
Competition, Room 303, Washington,  
DC 20580. (202) 326-3100

By Direction of the Commission.

**Donald S. Clark,**  
Secretary.

[FR Doc. 02-15841 Filed 6-21-02; 8:45 am]

BILLING CODE 6750-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[Program Announcement 02168]

#### Clinical Immunization Safety Assessment Centers (CISA); Notice of Availability of Funds for Fiscal Year 2002

##### A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program for Clinical Immunization

Safety Assessment Centers (CISA). The term "Immunization Safety" encompasses safety aspects of the vaccine administration process as well as the vaccine itself. This program addresses the "Healthy People 2010" focus areas of Immunization and Infectious Diseases, Medical Product Safety, Public Health Infrastructure, Maternal, Infant and Child Health, Health Communication and Access to Quality Health Services.

The purpose of the program is to expand the national network of CISA Centers (hereforth called Centers) to improve the scientific understanding of immunization safety issues at the individual patient level. Clinically significant adverse events occur rarely. They are infrequently seen in clinical trials and individual clinicians see them too infrequently to be able to manage them in a standardized fashion. In collaboration with CDC, the Centers will fill this gap by creating a new medical specialty of immunization safety. The Centers will develop and disseminate standardized evaluation protocols to clinicians; they will provide referral and consultation services to health care providers on how to evaluate patients who may have had an adverse reaction

to vaccination, which will include how to manage the adverse reaction, as well as advise on continued immunization; and they will undertake outreach and educational interventions in the area of immunization safety. The first goal is to enhance our understanding of known serious or unusual vaccine reactions, including the pathophysiology and risk factors (including genetics) for such reactions. The second goal is to evaluate and gain an understanding of newly hypothesized syndromes or events identified from the routine and enhanced assessment of Vaccine Adverse Event Reporting System (VAERS) case reports, in order to clarify any potential relationship with immunization.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Immunization Program: To improve vaccine safety surveillance.

##### B. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301, 317(k)(1) and 2102(a) of the Public Health Service Act, (42 U.S.C. sections 241, 247b(k)(1), and 300aa-2(a)), as amended. The Catalog of

Federal Domestic Assistance number is 93.185.

### C. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations, and by governments and their agencies; that is, universities, colleges, technical schools, research institutions, hospitals, other public and private nonprofit organizations, community-based organizations, faith-based organizations, State and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations. Preference will be given to applicants' proposals that would service a geographic region not currently covered by an existing CISA center.

**Note:** Title 2 United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

### D. Availability of Funds

Approximately \$1 million is available in FY 2002 to fund at least two awards. It is expected that the average award will be \$500,000. It is expected that the awards will begin on or before September 30, 2002, and will be made for a 12-month budget period within a project period of up to four years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

#### *Use of Funds*

Funds cannot be used for construction or renovation, to purchase or lease vehicles or vans, to purchase a facility to house project staff or carry out project activities, or to supplant existing support.

Matching funds are not required for this program.

### E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. Recipient Activities, CDC will be responsible for the activities listed under 2. CDC Activities, and the Recipient and CDC will both be

responsible for activities listed under 3. Coordinating activities.

#### *1. Recipient Activities*

The following section describes the expected activities of each Center and its functioning within the CISA network. The recipient shall perform all services necessary to establish and operate a Center for Clinical Immunization Safety Assessment in accordance with the requirements described:

a. Perform or coordinate the standardized intensive clinical and laboratory assessments of patients who may have had a known serious or unusual vaccine reaction (e.g. anaphylaxis, idiopathic thrombocytopenia purpura (ITP), swollen leg after DtaP vaccine), to improve the understanding of the pathophysiology and risk factors (including genetics) for the reaction.

b. Develop the necessary clinical evaluation protocols and conduct or coordinate the standardized clinical evaluation and any other follow-up studies of appropriate patients (and controls) for newly hypothesized syndromes. The syndromes are identified from the routine and enhanced assessment of case reports from the VAERS, to clarify the potential relationship with immunizations.

c. For patients who have had an adverse reaction that may not contraindicate further vaccination, but where there is concern, establish the protocols and the capacity to immunize under medical supervision. These will aid in the development of valid contraindications.

d. Serve as referral centers for clinical immunization safety inquiries.

e. Develop clinical evaluation protocols and case definitions of adverse events possibly related to immunizations that can be disseminated for use by health care providers.

f. Establish regional and national linkages with clinical experts who could participate in the evaluation of patients following an adverse event, and can also potentially be called upon to assist as needed with the development of clinical evaluation protocols and their implementation.

g. For case reports received by the VAERS program that refer to clinical conditions or syndromes under investigation by the Network, Center staff will manage the routine follow-up activities conducted to complete missing case report information, and solicit additional clinical records that may be useful in evaluating the case. The VAERS program will assist as needed in these activities to decrease

administrative workload on the network.

h. Participation and collaboration in the Network of clinical centers to include, but not limited to, participation in weekly conference calls, electronic mail discussions, and annual meetings.

i. Funded institutions may be able to request supplemental funding for the following additional activities:

1. Clinical consultation service capacity for health care providers.
2. Outreach and education activities.

#### *2. CDC Activities*

CDC will participate as an academic partner in the activities of the network of CISA Centers, providing technical assistance as well as scientific collaboration.

- a. Provide technical assistance.
- b. Arrange coordinating meetings.
- c. Assist in the development of any research protocols that may be developed to further investigate selected adverse events, for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

#### *3. Coordinating Activities*

a. Centers will develop joint network operating protocols/procedures including, but not limited to, mechanisms for billing of clinical assessment costs, patient billing as necessary, arranging specialist referrals, and other shared or commonly delegated activities.

b. All protocols/procedures pertaining to patient care costs shall be submitted to the CDC for prior approval before implementation. The Network will jointly discuss cases, make decisions regarding the need to carry out additional case follow-ups, and then select cases for detailed clinical evaluation.

### F. Content

#### *Letter of Intent (LOI)*

A LOI is required for this program. The program announcement title and number must appear in the LOI. The narrative should be no more than one page, printed on one side, with one-inch margins, and unreduced font. Your letter of intent will be used to determine the number of objective reviewers needed and evaluate public interest in the CISA Program. The LOI should include the name of the Institution and the name, title, and affiliation of the "principal investigator" who will lead the Center. If available, include the

name(s) and address(es) of the participating institution(s) that will form the infrastructure of the proposed CISA Center.

#### *Applications*

The program announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 pages, single-spaced, printed on one side with one-inch margins, and unredacted font.

The narrative should consist of, at a minimum, a Plan, Objectives, Methods, Evaluation and Budget.

#### **G. Submission and Deadline**

##### *Letter of Intent*

The letter of intent should be submitted on or before July 12, 2002, to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

##### *Application*

Submit the original and two copies of PHS-398 (OMB Number 0925-0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are available at the following Internet address: <http://www.cdc.gov/od/pgo/forminfo.htm>

Application forms must be submitted in the following order:

- Cover Letter
- Table of Contents
- Application
- Budget Information Form
- Budget Justification
- Checklist
- Assurances
- Certifications
- Disclosure Form
- Human Subjects Certification
- Indirect Cost Rate Agreement
- Narrative

The application must be received on or before 5 p.m. eastern time August 1, 2002. Submit the application to: Technical Information Management-PA02168, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd, Room 3000, Atlanta, GA 30341-4146.

**Deadline:** Letters of intent and applications shall be considered as meeting the deadline if they are received before 5 p.m. eastern time on the deadline date. Applicants sending applications by the United States Postal

Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (a) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (b) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications that do not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

#### **H. Evaluation Criteria**

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures must be objective/quantitative and must measure the intended outcome. These measures of effectiveness shall be submitted with the application and shall be an element of evaluation.

Each application will be evaluated against the following criteria by an objective review panel appointed by CDC:

##### *1. Methodology and Collaboration Potential (35 points)*

The soundness, practicality and feasibility of the applicant's organizational plan and methodology for undertaking the project will be evaluated. Since the project will involve collaboration with other Centers performing similar work, the value of the project will be maximized if: (a) Patients do not need to travel to reach a Center, and (b) Centers have well established professional contacts outside their immediate geographic or metropolitan boundaries. Thus, Centers should describe how they propose to extend their "virtual" clinical coverage area, and how they intend to measure the effectiveness of this expansion. Additional paragraphs should address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

b. The proposed justification when representation is limited or absent.

c. A statement as to whether the design of the study is adequate to measure differences when warranted.

d. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

##### *2. Experience and Capabilities (35 points)*

The applicant's (including proposed staff in applicable areas) experience, qualifications, and technical ability relevant to (1) the content areas of immunizations and adverse drug and vaccine reactions; (2) conducting clinical research and publishing in peer-reviewed journals; (3) providing clinical services and external consultation services; (4) transmission of information in a timely, efficient, secure and accurate manner; (5) discussing medical conditions with health care providers and the general public; (6) retrieving medical records and medical information from within their institution and on request from external institutions; (7) receiving and storing biological specimens related to this project; (8) taking part in multi-center projects and clinical trials; and (9) undertaking collaborative projects involving geographically separated institutions and consultations to health care providers in distant locations.

##### *3. Management Plan (20 points)*

The soundness and feasibility of the applicant's proposed management plan for accomplishing the work expectations outlined in Section E, to include identification of applicant's key personnel to be assigned to the CISA program and clear identification of their respective roles in the management and operations of the program.

##### *4. Understanding of the Project (10 points)*

The extent to which the applicant possesses an understanding of the needs and purpose of the project, as demonstrated through: knowledge and understanding of current research and activities being performed in this area, past studies, existing literature, and the clarity, practicality, and flexibility of the proposed project plan such that it can be networked with others. The application shall demonstrate that the applicant's plan to accomplish the effort is clear, feasible, practical, and includes recognition of potential difficulties in performance and appropriateness and soundness of proposed solutions.

##### *5. Human Subjects (not scored)*

The application should also adequately address the requirements of Title 45 CFR part 46 for the protection

of human subjects. Specific research studies may be undertaken by a Center or by the Network. Each will be undertaken as the need is identified through the ongoing experience of reviewing vaccine safety issues by the functioning Network, if funding is available, and with the development of a formal research protocol at that time.

#### 6. Budget (not scored)

The applicant shall describe their proposed plan for managing the resources necessary to comply with the requirements specified in Section E. This shall include a description of the Center organization, including proposed person hours for each key individual.

#### I. Reporting Requirements

Provide CDC with original plus two copies of:

1. Semi-annual progress reports. The progress report will include a data requirement that demonstrates measures of effectiveness.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program.

- AR-1 Human Subjects Requirements
- AR-2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
- AR-7 Executive Order 12372 Review
- AR-8 Public Health System Reporting Requirements
- AR-10 Smoke-Free Workplace Requirements
- AR-11 Healthy People 2010
- AR-12 Lobbying Restrictions
- AR-14 Accounting System Requirements
- AR-15 Proof of Non-Profit Status
- AR-22 Research Integrity

#### J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC home page Internet address—<http://www.cdc.gov> Click on "Funding" then "Grants and Cooperative Agreements."

For business management assistance contact: Peaches Brown, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease

Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341-4146, Telephone: 770-488-2738, E-mail: [prb0@cdc.gov](mailto:prb0@cdc.gov).

For program technical and administrative assistance, contact:

Dr. Christine Casey, Vaccine Safety and Development Activity, National Immunization Program, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., Mailstop E-62, Atlanta, GA 30333, Phone: 404-639-2973, E-mail: [ccasey@cdc.gov](mailto:ccasey@cdc.gov)

or

Sharon Holmes, Program Analyst, Vaccine Safety and Development Activity, National Immunization Program, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., Mailstop E-62, Atlanta, GA 30333, Phone: 404-639-8582, E-mail: [sholmes@cdc.gov](mailto:sholmes@cdc.gov).

Dated: June 18, 2002.

**Edward Schultz,**

*Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.*

[FR Doc. 02-15826 Filed 6-21-02; 8:45 am]

**BILLING CODE 4163-18-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[Program Announcement 02128]

#### Targeted Injury Intervention Programs; Notice of Availability of Funds; Amendment

A notice announcing the availability of Fiscal Year 2002 funds for a cooperative agreement for Targeted Injury Intervention Programs was published in the **Federal Register** dated May 9, 2002, Vol. 67, No. 90, pages 31331-31334. Page 31332, Section F. Submission and Deadline, Application, Paragraph 2, line 1, should be changed to read: "On or before 5 p.m. Eastern Standard Time on July 8, 2002, submit the application \* \* \*"

Dated: June 18, 2002.

**Edward Schultz,**

*Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.*

[FR Doc. 02-15828 Filed 6-21-02; 8:45 am]

**BILLING CODE 4163-18-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[Program Announcement 02206]

#### Cooperative Agreement for International Emerging Infections Program Surveillance in Thailand; Notice of Availability of Funds

##### A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program for International Emerging Infections Surveillance in Thailand.

The purpose of the program is to provide assistance to the Thailand Ministry of Public Health to conduct population-based surveillance for emerging infections in Thailand in collaboration with the International Emerging Infections Program (IEIP).

The objectives of this program are to (1) establish an active, populations-based surveillance network that uses standardized data collection instruments, operational definitions, and laboratory diagnostic tests to enhance surveillance for severe pneumonia in Sa Kaeo Province; (2) use the experience gained from the first six months of surveillance in Sa Kaeo to expand the surveillance system to include one additional province and two additional syndromes; (3) improve local laboratory diagnostic capabilities by supporting and enhancing those local laboratories that participate in IEIP surveillance; (4) develop educational and training opportunities for local public health practitioners as part of broader efforts to improve public health infrastructure in the region; and (5) improve communications and data exchange between public health officials by electronically linking IEIP surveillance sites, laboratories, and provincial and national epidemiologists.

Measurable outcomes of the program will be in alignment with one or more of the following performance goals for the National Center for Infectious Diseases: (1) Apply scientific findings to prevent and control infectious diseases and (2) Strengthen epidemiologic and laboratory capacity to recognize, respond to, and monitor infectious diseases.

##### B. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301 and 307 of the Public Health Service Act [42 U.S.C. 241 and 242], as

amended. The Catalog of Federal Domestic Assistance number is 93.283.

#### A. Eligible Applicants

Assistance will be provided only to the Ministry of Public Health, Thailand. No other applications are solicited.

The Thai Ministry of Public Health is the only qualified agency to conduct the activities specified under this cooperative agreement because:

1. The Ministry of Public Health is the governmental agency in Thailand legally responsible for disease surveillance activities and provides norms for provincial health department and local jurisdiction surveillance and disease investigation.

2. Within the Thai Ministry of Public Health are the Department of Communicable Disease Control (Thai CDC), the Department of Medical Sciences (including the Thai National Institute of Health), and the office of the Permanent Secretary (including the Division of Epidemiology), organizations responsible for national epidemiologic surveillance and national public health reference laboratory testing and training.

3. The IEIP Thailand has established a working group which includes representatives of the Thai CDC, the Thai NIH, and the Division of Epidemiology. This working group reports to a Steering Committee, which derives its authority from the Executive Committee for the Thai MOPH-US CDC Collaboration (TUC). The IEIP working group will be the principal collaborative mechanism for directing the surveillance system.

#### D. Availability of Funds

Approximately \$200,000 is available in FY 2002 to fund one award. It is expected that the award will begin on or about September 30, 2002, and will be made for a 12-month budget period within a project period of up to five years. The funding estimate may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

#### Use of Funds

1. All requests for funds, including the budget contained in the application, shall be stated in U.S. dollars. Once an award is made, the Department of Health and Human Services (DHHS) will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.

2. Funds may be spent for reasonable program purposes, including personnel,

travel, supplies, and services. Equipment may be purchased if deemed necessary to accomplish program objectives, however, the IEIP working group must be notified in advance of such purchases.

3. The costs that are generally allowable in grants to domestic organizations are likewise allowable to foreign institutions and international organizations, with the following exceptions:

Indirect Costs: With the exception of the American University, Beirut, the Gorgas Memorial Institute, and the World Health Organization, indirect costs will not be paid (either directly or through a sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location, major alteration and renovation, customs and import duties, and, with limited exception, patient care.

4. The majority of funds are expected to directly support costs associated with strengthening the quality of the IEIP program, epidemiologist and laboratory staff salaries. Remaining funds are expected to support a coordinated approach to monitoring and evaluation, and integration of IEIP into the national surveillance program.

#### E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities.

##### 1. Recipient Activities

- a. Identify staff at the national level to work on an active, population-based surveillance system in collaboration with IEIP U.S. staff.

- (1) The Division of Epidemiology will identify an epidemiologist to act as the National Epidemiology Coordinator for the active, population-based surveillance system. This person will work closely with the Chief of Epidemiology, IEIP.

- (2) The Division of Epidemiology will support one Foreign Epidemiology Training Program (FETP) fellow whose primary role will be to assist with the active, population-based surveillance system.

- b. In collaboration with Sa Kaeo Province, expand active, population-based surveillance for radiologically-confirmed pneumonia to include surveillance for two additional syndromes.

- (1) Coordinate with provincial staff to assure that appropriate staff are hired as surveillance officers.

- (2) Coordinate with provincial staff to assure that appropriate laboratory equipment is purchased.

- c. Expand the active, population-based surveillance system to a second province. Collaborate via the IEIP working group to confirm site selection.

- (1) Provide transportation costs for site visits during the selection process.

- (2) Coordinate with provincial staff to assure that appropriate equipment is purchased (e.g., computers and laboratory equipment).

- (3) Coordinate with provincial staff to assure that appropriate staff are hired to coordinate and run the surveillance system.

- (4) Coordinate with provincial staff to assure that appropriate office space and support is available for surveillance personnel.

- (5) Coordinate with provincial staff to provide transportation of personnel and clinical specimens when necessary.

- d. Provide administrative support to assure that the personnel employed to work on the surveillance system are paid promptly according to a standard pay schedule.

- e. Provide in-kind support for the following activities:

- (1) Travel within Thailand of the national coordinator and the provincial staff to assist with surveillance activities.

- (2) Perform and support the cost of reference diagnostic testing for specimens from the surveillance system.

- (3) Office space and telephones for the national coordinator and the provincial surveillance officers.

- f. Collaborate with all organizations in the context of the surveillance activities to broaden the exchange of infectious disease epidemiologic data between the United States and Thailand to improve the global prevention and control of infectious diseases.

- g. Collaborate with all organizations in the context of the surveillance activities to foster binational collaboration in the investigation of disease outbreaks which affect communities in the provinces under surveillance. Such collaboration may involve binational teams working according to agreed-upon protocols.

##### 2. CDC Activities

- a. Provide assistance and technical consultation on all aspects of program planning, implementation, and evaluation methods, as needed.

- b. Provide scientific support and training, and participate in study protocol development, epidemiological

and laboratory studies, data management and analysis, writing, and dissemination of information by relevant means.

c. Provide scientific support, as needed, in the development and support of a research agenda.

d. Provide special reagents or other materials, as needed to conduct surveillance and research.

e. Assist in the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

#### F. Content

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than twenty pages, double-spaced, printed on one side, with one-inch margins, and un-reduced font.

The narrative should consist of:

1. Plan
2. Documented Results
3. Capacity
4. Proposed Program Plan
  - (a) Goals
  - (b) Objectives
  - (c) Operational Plan
  - (d) Evaluation Plan
  - (e) Collaborations
5. Budget, with Staffing Breakdown and Justification Provide a line-item budget and narrative justification for all requested costs, and separate line-item budgets for each research area. Budgets should be consistent with the purpose, objectives and research activities and include:
  - a. Line-item breakdown and justification for all personnel, i.e., name, position title, annual salary, percentage of time and effort, and amount requested.
  - b. For each contract: (1) Name of proposed contractor; (2) breakdown and justification for estimated costs; (3) description and scope of activities to be performed by contractor; (4) period of performance; (5) method of contractor selection (e.g., sole-source of competitive solicitation); and (6) methods of accountability.

Activities for all priority research areas should be clearly identified in a distinct portion of the Operational Plan.

Although the activities proposed may address distinct issues and needs, they may be implemented in an integrated manner such that staff members work on more than one activity, or supplies and equipment are shared.

#### G. Submission and Deadline

Submit the original and two copies of PHS-398 (OMB Number 0925-0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are available in the application kit and at the following Internet address: <http://www.cdc.gov/od/pgo/forminfo.htm>

Application forms must be submitted in the following order:

Cover Letter  
Table of Contents  
Application  
Budget Information Form  
Budget Justification  
Checklist  
Assurances  
Certifications  
Disclosure Form  
HIV Assurance Form (if applicable)  
Human Subjects Certification (if applicable)  
Narrative

The application must be received on or before 5 p.m. Eastern Time August 1, 2002. Submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

**Deadline:** Letters of intent and applications shall be considered as meeting the deadline if they are received before 5 p.m. Eastern Time on the deadline date. Applicants sending applications by commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

An application which does not meet the above criteria will not be eligible for competition and will be discarded. Applicant will be notified of their failure to meet the submission requirements.

#### H. Evaluation Criteria

The applicant is required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of

effectiveness must relate to the performance goals as stated in section "A. Purpose" of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These Measures of effectiveness shall be submitted with the application and shall be an element of evaluation.

The application will be evaluated individually against the following criteria by an independent review group appointed by CDC:

#### 1. Objectives and Technical Approach (50 points total):

a. Extent to which applicant describes specific objectives of the proposed program that are consistent with the purpose and goals of this announcement and which are measurable and time-phased. (10 points)

b. Extent to which the applicant identifies appropriate populations for study, with an adequate size to perform the proposed studies. (10 points)

c. Extent to which applicant presents a detailed operational plan for initiating and conducting the program, which clearly and appropriately addresses all recipient activities. Extent to which applicant clearly identifies specific assigned responsibilities for all key professional personnel. Extent to which the plan clearly describes applicant's technical approach/methods for developing and conducting the proposed program and evaluation and extent to which the plan is adequate to accomplish the study objectives. If research involving human subjects is proposed, the degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) the proposed justification when representation is limited or absent; (3) a statement as to whether the design of proposed studies is adequate to measure differences when warranted; and (4) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community/ies and recognition of mutual benefits. The extent to which applicant describes the existence of or plans to establish partnerships. (10 points)

d. Extent to which applicant describes adequate and appropriate collaborations with other health agencies during various phases of the project. (10 points)

e. Extent to which applicant provides a detailed and adequate plan for evaluating program results. This

includes plans for evaluating specific projects as well as plans for evaluating other aspects of the collaboration (e.g., training). (10 points)

2. Capacity (35 points total):

a. Extent to which applicant describes adequate resources and facilities (both technical and administrative) for conducting the project. This includes the capacity to conduct quality laboratory measurements. (20 points)

b. Extent to which applicant documents that professional personnel involved in the project are qualified and have past experience and achievements in research and programs related to the program as evidenced by curriculum vitae, publications, etc. (15 points)

3. Background and Need (10 points):

Extent to which applicant's discussion of the background for the proposed project demonstrates a clear understanding of the purpose and objectives of this cooperative agreement program. Extent to which applicant illustrates and justifies the need for the proposed project that is consistent with the purpose and objectives of this program.

4. Measures of Effectiveness (5 points):

The extent to which the applicant provides Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant. The degree to which the measures are objective/quantitative and adequately measure the intended outcome.

5. Budget and Justification (not scored): Extent to which the proposed budget is reasonable, clearly justifiable, and consistent with the intended use of cooperative agreement funds.

6. Protection of Human Subjects (Not scored) The extent to which the application adequately addresses the requirements of Title 45 CFR Part 46 for the protection of human subjects. (Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.)

## VII. Other Requirements

Technical Reporting Requirements Provide CDC with original plus two copies of:

1. Semi-annual progress reports. The progress report will include a data requirement that demonstrates measures of effectiveness.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Awardee is required to obtain an annual audit of these CDC funds (program specific audit) by a U.S. based audit firm with international branches and current license/authority in-country, and in accordance with International Accounting Standards or equivalent.

A fiscal Recipient Capability Assessment may be required, pre or post award, with the potential Awardee in order to review their business management and fiscal capabilities regarding the handling of U.S. Federal funds.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the application kit.

AR-1 Human Subjects Requirements

AR-2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research

AR-9 Paperwork Reduction Act Requirements

AR-10 Smoke-Free Workplace Requirements

AR-14 Accounting Systems Requirement

AR-22 Research Integrity

### J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC home page Internet address—<http://www.cdc.gov>. Click on "Funding" then "Grants and Cooperative Agreements."

For business management assistance, contact: Cynthia Collins, Grants Management Specialist, International and Territories Acquisition and Assistance Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341-4146, Telephone number: 770-488-2757, E-mail address: [coc9@cdc.gov](mailto:coc9@cdc.gov)

For program technical assistance, contact: Sonja Olsen, Ph.D., Epidemiology Section Chief, International Emerging Infections Program, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), DMS building 6, Ministry of Public Health, Thanon Tivanon, Nonthaburi, Thailand, Telephone number: +66-2-591-8358, E-mail address: [sco2@cdc.gov](mailto:sco2@cdc.gov)

Dated: June 18, 2002.

**Edward Schultz,**

*Acting Director, Procurement and Grants Office Centers for Disease Control and Prevention.*

[FR Doc. 02-15829 Filed 6-21-02; 8:45 am]

BILLING CODE 4163-18-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### Breast and Cervical Cancer Early Detection and Control Advisory Committee Meeting Teleconference

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the following Federal Advisory Committee meeting.

*Name:* Breast and Cervical Cancer Early Detection and Control Advisory Committee (BCCEDCAC) Teleconference.

*Date and Time:* July 15, 2002, 2 p.m.-3:30 p.m., E.T.

*Place:* Conference call will originate at the Centers for Disease Control and Prevention in Atlanta, Georgia. Please see "Supplementary Information" for details on accessing the teleconference.

*Status:* This meeting is open to the public; teleconference access limited only by availability of telephone ports.

*Purpose:* This committee is charged with providing advice and guidance to the Secretary, Health and Human Services, and the Director, CDC, regarding the need for early detection and control of breast and cervical cancer and to evaluate the Department's current breast and cervical cancer early detection and control activities.

*Matters to be Discussed:* The discussion will primarily focus on termination of the committee.

*Supplementary Information:* This conference call is scheduled for 2 p.m. Eastern Time. To access the teleconference, you must dial (404) 639-3277. To be connected to the call, you will need to provide the passcode "523080" and Leader's name "Kevin Brady."

*Contact Person for Additional Information:* Mr. Kevin Brady, Deputy Director, Division of Cancer Prevention and Control, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, NE, M/S: K-52, Atlanta, Georgia 30341-3724, telephone (770) 488-4343.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: June 18, 2002.

**John Burckhardt,**

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 02-15827 Filed 6-21-02; 8:45 am]

BILLING CODE 4163-18-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

#### Proposed Information Collection Activity; Comment Request

##### Proposed Projects

*Title:* ACF-196.

*OMB No.:* 0970-0199.

*Description:* The form provides specific data regarding claims and

provides a mechanism for States to request grant awards and certify the availability of State matching funds. Failure to collect this data would seriously compromise ACF's ability to monitor expenditures. This information is also used to estimate outlays and may be used to prepare ACF budget submissions to Congress. The following citations should be noted in regard to this collection: 405(c)(1); 409(a)(7); and 409(a)(1).

*Respondents:* State TANF Agencies.

#### ANNUAL BURDEN ESTIMATES

| Instrument    | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---------------|-----------------------|------------------------------------|-----------------------------------|--------------------|
| ACF-196 ..... | 54                    | 4                                  | 8                                 | 1728               |

#### *Estimated Total Annual Burden Hours:* 1728.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c)

the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: June 17, 2002.

**Bob Sargis,**

*Reports Clearance, Officer.*

[FR Doc. 02-15790 Filed 6-21-02; 8:45 am]

BILLING CODE 4184-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

#### Submission for OMB Review; Comment Request

*Title:* Form ACF-300, TANF High Performance Bonus for Fiscal Year 2002,

Electronic Transmission File Layouts and Federal System Edits on Work Measures.

*OMB No.:* 0970-0230.

*Description:* The purpose of this notice is to solicit comments on the proposed extension of the previously approved information collection (Form ACF-300), which obtains data upon which to base the computation for measuring State performance in meeting the legislative goals of TANF as specified in section 403(a)(4) of the Social Security Act and 45 CFR part 270. This information collection replaced Form ACF-200 for FY 2002 (Bonus Year 2002). States are not required to submit this information unless they elect to compete on a work measure for the TANF High Performance Bonus awards.

*Respondents:* Respondents may include any of the 50 States, Guam, Puerto Rico, and the Virgin Islands.

#### ANNUAL BURDEN ESTIMATES

| Instrument                                                                                                                            | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---------------------------------------------------------------------------------------------------------------------------------------|-----------------------|------------------------------------|-----------------------------------|--------------------|
| The Revised Reporting Requirements And Transmission Layouts On TANF Work Measures For FY 2002, TANF High Performance Bonuses (HPB) .. | 54                    | 2                                  | 16                                | 1,728              |
| Estimated Total Annual Burden Hours .....                                                                                             | .....                 | .....                              | .....                             | 1,728              |

*Additional Information:* Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC

20447, Attn: ACF Reports Clearance Officer.

*OMB Comment:* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**.

Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork

Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: June 17, 2002.

**Bob Sargis,**

*Reports Clearance Officer.*

[FR Doc. 02-15789 Filed 6-21-02; 8:45 am]

BILLING CODE 4184-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

#### Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443-7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

#### Proposed Project

Effective Dissemination of Mentoring and Family Strengthening Programs, Cross-Site Evaluation—New—The basis for the current cross-site evaluation originates from two previous efforts funded by SAMHSA's Center for Substance Abuse Prevention (CSAP) aimed at providing prevention services for high-risk youth: (1) Project Youth Connect—Mentoring and (2) Parent and Family Strengthening. The Project

Youth Connect Program, funded in 1998, was designed to determine the effectiveness of a paid mentor/advocate model in improving life achievement outcomes for youth 9 to 15 years of age and their families. The Parent/Family Strengthening Program was designed to present science-based program models that would be selected for implementation within local communities. Funding for the parent/family strengthening program was distributed in two cohorts, with Cohort 1 receiving funding in 1998 and Cohort 2 receiving funding in 1999. Both cohorts were funded for a period of 24 months to address the gap between effective family-based prevention interventions and their availability in States, communities and other organizations. The goal of the current cross-site evaluation seeks to build upon these previous efforts by evaluating the impact of a three-year Mentoring and Family Strengthening prevention program targeting high-risk youth and their caregivers on reducing risk factors related to, and enhancing protective factors against, substance abuse.

Seven mentoring and nine family strengthening study sites were funded by SAMHSA/CSAP as of September 2001 to participate in this cross-site study. The primary objectives of the cross-site evaluation are to: (1) Assess the process of implementing program models with diverse target groups, (2) measure the effectiveness of specified intervention strategies such as cultural enrichment activities, educational and vocational resources, or computer-based curricula, and (3) determine the success of the Mentoring and Family Strengthening Programs in delaying, preventing, and/or reducing the use of alcohol, tobacco, and other drugs (ATOD) among youth and caregivers at risk for such behaviors. Conducting this evaluation will assist SAMHSA/CSAP in promoting and disseminating optimally effective prevention programs.

The CSAP GPRA Adult and Youth questionnaires, which have been approved by OMB (OMB No. 0930-0208) for use in all CSAP evaluation studies, will be used to measure ATOD use and risk factors associated with ATOD abuse among program participants and comparison subjects. Scales from the CSAP Core Measures

list (OMB No. 0930-0230) and the CSAP National Youth Survey (OMB No. 0930-0178) will be used to measure other important risk and protective factors. The cross-site instrument (containing CSAP GPRA, scales from the CSAP Core Measures list, and scales from the CSAP National Youth Survey) will be augmented with additional scales in order to measure other important risk factors such as family conflict and parental stress. Protective factors that serve to guard against ATOD abuse include educational aspirations, school connectedness, and family cohesion. Data will also be gathered from program reports using a "dosage form" that will document services provided to youth and their adult caregivers.

The evaluation data will be collected through self-report questionnaires administered to program and comparison youth and adults, and to Mentors at the Mentoring Study Sites. Each Mentor, youth and adult in the intervention and comparison group will complete questionnaires at three different times: (1) Baseline, (2) program exit and (3) 6-month follow up. The dosage form will be completed by staff on a weekly basis for program youth and adults only.

Sample size, respondent burden, and intrusiveness have been minimized to be consistent with the cross-site evaluation objectives. Procedures are employed to safeguard the privacy and confidentiality of participants. Every effort has been made to coordinate cross-site data collection with local data collection efforts in order to minimize respondent burden. Pilot tests assisted in controlling burden and ensuring the user-relevance of questions.

Evaluation results will have significant implications for the substance abuse prevention field, the allocation of grant funds, and evaluation activities conducted by multiple Federal, state, and local government agencies. Results will be used to develop federal policy in support of SAMHSA/CSAP program initiatives, inform the public of lessons learned and findings, improve existing programs, and promote replication and dissemination of effective prevention strategies.

The following table shows the estimated annualized burden for data collection.

| Response type                              | Number of respondents | Responses/respondent | Average burden/response (hrs.) | Average annual burden hrs. |
|--------------------------------------------|-----------------------|----------------------|--------------------------------|----------------------------|
| Youth (intervention and comparison) .....  | 2,50                  | 1                    | 1                              | 2,500                      |
| Adults (intervention and comparison) ..... | 2,500                 | 1                    | 1                              | 2,500                      |

| Response type                                       | Number of respondents | Responses/respondent | Average burden/response (hrs.) | Average annual burden hrs. |
|-----------------------------------------------------|-----------------------|----------------------|--------------------------------|----------------------------|
| Mentors .....                                       | 40                    | 1                    | 1                              | 40                         |
| Weekly Dosage Form—Family Strengthening Staff ..... | 46                    | 40                   | .083                           | 153                        |
| Weekly Dosage Form—paid mentors .....               | 21                    | 9                    | .167                           | 32                         |
| Weekly Dosage Form—volunteer mentors .....          | 100                   | 2                    | .083                           | 17                         |
| Total .....                                         | 5,167                 | .....                | .....                          | 5,242                      |

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: June 17, 2002.

**Richard Kopanda,**

*Executive Officer, Substance Abuse and Mental Health Administration.*

[FR Doc. 02–15830 Filed 6–21–02; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

#### Fiscal Year 2003 Funding Opportunities

**AGENCY:** Substance Abuse and Mental Health Services Administration, HHS.

**ACTION:** Notice of funding availability for grants to expand substance abuse treatment capacity in targeted areas of need (Short Title: Targeted Capacity Expansion—PA 03–001)

**SUMMARY:** The Substance Abuse and Mental Health Services Administration

(SAMHSA) Center for Substance Abuse Treatment (CSAT) announces the availability of Fiscal Year (FY) 2003 funds for grants for the following activity. This notice is not a complete description of the activity; potential applicants *must* obtain a copy of the Program Announcement (PA), including Part I, Grants to Expand Substance Abuse Treatment Capacity in Targeted Areas of Need (Short Title: Targeted Capacity Expansion—PA 03–001), and Part II, General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements, before preparing and submitting an application.

| Activity                                                                       | Application deadline                                | Est. funds FY 2003 | Est. number of awards | Project period |
|--------------------------------------------------------------------------------|-----------------------------------------------------|--------------------|-----------------------|----------------|
| Grants to Expand Substance Abuse Treatment Capacity in Targeted Areas of Need. | Sept. 10, 2002 and Jan. 10 and Sept. 10 thereafter. | \$28 million ..... | 56                    | 3 years.       |

The actual amount available for the award may vary, depending on unanticipated program requirements and the number and quality of applications received. This program is being announced prior to the annual appropriation for FY 2003 for SAMHSA's programs. Applications are invited based on the assumption that sufficient funds will be appropriated for FY 2003 to permit funding of a reasonable number of applications being hereby solicited. This program is being announced in order to allow applicants sufficient time to plan and prepare applications. Solicitation of applications in advance of a final appropriation will also enable the award of appropriated grant funds in an expeditious manner and thus allow prompt implementation and evaluation of promising practices. All applicants are reminded, however, that we cannot guarantee sufficient funds will be appropriated to permit SAMHSA to fund any applications. This program is authorized under Section 509 of the Public Health Service Act. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published

in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

**General Instructions:** Applicants must use application form PHS 5161–1 (Rev. 7/00). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from: National Clearinghouse for Alcohol and Drug Information (NCADI), P.O. Box 2345, Rockville, MD 20847–2345, Telephone: 1–800–729–6686. The PHS 5161–1 application form and the full text of the activity are also available electronically via SAMHSA's World Wide Web Home Page: <http://www.samhsa.gov>

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit.

**Purpose:** The Substance Abuse and Mental Health Services Administration

(SAMHSA), Center for Substance Abuse Treatment (CSAT) announces the availability of funds for grants to expand or enhance substance abuse treatment capacity in local communities. The Targeted Capacity Expansion (TCE) program is designed to address gaps in treatment capacity by supporting rapid and strategic responses to demands for alcohol and drug treatment services and/or innovative solutions to unmet needs in communities with serious, emerging substance abuse problems.

This Program Announcement (PA) is a re-issuance (with revisions) and replaces a prior PA by the same title, "Targeted Capacity Expansion," No. PA 00–001.

**Eligibility:** Only the following are eligible to apply:

- Local governments (cities, towns, counties, and their respective departments and political subdivisions, such as a Department of Health and Human Services); and
- Tribes, Tribal governments, or other federally recognized Tribal authorities and organizations.

Because States receive substantial funding for substance abuse treatment services via the Substance Abuse

Prevention and Treatment (SAPT) Block Grant, SAMHSA/CSAT uses TCE to target specific local needs that address national treatment priorities. Eligibility is restricted to local governmental entities in recognition of the local governments' responsibility for and interest in providing for the needs of their citizens, and because the success of the program will depend upon their authority and ability to broadly coordinate a variety of resources.

Grants will be awarded only to local and tribal governments and their major organizational units with broad planning, policy, and service coordination responsibilities. Hospitals, community health centers, school systems, or court systems are not eligible for TCE grants.

Community-based organizations (CBOs), including not-for-profit and faith based organizations, are not eligible to apply directly for these grants, even if providing services under contract to a unit of government. However, CSAT encourages local government applicants to develop partnerships with these organizations for the provision of treatment services as part of their proposed TCE projects.

Potential applicants who are unsure of eligibility should contact the person responsible for program issues listed below.

**Availability of Funds:** CSAT anticipates that approximately \$28 million will be available for approximately 56 awards in FY 2003. The total funds available and the actual funding levels will depend on the receipt of an appropriation. Additional funding for new grants may be available in future fiscal years. Applicants may request up to but not more than \$500,000 in total costs (direct and indirect) per year. Because TCE is intended to be a national program benefitting the maximum possible number of communities, CSAT will reserve up to one third of TCE funds for applicants within States and communities that have no active TCE grants at the time awards are made.

**Period of Support:** Awards may be requested for up to 3 years.

**Criteria for Review and Funding:**  
**General Review Criteria:** Competing applications requesting funding under this activity will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures. Review criteria that will be used by the peer review groups are specified in the application guidance material.

**Award Criteria for Scored Applications:** Applications will be considered for funding on the basis of

their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criteria. Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

**Catalog of Federal Domestic Assistance Number:** 93.243.

**Program Contact:** For questions concerning program issues, contact: James M. Herrell, Ph.D., Division of Practice and Systems Development, CSAT/SAMHSA, Rockwall II, Suite 740, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-2376, E-Mail: [jherrell@samhsa.gov](mailto:jherrell@samhsa.gov)

For questions regarding grants management issues, contact: Steve Hudak, Division of Grants Management, OPS/SAMHSA, Rockwall II, 6th floor, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-9666, E-Mail: [shudak@samhsa.gov](mailto:shudak@samhsa.gov)

**Public Health System Reporting Requirements:** The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions. Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

- a. A copy of the face page of the application (Standard form 424).
- b. A summary of the project (PHSIS), not to exceed one page, which provides:
  - (1) A description of the population to be served.
  - (2) A summary of the services to be provided.
  - (3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements. Application guidance materials will specify if a particular FY 2003 activity is subject to the Public Health System Reporting Requirements.

**PHS Non-use of Tobacco Policy Statement:** The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco

products. In addition, Public Law 103-227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

**Executive Order 12372:** Applications submitted in response to the FY 2003 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17-89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: June 18, 2002.

**Richard Kopanda,**

*Executive Officer, SAMHSA.*

[FR Doc. 02-15781 Filed 6-21-02; 8:45 am]

**BILLING CODE 4162-20-P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4739-N-18]

### Notice of Proposed Information Collection: Comment Request; Survey of Neighborhood Networks Centers

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* August 23, 2002

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposed by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, L'Enfant Plaza Building, Room 8003, Washington, DC 20410.

**FOR FURTHER INFORMATION CONTACT:**

Delores A. Pruden, Director, Neighborhood Networks, Office of Housing Assistance and Grant Administration, Multifamily Housing Programs, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410, telephone (202) 708-4135 (this is not a toll free number) for copies of the proposed forms and other available information.

**SUPPLEMENTARY INFORMATION:** The Department is submitting the proposed information collection to OMB or review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Survey of Neighborhood Networks Centers.

*OMB Control Number, if applicable:* None.

*Description of the need for the information and proposed use:* Launched by HUD's Office of Multifamily Housing Programs in September 1995, Neighborhood

Networks is a community-based program that encourages the development of resource and community technology centers in HUD insured and assisted housing. Common factors have contributed to overall program success and sustainability. Likewise, there are common obstacles to starting and maintaining successful Neighborhood Networks Centers. HUD's Office of Multifamily Housing Programs is planning to conduct surveys of Neighborhood Networks Center Directors to document Center characteristics in five key areas: (1) Center and user demographics, (2) Center capacity, (3) programs offered, (4) overall progress, and (5) obstacles or barriers to success. The surveys will identify commonalities and trends that will guide the future of the Neighborhood Networks Program.

*Agency form numbers, if applicable:* None.

*Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* Based on a starting sample of approximately 1,000 Directors and Coordinators of Neighborhood Networks Centers, and an estimated 80 percent response rate, the survey will be administered to approximately 800 respondents. For the current data collection, the frequency of response will be on occasion and annually, with an estimated response time of 25 minutes per respondent. The estimated total annual burden is 336 hours.

*Status of the proposed information collection:* New Collection.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: June 13, 2002.

**Sean G. Cassidy,**

*General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commission.*

[FR Doc. 02-15807 Filed 6-21-02; 8:45 am]

**BILLING CODE 4210-27-M**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4734-N-27]

### Notice of Submission of Proposed Information Collection to OMB Consolidated Plan

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of

Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* July 24, 2002.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2506-0117) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395-6974; E-mail [Lauren\\_Wittenberg@omb.eop.gov](mailto:Lauren_Wittenberg@omb.eop.gov).

**FOR FURTHER INFORMATION CONTACT:**

Wayne Eddins, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail [Wayne\\_Eddins@HUD.gov](mailto:Wayne_Eddins@HUD.gov); telephone (202) 708-2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

*Title of Proposal:* Consolidate Plan.

*OMB Approval Number:* 2506-0117.

*Form Numbers:* None.

*Description of the Need for the Information and its Proposed Use:* The information is collected from all

localities and states participating in any one of CPD's four formula grant programs to determine each

jurisdiction's compliance with statutory and regulatory requirements.

*Respondents:* State, Local or Tribal Government.  
*Frequency of Submission:* Annually.

|                        | Number of<br>respondents | × | Annual<br>responses | × | Hours per<br>response | = | Burden<br>hours |
|------------------------|--------------------------|---|---------------------|---|-----------------------|---|-----------------|
| Reporting Burden ..... | 1,150                    |   | 1.9                 |   | 250                   |   | 549,925         |

*Total Estimated Burden Hours:*  
549,925.

*Status:* Extension of currently approved collection.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 14, 2002.

**Wayne Eddins,**

*Departmental Reports Management Officer,  
Office of the Chief Information Officer.*

[FR Doc. 02-15806 Filed 6-21-02; 8:45 am]

**BILLING CODE 4210-72-M**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### **Draft Low Effect Habitat Conservation Plan for the University of California, Davis 2001-2002 Campus Projects, Yolo County, CA**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** The University of California, Davis (the "applicant") has applied to the Fish and Wildlife Service (Service) for 10-year incidental take permit for 1 covered species pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The applications address the potential for "take" of threatened valley elderberry longhorn beetle (*Desmoncerus californicus dimorphus*) associated with various development activities within the University of California, Davis campus, a 5,300-acre area in portions of Yolo and Solano counties. These activities (the "covered activities") include 10.15 acres of planned land development, and management of a mitigation site. A conservation program to minimize and mitigate for the covered activities would be implemented as described in the University of California, Davis Low Effect Habitat Conservation Plan for 2001-2002 Campus Projects (Plan), which would be implemented by the applicant.

The Service requests comments on the permit application and on the preliminary determination that the Plan qualifies as a "Low-effect" Habitat

Conservation Plan, eligible for a categorical exclusion under the National Environmental Policy Act. The basis for this determination is discussed in Environmental Action Statement, which is also available for public review.

**DATES:** Written comments should be received on or before July 24, 2002.

**ADDRESSES:** Comments should be addressed to the Field Supervisor, Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W-2605, Sacramento, California 95825. Written comments may be sent by facsimile to (916) 414-6711.

**FOR FURTHER INFORMATION CONTACT:** Ms. Vicki Campbell, Chief, Conservation Planning Division, at the Sacramento Fish and Wildlife Office (see **ADDRESSES**); telephone: (916) 414-6600.

#### **SUPPLEMENTARY INFORMATION:**

##### **Availability of Documents**

Individuals wishing copies of the application, Plan, and Environmental Action Statement should immediately contact the Service by telephone at (916) 414-6600 or by letter to the Sacramento Fish and Wildlife Office [see **ADDRESSES**]. Copies of the Plan, and Environmental Action Statement also are available for public inspection, during regular business hours, at the Sacramento Fish and Wildlife Office [see **ADDRESSES**]; University of California, Davis, Office of Resource Management and Planning, One Shields Avenue, 376 Mark Hall, Davis, California 95616; and, University of California, Davis, Shields Library, Reserve Room, Davis, California 95616.

##### **Background Information**

Section 9 of the Act and Federal regulation prohibit the "take" of animal species listed as endangered or threatened. Take is defined under the Act as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect listed animal species, or attempt to engage in such conduct (16 U.S.C. 1538). However, under limited circumstances, the Service may issue permits to authorize "incidental take" of listed animal species. "Incidental take" is defined by the Act as take that is incidental to, and not the purpose of, carrying out of an otherwise lawful

activity. Regulations governing permits for threatened species and endangered species, respectively, are at 50 CFR 17.32 and 50 CFR 17.22.

The applicant is seeking permits for take of the federally listed threatened valley elderberry longhorn beetle (*Desmoncerus californicus dimorphus*) during the life of the permit. This species is referred to as the "covered species" in the Plan.

The project encompasses five different sites; the Genome Launch Facility, the Cole Facility Stormwater Improvements, the Center for Companion Animal Health, the NEES Facility, and Phase 2B Electrical Improvement project. The Genome Launch Facility includes the construction of an approximately 21,000 square foot laboratory building, including extending utilities along existing utility corridors, converting an existing parking area and gravel driveway to landscaping, and replacing a paved road with a sidewalk and landscaping. The Cole Facility Stormwater Improvements consists of implementing stormwater drainage improvements, including installing new rain gutters and down spouts on 5 buildings in the Cole Equestrian Facility, installing new storm piping to collect rainwater from the downspouts of 13 roofs (currently runs onto the ground within animal stall areas), and install a new sewer line that will drain an existing storm line into the sewer system. The Center for Companion Animal Health project includes the construction of an approximately 10,000 square foot veterinary medicine building and parking lot. The project would involve the removal of an existing building and pasture land currently located onsite. The NEES Facility project is the construction of a 4,720 square foot building. The Phase 2B Electrical Improvement project consists of replacing approximately two miles of above ground electrical distribution lines, including replacing poles, conductors, insulators and other miscellaneous mounting hardware.

Six elderberry shrubs, containing 130 stems, greater than 1-inch at the ground level, at the Genome Launch Facility site will be impacted by the project. Four elderberry shrubs, containing 21

stems greater than 1-inch at the ground level, at the Cole Facility Stormwater Improvements site will be impacted by the project. Two elderberry shrubs, containing six stems greater than one inch at the ground level, at the Center for Companion Animal Health site will be impacted by the project. Several shrubs occur within or adjacent to the Cole Facility Stormwater Improvements site, NEES Facility, and Phase 2B Electrical Improvement project that will not be impacted by the proposed projects through implementation of avoidance measures described within the Service's 1999 *Conservation Guidelines for Valley Elderberry Longhorn Beetles*. The project sites contain potential habitat for the federally-threatened valley elderberry longhorn beetle. The project sites do not contain any other rare, threatened, or endangered species or habitat. No critical habitat for any listed species occurs on the project site. Construction of the proposed projects would result in the avoidance of 28 elderberry shrubs and the removal of 12 elderberry shrubs, with 157 stems greater than 1-inch diameter at ground level, which have been determined to be habitat for the valley elderberry longhorn beetle. No beetle exit holes were found in these 12 shrubs.

The applicant proposes to avoid, minimize and mitigate the effects to the covered species associated with the covered activities by implementing their Plan and adhering to the Service's 1999 Conservation Guidelines. The purpose of this conservation program is to promote biological conservation in conjunction with economic and urban development within the campus of University of California, Davis. As mitigation, the applicant will transplant 10 of the 12 elderberry shrubs, and plant 243 elderberry seedlings and 243 native riparian plant seedlings on 2.01-acres of the Russell Ranch conservation area. The 158-acre Russell Ranch is owned and managed by the applicant, and was established in 1994 for use by the University of California, Davis for mitigation from various future projects. In addition to mitigation, the Plan also includes measures to avoid and minimize take of the valley elderberry longhorn beetle.

The Proposed Action consists of the issuance of an incidental take permit and implementation of the Plan, which included measures to avoid, minimize and mitigate impacts of the project on the valley elderberry longhorn beetle. Three alternatives to the taking of listed species under the Proposed Action are considered in the Plan. Under the No Action Alternative, no permit would be

issued. Under the Alternative Site Alternative, new facilities would be built at alternate sites. Under the Reduced Project Alternative, the size and scope of the new facilities and improvements to existing facilities would be reduced.

The Service has made a preliminary determination that the Plan qualifies as a "low-effect" plan as defined by its Habitat Conservation Planning Handbook (November 1996). Determination of low-effect Habitat Conservation Plans is based on the following three criteria: (1) Implementation of the Plan would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the Plan would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the Plan, considered together with the impacts of other past, present and reasonably foreseeable similarly situated projects would not result, over time, in cumulative effects to environmental values or resources which would be considered significant. As more fully explained in the Service's Environmental Action Statement, the Plan qualifies as a "low-effect" plan for the following reasons:

1. Approval of the Plan would result in minor or negligible effects on the valley elderberry longhorn beetle and its habitat. The Service does not anticipate significant direct or cumulative effects to the valley elderberry longhorn beetle resulting from development of the Genome Launch Facility, Cole Facility, Center for Companion Animal Health areas, NEES Facility, and Phase 2B Electrical Improvement project, or from the management of the mitigation site on the Russell Ranch.

2. Approval of the Plan would not have adverse effects on unique geographic, historic or cultural sites, or involve unique or unknown environmental risks.

3. Approval of the Plan would not result in any cumulative or growth inducing impacts and, therefore, would not result in significant adverse effects on public health or safety.

4. The project does not require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act, nor does it threaten to violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment.

5. Approval of the Plan would not establish a precedent for future action or represent a decision in principle about

future actions with potentially significant environmental effects.

The Service therefore has preliminarily determined that approval of the Plan qualifies as a categorical exclusion under the National Environmental Policy Act, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). Based upon this preliminary determination, we do not intend to prepare further National Environmental Policy Act documentation. The Service will consider public comments in making its final determination on whether to prepare such additional documentation.

The Service provides this notice pursuant to section 10(c) of the Act. We will evaluate the permit application, the Plan, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act. If the requirements are met, the Service will issue a permit to University of California, Davis for the incidental take of the valley elderberry longhorn beetle from development of the new Genome Launch Facility, Cole Facility, Center for Companion Animal Health areas, NEES Facility, and Phase 2B Electrical Improvement project, and the management of the mitigation site on Russell Ranch. We will make the final permit decision no sooner than 30 days from the date of this notice.

Dated: June 14, 2002.

**D. Kenneth McDermond,**

*Deputy Manager, Region 1, California/Nevada Operations Office, Sacramento, California.*

[FR Doc. 02-15831 Filed 6-21-02; 8:45 am]

BILLING CODE 4310-55-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[WO-260-09-1060-00-24 1A]

### Correction to Notice of Call for Nominations for the Wild Horse and Burro Advisory Board

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Correction to Notice of Call for Nominations for the Wild Horse and Burro Advisory Board. This notice was previously published in the **Federal Register**: Vol. 67, No. 98/Tuesday May 21, 2002.

**SUMMARY:** The **Federal Register** Notice has an incorrect date for nominations to be submitted to the National Wild Horse and Burro Advisory Board. The correct date is July 24, 2002. The nominations should be submitted to the National Wild Horse and Burro Program, Bureau

of Land Management, Department of the Interior, P.O. Box 12000, Reno, Nevada 89520-0006, Attn: Ramona DeLorme; FAX (775) 861-6711.

**FOR FURTHER INFORMATION CONTACT:** John Fend, Group Manager—Wild Horse and Burro Group, (202) 452-0379.

**Michael Schwartz,**

*Group Manager, Regulatory Affairs.*

[FR Doc. 02-15822 Filed 6-21-02; 8:45 am]

**BILLING CODE 4310-84-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

## DEPARTMENT OF AGRICULTURE

### United States Forest Service

[CA 688\_02\_1610\_DO\_083A]

#### Monument Advisory Committee Meeting Schedule Public Comment Time Change

**AGENCY:** Bureau of Land Management, Interior; United States Forest Service, Agriculture.

**ACTION:** Notice of change in time for public comment period at meetings. The Monument Advisory Committee desires to change the afternoon comment period previously designated as 3:30 p.m.–4 p.m. The afternoon public comment period will now take place from 1 p.m.–1:30 p.m., with the morning public comment period remaining 9 a.m.–9:30 a.m.

**SUMMARY:** The Bureau of Land Management (BLM) and United States Forest Service (USFS) announces a change in time for the afternoon public comment period from 3:30–4 p.m. to 1–1:30 p.m. for the Advisory Committee to the Santa Rosa and San Jacinto Mountains National Monument (hereinafter referred to as “National Monument”). The meetings where this time change will go into effect will be held on the following dates:

- Saturday, August 3, 2002
- Saturday, October 5, 2002
- Saturday, December 7, 2002
- Saturday, February 1, 2003

The meetings will be held at the Palm Desert City Hall Council Chambers, located at 73–510 Fred Waring Drive, Palm Desert, California, 92260. The meetings will take place from 9:00 a.m. until 4:00 p.m. although meetings may be adjourned prior to 4:00 p.m. There will be a half hour dedicated to public input during both the first half hour of the meeting and after lunch starting at 1:00 p.m. A sign up sheet will be located at the meeting room on the day

of the meeting. Speakers wishing to comment publicly should sign the public comment sign-in sheet provided at the location of the meetings. All committee and subcommittee meetings, including field examinations, will be open to the general public, including representatives of the news media. Any organization, association, or individual may file a statement with or appear before the committee and its subcommittees regarding topics on a meeting agenda—except that the chairperson or the designated federal official may require written comments to the Advisory Committee. The meetings will have agendas developed and available to the public prior to the meeting date. The agendas for each meeting will be located on the Bureau of Land Management web page for the Santa Rosa San Jacinto National Monument (<http://www.ca.blm.gov/palmsprings/>). The subject matter of each meeting will focus on the development and implementation of the Santa Rosa San Jacinto Mountains National Monument Management Plan.

The Monument Advisory Committee (MAC) is a committee of citizens appointed to provide advice to the BLM and USFS with respect to preparation and implementation of the management plan for the National Monument as required in the Santa Rosa and San Jacinto Mountains National Monument Act of 2000 (16 U.S.C. 431nt). The act authorized establishment of the MAC with representative members from State and local jurisdictions, the Agua Caliente Band of Cahuilla Indians, a natural science expert, local conservation organization, local developer of building organization, the Winter Park Authority and a representative from the Pinyon Community 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 interpretations or other reasonable accommodations should notify the contact person listed below in advance of the meeting. Persons wishing to make statements will need to sign up at the meeting location.

**DATES:** August 3, 2002; October 5, 2002; December 7, 2002; February 1, 2003; All meetings will take place from 9:00 a.m. to 4:00 p.m. with a morning public comment period from 9:00 to 9:30 a.m. and an afternoon public comment period from 1:00 to 1:30 p.m. Meetings may adjourn prior to 4:00 p.m.

**ADDRESSES:** The meeting will be held in the Council Chambers of the Palm

Desert City Hall, 73–510 Fred Waring Drive, Palm Desert, California, 92260.

#### FOR FURTHER INFORMATION CONTACT:

Written comments should be sent to Miss Danella George, Santa Rosa and San Jacinto Mountains National Monument Manager, Bureau of Land Management, P.O. Box 581260, North Palm Springs, CA 92258; or by fax at (760) 251-4899 or by email at [dgeorge@ca.blm.gov](mailto:dgeorge@ca.blm.gov). Information can be found on our webpage: <http://www.ca.blm.gov/palmsprings/>.

Documents pertinent to this notice, including comments with the names and addresses of respondents, will be available for public review at the Palm Springs-South Coast Field Office located at 690 W. Garnet Avenue, North Palm Springs, California, during regular business hours 8:00 a.m. to 4:30 p.m., Monday through Friday, except holidays.

**SUPPLEMENTARY INFORMATION:** The Santa Rosa and San Jacinto Mountains National Monument was established by act of Congress and signed into law on October 24, 2000. The National Monument was established in order to preserve the nationally significant biological, cultural, recreational, geological, educational and scientific values found in the Santa Rosa and San Jacinto Mountains. This legislation established the first monument to be jointly managed by the Bureau of Land Management (BLM) and the U.S. Forest Service (USFS). The Santa Rosa and San Jacinto Mountains National Monument Act of 2000 affects only Federal lands and Federal interests located within the established boundaries.

The 272,000 acre Monument encompasses 86,400 acres of Bureau of Land Management lands, 64,400 acres of Forest Service lands, 23,000 acres of Agua Caliente Band of Cahuilla Indians lands, 8,500 acres of California Department of Parks and Recreation lands, 35,800 acres of other State of California agencies lands, and 53,900 acres of private land. The BLM and the Forest Service will jointly manage Federal lands in the National Monument in coordination with the Agua Caliente Band of Cahuilla Indians, other federal agencies, state agencies and local governments.

Dated: June 6, 2002.

**Danella George,**

*Designated Federal Official, National Monument Manager.*

**Laurie Rosenthal,**

*District Ranger, San Jacinto Ranger District, San Bernardino National Forest.*

[FR Doc. 02-15791 Filed 6-21-02; 8:45 am]

**BILLING CODE 4310-32-P**

**DEPARTMENT OF THE INTERIOR****National Park Service****National Register of Historic Places;  
Notification of Pending Nominations**

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 1, 2002. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register Historic Places, National Park Service, 1849 C St. NW., NC400, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 800 N. Capitol St., NW., Suite 400, Washington DC 20002; or by fax, 202-343-1836. Written or faxed comments should be submitted by July 9, 2002.

**Carol D. Shull,**

*Keeper of the National Register of Historic Places.*

**ARIZONA****Pinal County**

Building at 121 North Florence Street, (Casa Grande, Arizona MPS), 121 N. Florence St., Casa Grande, 02000737  
 Building at 400 East Third Street, (Casa Grande, Arizona MPS), 400 E. Third St., Casa Grande, 02000749  
 Casa Grande Dispatch, (Casa Grande, Arizona MPS), 109 E. Second St., Casa Grande, 02000747  
 Casa Grande Hospital, (Casa Grande, Arizona MPS), 601 N. Cameron Ave., Casa Grande, 02000740  
 Church of the Nazarene, (Casa Grande, Arizona MPS), 305 E. Fourth St., Casa Grande, 02000750  
 First Baptist Church, (Casa Grande, Arizona MPS), 218 E. Eighth St., Casa Grande, 02000751  
 House at 222 West Ninth St., (Casa Grande, Arizona MPS), 222 W. Ninth St., Casa Grande, 02000743  
 House at 317 East Eighth Street, (Casa Grande, Arizona MPS), 317 E. Eighth St., Casa Grande, 02000753  
 House at 320 West Eighth Street, (Casa Grande, Arizona MPS), 320 W. Eighth St., Casa Grande, 02000745  
 House at 323 West Eighth St., (Casa Grande, Arizona MPS), 323 W. Eighth St., Casa Grande, 02000744  
 House at 59 North Brown Avenue, (Casa Grande, Arizona MPS), 59 N. Brown Ave., Casa Grande, 02000742  
 House at 736 North Central Avenue, (Casa Grande, Arizona MPS), 736 N. Central Ave., Casa Grande, 02000738

House at North Lehmberg Avenue, (Casa Grande, Arizona MPS), 1105 N. Lehmberg Ave., Casa Grande, 02000735  
 Kilcrease, V.W., Building, (Casa Grande, Arizona MPS), 139 W. First St., Casa Grande, 02000754  
 Kochsmeier, Henry and Anna, House, (Casa Grande, Arizona MPS), 401 W. Second Ave., Casa Grande, 02000746  
 Lincoln Hospital, (Casa Grande, Arizona MPS), 112 N. Brown Ave., Casa Grande, 02000741  
 Mandell and Meyer Building, (Casa Grande, Arizona MPS), 211 N. Florence St., Casa Grande, 02000736  
 S.S. Blinky Jr. Building, (Casa Grande, Arizona MPS), 511 W. Second St., Casa Grande, 02000748  
 Southern Pacific Railroad Depot, (Casa Grande, Arizona MPS), 201 W. Main St., Casa Grande, 02000734  
 Templeton, Benjamin, House, (Casa Grande, Arizona MPS), 923 N. Center Ave., Casa Grande, 02000739  
 Valley National Bank, (Casa Grande, Arizona MPS), 221 N. Florence St., Casa Grande, 02000733  
 Wilbur, Walter, House, (Casa Grande, Arizona MPS), 904 E. Eighth St., Casa Grande, 02000752

**ARKANSAS****Logan County**

Farmer's State Bank, (New Blaine, Arkansas MPS), 100 Seallars St., New Blaine, 02000757  
 Lasater, Freeborn T., House, (New Blaine, Arkansas MPS), 494 AR 197, New Blaine, 02000756  
 Main Street Bridge, (New Blaine, Arkansas MPS), Sellers St. at Silver Smith Branch, New Blaine, 02000755

**GEORGIA****Berrien County**

Alapaha Colored School, Henry St., S of jct. with George St., Alapaha, 02000758

**Clarke County**

Newton House, 892 Prince Ave., Athens, 02000759

**IOWA****Dubuque County**

Mount, Sherrill, House, 5259 S. Mound Rd., Sherrill, 02000760

**KANSAS****Elk County**

Grenola Mill and Elevator, Railroad Avenue, Grenola, 02000764

**Labette County**

East Side School, Iowa St., Oswego, 02000762

**Sedgwick County**

Kelly, Edward M., House, 1711 N. Market St., Wichita, 02000763  
 Riverview Apartments, 404-408 Back Bay Blvd., Wichita, 02000765

**Wyandotte County**

Bonner Springs High School, 200 East Third, Bonner Springs, 02000761

**MONTANA****Flathead County**

Great Northern Railway Passenger and Freight Depot and Division Office, 500 Depot St., Whitefish, 02000766

**Lewis and Clark County**

Temple Emanu-El, 515 N. Ewing St., Helena, 02000724

**Sweet Grass County**

Carnegie Public Library, 314 McLeod St., Big Timber, 02000725

**NEBRASKA****Dodge County**

Fremont Municipal Auditorium, 925 Broad St., Fremont, 02000773  
 Fremont Municipal Power Plant and Pumping Station, Eighth St. and Park Ave., Fremont, 02000772

**Hitchcock County**

Weyl Service Station, 124 E. D St., Trenton, 02000768

**Kimball County**

Wheat Growers Hotel, 102 S. Oak St., Kimball, 02000769

**Lancaster County**

Nebraska City to Fort Kearny Cutoff Ruts at Spring Creek Prairie, 11700 SW 100th St., Denton, 02000771

**Madison County**

Karl Stefan Memorial Airport Administration Building, 4100 S. 13th St., Norfolk, 02000767

**Sherman County**

Frederick Hotel, 810 O St., Loup City, 02000770

**NEW MEXICO****Grant County**

Fort Bayard Historic District, 0.5 mi. N of jct. of US 180 and NM 152, Santa Clara, 02000726

**PENNSYLVANIA****Allegheny County**

Heinz, H.J., Company, Roughly bounded by Chestnut St., River Ave., S. Canal St., Progress St. and Heinz Modern Manufacturing Facilities, Pittsburgh, 02000774

**SOUTH DAKOTA****Clark County**

Good Hope Lutheran Church, US 1,  
Vienna, 02000727

**TEXAS****Burleson County**

Kraitchar, Thomas, Jr. and Mary, House,  
200 E. Buck St., Caldwell, 02000731

**Dallas County**

Lincoln Paint and Color Company  
Building, 3210 Main, Dallas,  
02000730

**Harris County**

McKee Street Bridge, (Historic Bridges  
of Texas MPS) McKee St. and Buffalo  
Bayou, Houston, 02000729

**Jeff Davis County**

Jeff Davis County Courthouse, Bounded  
by Court St., Front St., Woodward  
Ave., and State St., Fort Davis,  
02000728

**VERMONT****Addison County**

Glen Dale, (Agricultural Resources of  
Vermont MPS) 1455 Cider Mill Rd.,  
Cornwall, 02000776

**Bennington County**

Pratt—McDaniels—LaFlamme House,  
501—507 South St., Bennington,  
02000777

**VIRGINIA****Goochland County**

Tanglewood—037—5010, 2200—2210  
River Rd W, Maidens, 02000775

**WISCONSIN****Washington County**

Amity Leather Products Company  
Factory, 723—735 S. Main St., West  
Bend, 02000778

**Wood County**

Skunk Hill (Tah-qu-a-kik) Ceremonial  
Community, Address Restricted,  
Arpin, 02000732

A request for REMOVAL has been  
made for the following resource:

**ARIZONA****Maricopa County**

Archeological Site No. AZ  
U:10:68(ASM) (Hohokam and  
Euroamerican Land Use and  
Settlement Along the Northern Queen  
Creek Delta MPS), Address Restricted,  
Mesa vicinity, 95000756

[FR Doc. 02—15888 Filed 6—21—02; 8:45 am]

BILLING CODE 4310-70-P

**DEPARTMENT OF THE INTERIOR****National Park Service****National Register of Historic Places;  
Notification of Pending Nominations**

Nominations for the following  
properties being considered for listing  
in the National Register were received  
by the National Park Service before June  
8, 2002. Pursuant to section 60.13 of 36  
CFR part 60 written comments  
concerning the significance of these  
properties under the National Register  
criteria for evaluation may be forwarded  
by United States Postal Service, to the  
National Register Historic Places,  
National Park Service, 1849 C St. NW,  
NC400, Washington, DC 20240; by all  
other carriers, National Register of  
Historic Places, National Park Service,  
800 N. Capitol St., NW, Suite 400,  
Washington DC 20002; or by fax, 202—  
343—1836. Written or faxed comments  
should be submitted by July 9, 2002.

**Carol D. Shull,**

*Keeper of the National Register of Historic  
Places.*

**CALIFORNIA****San Diego County**

Mohnike Adobe, 12115 Black Mountain  
Rd., San Diego, 02000779

**FLORIDA****Sarasota County**

Overtown Historic District, Roughly  
along Central and Cohen Aves., bet.  
9th and 4th Sts., Sarasota, 02000781  
Reid, Leonard, House, 1435 7th St.,  
Sarasota, 02000780

**LOUISIANA****Orleans Parish**

Fourth Church of Christ, Scientist, 134  
Polk Ave., New Orleans, 02000782

**MAINE****Lincoln County**

Carleton, Moses, House, Hollywood  
Blvd., 0.2 mi. NE of jct. with ME 94,  
Alna, 02000783

Union Meeting House, (Former), Main  
Rd., ME 144, Westport, 02000786  
Westport Community Church, Main Rd.,  
ME 144, Westport, 02000784

**Somerset County**

Dudley's Corner School House, 5  
Dudley Corner Rd., Skowhegan,  
02000787

**Washington County**

Jonesboro Union Church, Looks Point  
Rd., at jct. with US 1, Jonesboro,  
02000788

**York County**

Old Town House, Merrill Hill Rd., N of  
jct. wit Middle Rd., Parsonsfield,  
02000785

**MASSACHUSETTS****Essex County**

Bridge Street Neck Historic District,  
Bridge St., and side Sts. bet. March/  
Osgood Sts., and Howard/Webb Sts.,  
Salem, 02000790

**Middlesex County**

St. Joseph's Convent and School, 517  
Moody St., Lowell, 02000789

**MISSOURI****Bates County**

Palace Hotel, 2—4 W. Ohio St., Butler,  
02000795

**Johnson County**

Hamilton—Brown Shoe Factory, 1123  
Wilkes Blvd., Columbia, 02000791

**Putnam County**

Unionville Square Historic District,  
Roughly along portions of Main,  
Grant., 16th and 17th Sts., Unionville,  
02000793

**St. Charles County**

Meier General Store, 3669 Mill St., New  
Melle, 02000794

**St. Louis County**

Czufin, Rudolph and Dorothy C., House,  
24 Dielman Rd., Ladue, 02000792

**St. Louis Independent City**

Fairgrounds Hotel, 3644 Natural Bridge  
Rd., St. Louis (Independent City),  
02000796

**NEBRASKA****Lancaster County**

Forest Brook Farm, 13905 Van Dorn,  
Walton, 02000797

**NEW YORK****Tompkins County**

Austin, William, House, 34 Seneca St.,  
Trumansburg, 02000798

**Warren County**

Marcella Sembrich Opera Museum,  
4800 Lake Shore Dr., Bolton Landing,  
02000799

A Request for REMOVAL has been  
made for the following resources:

**ALABAMA****Tuscaloosa County**

Hassell, John, House, Rt. 1 Watermelon  
Rd., Northport, 85000447

**PENNSYLVANIA****Lycoming County**

Bridge in Plunkett's Creek Township (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR) LR 41053 over Plunkett's Creek Proctor, 88000830

[FR Doc. 02-15889 Filed 6-21-02; 8:45 am]

BILLING CODE 4310-70-P

**DEPARTMENT OF THE INTERIOR****National Park Service****National Register of Historic Places; Notification of Pending Nominations**

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 15, 2002. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register Historic Places, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 800 N. Capitol St., NW., Suite 400, Washington DC 20002; or by fax, 202-343-1836. Written or faxed comments should be submitted by July 9, 2002.

**Carol D. Shull,**

*Keeper of the National Register of Historic Places.*

**ARIZONA****Maricopa County**

915 E. Pierce Street/Grand Pyramid House, 915 E. Pierce St., Phoenix, 02000800

**CALIFORNIA****Orange County**

Congdon, Joel R., House, 32701 Alipaz St., San Juan Capistrano, 02000801

**IDAHO****Bonneville County**

Holy Rosary Church, 288 E. Ninth St., Idaho Falls, 02000802

**LOUISIANA****Orleans Parish**

Washington, Booker T., High School and Auditorium, 1201 S. Roman, New Orleans, 02000803

**MISSOURI****Cole County**

Missouri State Capitol Historic District (Boundary Increase), 200 Blk. of W. McCarty St. and 406-408 Washington St., Jefferson City, 02000804

**St. Louis Independent City**

Stix, Baer and Fuller Dry Goods Company's "Grand Leader" Relay Station, 3712-3748 Laclede Ave., 3717 Forest Park Blvd., St. Louis (Independent City), 02000805

**NEW JERSEY****Somerset County**

West End Hose Company Number 3, 15 Doughty Av., Somerville, 02000808

**PENNSYLVANIA****Blair County**

Broad Avenue Historic District, Roughly along Broad Ave., from 23rd to 31st Sts., Altoona, 02000806

Llyswen Historic District, Coleridge, Logan, Aldrich bounded by Mill Run and Ward, Altoona, 02000807

**TENNESSEE****Knox County**

Racheff, Ivan, House, 1943 Tennessee Ave., Knoxville, 02000810

**Obion County**

Houser House, 2221 Old Troy Rd., Union City, 02000809

**Tipton County**

Charleston United Methodist Church and Cemetery, Covington-Stanton Rd., Charleston, 02000811

**Washington County**

Washington College Historic District, 116 Doak Ln., Washington College, 02000812

**WISCONSIN****Dane County**

McCarthy, Timothy C. and Katherine, House, 848 Jenifer St., Madison, 02000813

A request for REMOVAL has been made for the following resources:

**NEVADA****Washoe County**

Wingfield, George, House 219 Court St. Reno, 82003260

[FR Doc. 02-15890 Filed 6-21-02; 8:45 am]

BILLING CODE 4310-70-P

**INTERNATIONAL TRADE COMMISSION**

[Investigation No. 731-TA-1010 (Preliminary)]

**Lawn and Garden Steel Fence Posts From China****Determinations**

On the basis of the record<sup>1</sup> developed in the subject investigation, the United States International Trade Commission determines,<sup>2</sup> pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China of U-shaped or hat-shaped lawn and garden fence posts made of steel and/or any other metal, weighing one pound or less per foot, provided for in subheading 7326.90.85 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

On the basis of the record developed in the subject investigation, the Commission also determines,<sup>3</sup> pursuant to section 733(a) of the Act, that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from China of other fence posts made of steel and/or other metal including tee, farm, and sign posts weighing one pound or less per foot, provided for in subheading 7326.90.85 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at LTFV.

**Commencement of Final Phase Investigation**

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in

<sup>1</sup> The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

<sup>2</sup> Vice Chairman Hillman and Commissioner Miller dissenting.

<sup>3</sup> Commissioner Bragg dissenting.

that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. 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 antidumping and 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 the investigation.

### Background

On May 1, 2002, a petition was filed with the Commission and Commerce by Steel City Corporation, Youngstown, OH, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of lawn and garden steel fence posts from China. Accordingly, effective May 1, 2002, the Commission instituted antidumping duty investigation No. 731-TA-1010 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of May 8 (67 FR 30963, May 8, 2002). The conference was held in Washington, DC, on May 22, 2002, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on June 17, 2002. The views of the Commission are contained in USITC Publication 3521 (June 2002), entitled *Lawn and Garden Steel Fence Post from China: Investigation No. 731-TA-1010* (Preliminary).

By order of the Commission.

Issued: June 18, 2002.

**Marilyn R. Abbott,**

Secretary.

[FR Doc. 02-15862 Filed 6-21-02; 8:45 am]

BILLING CODE 7020-02-P

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby

given that a consent decree resolving the liability of John Simpson ("Defendant") in *United States of America v. Simpson*, Civil Action No. 01-288-E-BLW, will be lodged with the United States District Court for the District of Idaho.

The proposed consent decree concerns allegations that Defendant violated the Clean Water Act, 33 U.S.C. 1311, and a scenic easement, and committed trespass, resulting from the unauthorized discharge of dredged or fill materials into waters of the United States in Custer County, Idaho, in areas adjacent to the Salmon River. The consent decree enjoins the Defendant from (1) discharging dredged or fill material into waters of the United States; (2) violating the scenic easement; and (3) trespassing. It also requires the Defendant to restore the site; to conduct additional injunctive relief; and to pay a civil penalty of \$23,750 to the United States Treasury.

The Department of Justice will receive written comments relating to the proposed consent decree for a period of eight (8) days from the date of publication of this notice. This expedited comment period is necessary due to the short time period available for completing certain restoration work under the Consent Decree during this summer. Comments should either be sent by overnight express delivery addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, Attention: David Kaplan, Senior Trial Counsel, Environmental Defense Section, Suite 8000, 601 D Street, Washington, DC 20004, or by telefax to (202) 514-8865, and marked Attention: David Kaplan, Environmental Defense Section, and in either case should refer to *United States of America v. John Simpson*, DJ Reference No. 90-5-1-1-16255.

A copy of the proposed consent decree may be obtained for examination by requesting a copy by calling (202) 514-2219 and asking for David Kaplan.

**Russell Young,**

Assistant Chief, Environmental Defense Section, Environment and Natural Resources Division, United States Department of Justice.  
[FR Doc. 02-15895 Filed 6-19-02; 4:37 pm]

BILLING CODE 4410-15-M

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA-W) issued during the period of June 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

#### Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-39,646; *L.B. Foster Co., Pomeroy, OH*

TA-W-40,533; *Froedtert Malting, A Div. Of International Malting Co LLC, Milwaukee, WI*

TA-W-41,088; *Crompton and Knowles Colors, Inc., Reading, PA*

TA-W-41,537; *AmeriSteel Corp., Dust Processing Div., Jackson, TN*

TA-W-41,143; *Liebert Corp., Delaware, OH: "All workers who are engaged in the production of surge suppressors are denied eligibility to apply for adjustment assistance"*

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-39,906; *Metals USA, Flat Rolled Div., Youngstown, OH*  
 TA-W-40,596; *Alcoa Fujikura Ltd., El Paso, TX*  
 TA-W-41,404; *Stream International, Inc., A Div. Of Solectron, Dallas, TX*  
 Increased imports did not contribute importantly to worker separations at the firm.  
 TA-W-40,824; *Fort Dearborn Co., Coldwater, MI*  
 TA-W-40,849; *Denso Sales California, Inc., Long Beach, CA*  
 TA-W-39,980; *M & S Manufacturing Co., Plant 15, Morenci, MI*  
 TA-W-41,054; *Trinity Industries, Springfield, MO*  
 TA-W-41,133; *Baldwin Piano and Organ Co., Greenwood, MS*  
 TA-W-41,313; *Goodrich Corp., Arkadelphia, AR*  
 TA-W-40,697; *First Source Furniture Group, A Subsidiary of Haworth, Inc., Halls, TN*  
 TA-W-40,789; *Ferro Corp., Pittsburgh, PA*

#### Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA-W-40,931; *Cone Blanchard Corp., A Subsidiary of Park Corp., Windsor, VT: January 24, 2001.*  
 TA-W-40,937; *IBM Corp., Storage Technology Div., Rochester, MN: January 21, 2001.*  
 TA-W-40,929; *Loranger Manufacturing Corp., Warren, PA: January 15, 2001.*  
 TA-W-40,909; *Bowater, Inc., Bowater Newsprint Coosa Pines Operations, Formerly Alliance Forest Products, Inc., Coosa Pines, AL: December 3, 2000.*  
 TA-W-40,646; *GE Superabrasives, A Subsidiary of GE Specialty Materials, Worthington, OH: November 28, 2000.*  
 TA-W-40,640; *The Timken Co., Canton, OH: October 14, 2001.*  
 TA-W-40,609; *Leybold Vacuum USA, Inc., Export, PA: December 7, 2000.*  
 TA-W-40,397; *Lorber Industries, of Texas, Snyder, TX: October 22, 2000.*  
 TA-W-40,300; *ADC Communications, Minnetonka, MN: October 9, 2000.*  
 TA-W-40,111; *SCI Enclosures (Formerly CMS Hartzell), Richmond, KY: September 17, 2000.*  
 TA-W-39,865; *Measurement Specialties, Inc., Schaevitz Sensors Div., Hampton, VA: August 7, 2000.*

TA-W-41,642; *Parksley Apparel, Parksley, VA: May 24, 2001.*  
 TA-W-41,449; *Biljo, Inc., Dublin, GA: June 2, 2002.*  
 TA-W-41,384; *Chicago Mold Engineering Co., Inc., St. Charles, IL: March 26, 2001.*  
 TA-W-41,328; *New World Pasta, Lebanon, PA: March 22, 2001.*  
 TA-W-41,320; *South Coast Lumber Co., Brookings, OR: March 13, 2001.*  
 TA-W-41,252; *Rosebar Textile Co., Inc., Paterson, NJ: March 8, 2001.*  
 TA-W-41,200; *Tapetex, A Div. Of Duro Industries, Rochester, NY: February 28, 2001.*  
 TA-W-41,143; *Liebert Corp., Delaware, OH: February 25, 2001. "All workers engaged in the production of battery back-ups for main frame computers are eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974."*  
 TA-W-41,124; *Simpson Timber Co., Shelton, WA: February 14, 2001.*  
 TA-W-41,115 & A, B; *Insteel Industries, Inc., Mount Airy, NC, Insteel Wire Products Co., A Subsidiary of Insteel Industries, Inc., 184 Insteel Drive, Andrews, SC and 185 Insteel Drive, Andrews, SC: February 20, 2001.*  
 TA-W-41,095 & A; *Woolrich, Inc., Woolrich, PA and Jersey Shore, PA: June 22, 2001.*  
 TA-W-41,094; *STMicroelectronics, Inc., San Diego, CA: February 28, 2001.*  
 TA-W-41,048; *Grede Foundries, Inc., Grede-Pryor Foundry, Pryor, OK: January 26, 2001.*  
 TA-W-41,033; *Accuride Corp., Columbia, TN: January 17, 2001.*  
 TA-W-40,996; *Kosa, Spartanburg, SC: January 28, 2001.*  
 TA-W-40,991; *Telex Communications, Inc., Buchanan, MI: January 18, 2001.*

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103-182) concerning transitional adjustment assistance hereinafter called (NAFTA-TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA-TAA issued during the month of June, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA-TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate

subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

#### Negative Determinations NAFTA-TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA-TAA-06040; *Kaijay Pants Co., A Div. Of Warnaco, Nesquehoning, PA*  
 NAFTA-TAA-05088; *AP Green Industries, Inc., A Subsidiary of RHI America, (RHI Refractories holding Co.), Mexico, MO*  
 NAFTA-TAA-05303; *M and S Manufacturing Co., Plant 15, Morenci, MI*  
 NAFTA-TAA-05409; *JEM Sportswear, Inc., San Fernando, CA*  
 NAFTA-TAA-05561; *Osan Manufacturing, Boyertown, PA*  
 NAFTA-TAA-05782; *Allegro Microsystems, Inc., A Subsidiary of Sankin Electric, Ltd, Willow Grove, PA*  
 NAFTA-TAA-05793; *Ferro Corp., Pittsburgh, PA*  
 NAFTA-TAA-05886; *Trinity Industries, Inc., Springfield, MO*  
 NAFTA-TAA-05910; *Liebert Corp., Delaware, OH "All worker engaged in the production of surge protectors are denied eligibility to apply for NAFTA-TAA under Section 250 of the Trade Act of 1974.*  
 NAFTA-TAA-05937; *Denso Sales California, Inc., Long Beach, CA: "All workers engaged in the production of automotive cooling units and refurbished automotive parts, are denied eligibility to apply*

for NAFTA-TAA under Section 250 of the Trade Act of 1974.”  
 NAFTA-TAA-05975; S.D. Warren Co, d/b/a/ Sappi Fine Paper North America, Somerset Operations, Skowhegan, ME  
 NAFTA-TAA-6111; International Paper, Industrial Packaging Containerboard and Kraft, Oswego, NY

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

NAFTA-TAA-06122; Stream International Inc., A Div. Of Solectron, Dallas, TX  
 NAFTA-TAA-05740; REM Electronics Supply Co., Inc., El Paso, TX  
 NAFTA-TAA-05258; Metals USA, Flat Rolled Div., Youngstown, OH

The investigation revealed that criteria (1) has not been met. A significant number or proportion of the workers in such workers' firm or an appropriate subdivision (including workers in any agricultural firm or appropriate sub-division thereof) did not become totally or partially separated from employment.

NAFTA-TAA-06112; Ivaco Stel Processing LLC., Tonawanda, NY

#### **Affirmative Determinations NAFTA-TAA**

NAFTA-TAA-05937; Denso Sales California, Inc., Long Beach, CA: March 1, 2001. “All workers engaged the production of automotive tubes and hoses, automotive air conditioning kits and portable air conditioners, are eligible to apply for NAFTA-TAA under Section 250 of the Trade Act of 1974.”

NAFTA-TAA-05910; Liebert Corp., Delaware, OH: February 1, 2001. “All workers engaged in the production of battery back-ups for main frame computers, are eligible to apply for NAFTA-TAA under Section 250 of the Trade Act of 1974.”

NAFTA-TAA-06173; AmeriSteel Corp., Dust Processing Div., Jackson, TN: April 23, 2001.

NAFTA-TAA-5437; ADC Communications, Minnetonka, MN: October 9, 2000.

NAFTA-TAA-05746; Loranger Manufacturing Corp., Warren, PA: January 14, 2001.

NAFTA-TAA-05750; Telex Communications, Inc., Buchanan, MI: January 18, 2001.

NAFTA-TAA-5806; Accuride Corp., Columbia, TN: January 25, 2001.

NAFTA-TAA-05847; Bowater, Inc., Bowater Newsprint Coosa Pines Operations, Formerly Alliance Forest Products, Inc., Coosa Pines, AL: January 28, 2001.

NAFTA-TAA-06000; General Electric Co., Small Motors, Owensboro, KY: March 15, 2001.

NAFTA-TAA-06001; South Coast Lumber Co., Brookings, OR: March 18, 2001.

NAFTA-TAA-06057; Chicago Mold Engineering Co., Inc., St. Charles, IL: March 26, 2001.

NAFTA-TAA-06061; Owens-Brigam Medical Co., Headquarters, Morganton, NC: April 1, 2001.

NAFTA-TAA-06099; Biljo, Inc., Dublin, GA: June 2, 2002.

I hereby certify that the aforementioned determinations were issued during the month of June, 2002. Copies of these determinations are available for inspection in Room C-5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: June 14, 2002.

**Edward A. Tomchick,**  
 Director, Division of Trade Adjustment Assistance.

[FR Doc. 02-15850 Filed 6-21-02; 8:45 am]

BILLING CODE 4510-30-P

#### **DEPARTMENT OF LABOR**

##### **Employment and Training Administration**

[TA-W-40,553 and TA-W-40,553E]

##### **AALFS Manufacturing, Inc., Glenwood, Arkansas and Texarkana Distribution Center, Texarkana, Arkansas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance**

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on January 22, 2002, applicable to workers of Aalfs Manufacturing, Inc., Glenwood, Arkansas. The notice was published in the **Federal Register** on February 5, 2002.

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations occurred at the Texarkana

Distribution Center of Aalfs Manufacturing, Inc., Texarkana, Arkansas. The Texarkana, Arkansas location provided distribution services for Aalfs Manufacturing's production facilities including Glenwood, Arkansas. The workers were engaged in the production of men's, boy's and ladies' denim jeans and shorts.

Accordingly, the Department is amending the certification to cover the workers of Aalfs Manufacturing, Inc., Texarkana Distribution Center, Texarkana, Arkansas.

The intent of the Department's certification is to include all workers of Aalfs Manufacturing, Inc. who were adversely affected by increased imports.

The amended notice applicable to TA-W-40,553 is hereby issued as follows:

“All workers of Aalfs Manufacturing, Inc., Glenwood, Arkansas (TA-W-40,553) and Aalfs Manufacturing, Inc., Texarkana Distribution Center, Texarkana, Arkansas (TA-W-40,553E) who became totally or partially separated from employment on or after November 14, 2000, through January 22, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.”

Signed at Washington, DC, this 16th day of May, 2002.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02-15851 Filed 6-21-02; 8:45 am]

BILLING CODE 4510-30-P

#### **DEPARTMENT OF LABOR**

##### **Employment and Training Administration**

[TA-W-41,498]

##### **AALFS Manufacturing, Inc., Texarkana Distribution Center, Texarkana, AR; Notice of Termination of Investigation**

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on May 6, 2002 in response to a petition that was filed by a company official on behalf of workers at Aalfs Manufacturing, Inc., Texarkana Distribution Center, Texarkana, Arkansas.

An active certification covering the petitioning group of workers is already in effect (TA-W-40,553E, as amended). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 16th day of May, 2002.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02-15854 Filed 6-21-02; 8:45 am]

BILLING CODE 4510-30-P

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions,

the director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment

Assistance, at the address shown below, not later than July 5, 2002.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 10, 2002.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C-5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 20th day of May, 2002.

**Edward A. Tomchick,**

*Director, Division of Trade Adjustment Assistance.*

## APPENDIX

[Petitions instituted on 05/20/2002]

| TA-W         | Subject firm (Petitioners)           | Location                  | Date of petition | Product(s)                              |
|--------------|--------------------------------------|---------------------------|------------------|-----------------------------------------|
| 41,547 ..... | Church and Dwight (Co.) .....        | Winsted, CT .....         | 04/05/2002       | Dog Brushes, Collars, and Leashes.      |
| 41,548 ..... | Universal Instruments (Wkrs) .....   | Binghamton, NY .....      | 04/22/2002       | Fabrications for Electronic Assembly.   |
| 41,549 ..... | Philips (Wkrs) .....                 | Knoxville, TN .....       | 04/12/2002       | Projection Television Sets.             |
| 41,550 ..... | Lenz Ricker (Wkrs) .....             | Totowa, NJ .....          | 04/24/2002       | Legal Forms and Books                   |
| 41,551 ..... | Wabash Aluminum Alloy (Wkrs) .....   | East Syracuse, NY .....   | 03/01/2002       | Aluminum.                               |
| 41,552 ..... | SouthTech (Wkrs) .....               | Tappahannock, VA .....    | 04/29/2002       | Laser Beam Printers.                    |
| 41,553 ..... | Astechnologies (Wkrs) .....          | Monroe, MI .....          | 04/19/2002       | Laminated Composite Boards.             |
| 41,554 ..... | International Utility (Co.) .....    | Batesville, AR .....      | 04/11/2002       | Utility Poles.                          |
| 41,555 ..... | Usibelli Coal Mine (Co.) .....       | Healy, AK .....           | 04/22/2002       | Low Sulfur Coal.                        |
| 41,556 ..... | Fedders Appliances (Wkrs) .....      | Effingham, IL .....       | 04/30/2002       | Air Conditioners.                       |
| 41,557 ..... | Battery Pack of America (Wkrs) ..... | Durham, NC .....          | 04/24/2002       | Rechargeable Battery Packs.             |
| 41,558 ..... | BASF Corporation (Co.) .....         | Wilmington, NC .....      | 05/02/2002       | Vitamin C.                              |
| 41,559 ..... | Southern Button (Wkrs) .....         | Riviera Beach, FL .....   | 04/12/2002       | Polyester Buttons.                      |
| 41,560 ..... | SRAM Corporation (Co.) .....         | Colorado Spring, CO ..... | 04/26/2002       | Forks, Rearshocks, Seatposts for Bikes. |
| 41,561 ..... | Casco Products (Wkrs) .....          | Bridgeport, CT .....      | 04/29/2002       | Car Lighters and Power Outlets.         |
| 41,562 ..... | Florshiem Distribution (Wkrs) .....  | Jefferson City, MO .....  | 05/03/2002       | Warehouse & Distribution of Shoes.      |
| 41,563 ..... | Clariant Corporation (Co.) .....     | Oak Creek, WI .....       | 05/08/2002       | Natural Oils, Polyurethane, Lacquers.   |
| 41,564 ..... | Domtar A.W. (Co.) .....              | Port Edwards, WI .....    | 05/03/2002       | Uncoated Trade Paper.                   |
| 41,565 ..... | Washington Garment (Co.) .....       | Washington, NC .....      | 04/29/2002       | Children's Dresses.                     |
| 41,566 ..... | Johanna York (Wkrs) .....            | New York, NY .....        | 11/29/2001       | Ladies Apparel.                         |
| 41,567 ..... | Virginia House Furniture (Co.) ..... | Atkins, VA .....          | 05/07/2002       | Bedroom Furniture.                      |
| 41,568 ..... | Invensys Sensor Systems (Wkrs) ..... | El Paso, TX .....         | 04/29/2002       | Plastic Molded Parts.                   |
| 41,569 ..... | ZF Meritor, LL Clutch (Wkrs) .....   | Maxton, NC .....          | 04/10/2002       | Heavy-Duty Clutch Assemblies.           |
| 41,570 ..... | FMC Corporation (Wkrs) .....         | Green River, WY .....     | 04/23/2002       | Soda Ash.                               |
| 41,571 ..... | Framatome Connectors (Wkrs) .....    | Etters, PA .....          | 05/01/2002       | Optical Cable Assemblies.               |
| 41,572 ..... | RMH (Wkrs) .....                     | Scranton, PA .....        | 04/30/2002       | Insurance Sales.                        |
| 41,573 ..... | J.R. Simplot (PACE) .....            | Pocatello, ID .....       | 05/10/2002       | Chemical Fertilizer.                    |
| 41,574 ..... | Agere Systems (Wkrs) .....           | Breinigsville, PA .....   | 02/04/2002       | Wavelength Pump Laser.                  |
| 41,575 ..... | Schlumberger Oilfield (Wkrs) .....   | Midland, TX .....         | 03/25/2002       | Oil Field Services.                     |

[FR Doc. 02-15847 Filed 6-21-02; 8:45 am]

BILLING CODE 4510-30-M

**DEPARTMENT OF LABOR****Employment and Training  
Administration****Investigations Regarding Certifications  
of Eligibility To Apply for Worker  
Adjustment Assistance**

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has

instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 5, 2002.

Interest persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 5, 2002.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C-5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 3rd day of June, 2002.

**Edward A. Tomchick,**

*Director, Division of Trade Adjustment Assistance.*

**APPENDIX**

[Petitions instituted on 06/03/2002]

| TA-W         | Subject firm (petitioners)             | Location                  | Date of petition | Product(s)                                 |
|--------------|----------------------------------------|---------------------------|------------------|--------------------------------------------|
| 41,601 ..... | Dimon, Inc (Comp) .....                | Danville, VA .....        | 05/23/2002       | Leaf Tobacco.                              |
| 41,602 ..... | Diversified Tool Corp. (Comp) .....    | Cambridge Spgs, PA .....  | 05/13/2002       | Plastic Injection Molds.                   |
| 41,603 ..... | Tredegar Film Products (Comp) .....    | Tacoma, WA .....          | 05/03/2002       | Permeable Film.                            |
| 41,604 ..... | Benchmark Electronics (Wrks) .....     | Pulaski, TN .....         | 05/09/2002       | Circuit Boards.                            |
| 41,605 ..... | Bemis Manufacturing Co (Wrks) .....    | Sheboygan Falls, WI ..... | 04/16/2002       | Cutting Boards.                            |
| 41,606 ..... | Whatman, Inc. (Comp) .....             | Ann Arbor, MI .....       | 05/20/2002       | Medical Filtration Devices.                |
| 41,607 ..... | John Deere Commercial (Wrks) .....     | New London, TN .....      | 05/06/2002       | Upper & Lower Links, Buckets<br>Toothbars. |
| 41,608 ..... | G and L Trucking, Inc (Wrks) .....     | Hanceville, AL .....      | 05/03/2002       | Coal.                                      |
| 41,609 ..... | Nokia Mobile Phones (Wrks) .....       | Fort Worth, TX .....      | 05/16/2002       | Cellular Phones.                           |
| 41,610 ..... | Simmons Juvenile Prod. Co (Wrks) ..... | New London, WI .....      | 05/16/2002       | Infant Furniture.                          |
| 41,611 ..... | Dean Pickle and Specialty (IBT) .....  | Atkins, AR .....          | 05/09/2002       | Vegetables.                                |
| 41,612 ..... | J.R. Simplot Co (BCTW) .....           | Heyburn, ID .....         | 05/09/2002       | Potatoes.                                  |
| 41,613 ..... | Nordic Gear (Wrks) .....               | Millersburg, PA .....     | 05/09/2002       | Sewn Fleece.                               |
| 41,614 ..... | Great Northern Paper (Wrks) .....      | Millinocket, ME .....     | 05/17/2002       | High Gloss Paper.                          |
| 41,615 ..... | Aarons Automotive (Wrks) .....         | Joplin, MO .....          | 05/20/2002       | Transmissions.                             |

[FR Doc. 02-15846 Filed 6-21-02; 8:45 am]

BILLING CODE 4510-38-M

**DEPARTMENT OF LABOR****Employment and Training  
Administration**

[TA-W-41,160]

**MK Gold Company, Searchlight,  
Nevada; Notice of Termination of  
Investigation**

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on March 25, 2002 in response to a worker petition which was filed on behalf of workers at MK Gold Company, Searchlight, Nevada.

An active certification covering the petitioning group of workers is already in effect (TA-W-39,592, as amended). Consequently, further investigation in

this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 23rd day of April, 2002.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02-15853 Filed 6-21-02; 8:45 am]

BILLING CODE 4510-30-P

**DEPARTMENT OF LABOR****Employment and Training  
Administration**

[TA-W-38,447]

**Pinebluff Manufacturing Company,  
Now Known as Ellery Homestyles,  
LLC, Pinebluff, NC; Amended  
Certification Regarding Eligibility To  
Apply for Worker Adjustment  
Assistance**

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 7, 2001, applicable to workers of Pinebluff Manufacturing Company, Pinebluff, North Carolina. The notice was published in the **Federal Register** on March 2, 2001 (66 FR 13086).

At the request of the petitioners, the Department reviewed the certification

for workers of the subject firm. The workers were engaged in the production of curtains

The workers of Ellery Homestyles, LLC, Pinebluff, North Carolina (TA-W-41,083) engaged in the distribution of window curtains were denied Trade Adjustment Assistance on March 27, 2002. Performance of services does not constitute production of an article, as required by the Trade Act of 1974, and this determination has been upheld in the U.S. Court of Appeals.

The petitioners provided new information after the issuance of the March 27, 2002 denial indicating that after a company name change in April 2001, Pinebluff Manufacturing Company is now known as Ellery Homestyles, LLC.

Accordingly, the Department is amending the certification determination to properly reflect this matter.

The intent of the Department's certification is to include all workers of Pinebluff Manufacturing Company, now known as Ellery Homestyles, LLC who were adversely affected by increased imports.

The amended notice applicable to TA-W-38,447 is hereby issued as follows:

All workers of Pinebluff Manufacturing Company, now known as Ellery Homestyles, LLC, Pinebluff, North Carolina who became totally or partially separated from

employment on or after December 4, 1999, through February 7, 2003, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 26th day of April, 2002.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02-15848 Filed 6-21-02; 8:45 am]

**BILLING CODE 4510-30-P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations

will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 5, 2002.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 5, 2002.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C-5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 28th day of May, 2002.

**Edward A. Tomchick,**

*Director, Division of Trade Adjustment Assistance.*

### Appendix

#### Petitions Instituted on 05/28/2002

| TA-W         | Subject firm (petitioners)              | Location                | Date of petition | Product(s)                                |
|--------------|-----------------------------------------|-------------------------|------------------|-------------------------------------------|
| 41,576 ..... | R and B Falcon Management (Comp) .....  | Lafayette, LA .....     | 05/03/2002       | Oil.                                      |
| 41,577 ..... | 3M Company (Comp) .....                 | Columbia, MO .....      | 03/19/2002       | Flexible Circuits.                        |
| 41,578 ..... | Holophane Acuity Lighting (UAW) .....   | Springfield, OH .....   | 05/19/2002       | High Intensity Lighting.                  |
| 41,579 ..... | Delphi Energy and Chassis (UAW) .....   | Dayton, OH .....        | 05/10/2002       | Components for Brakes and Chassis System. |
| 41,580 ..... | Pacific Northwest Sugar (Comp) .....    | Moses Lake, WA .....    | 04/30/2002       | Sugar.                                    |
| 41,581 ..... | Cincinnati Gear Co (IAMAW) .....        | Mariemont, OH .....     | 05/01/2002       | Gears for Engines and Electric.           |
| 41,582 ..... | Garment Corp. of America (Comp) .....   | Miami Beach, FL .....   | 02/18/2002       | Uniform Shirts.                           |
| 41,583 ..... | Coco Co. Door Products (Wrks) .....     | Harlingen, TX .....     | 04/17/2002       | Metal Frames.                             |
| 41,584 ..... | Square D Co. (Comp) .....               | Oshkosh, WI .....       | 05/16/2002       | Low Voltage Transformers.                 |
| 41,585 ..... | Kennametal Greanfield (Wrks) .....      | Greenfield, MA .....    | 05/14/2002       | Taps.                                     |
| 41,586 ..... | C ad M Knitting Mill (Wrks) .....       | Maspeth, NY .....       | 05/02/2002       | Textiles, Knitted Ladies Sweaters.        |
| 41,587 ..... | Saes Getters Corp (Wrks) .....          | Independence, OH .....  | 05/05/2002       | Getters (T.V.'s and Computers).           |
| 41,588 ..... | Osram Sylvania Products (Comp) .....    | Central Falls, RI ..... | 05/02/2002       | Glass.                                    |
| 41,589 ..... | Sharmrock Conduit Products (UMWA) ..... | Barnesville, OH .....   | 05/07/2002       | Conduit Cupplings.                        |
| 41,590 ..... | Oxford Womenswear Group (Comp) .....    | New York, NY .....      | 05/03/2002       | Womens Clothing.                          |
| 41,591 ..... | Riley Gear Corp (IAMAW) .....           | No. Tonawanda, NY ..... | 05/01/2002       | Precision Gears.                          |
| 41,592 ..... | Logan Manufacturing (Wrks) .....        | Ghapmanville, WV .....  | 05/02/2002       | Jackets.                                  |
| 41,593 ..... | Seco/Warwick Corp. (Comp) .....         | Meadville, PA .....     | 05/20/2002       | Custom Furnances.                         |
| 41,594 ..... | Fulfex, Inc. (Wrks) .....               | Scotland Neck, NC ..... | 05/11/2002       | Elastic Rubber.                           |
| 41,595 ..... | Greyhound Lines, Inc. (Wrks) .....      | Dallas, TX .....        | 02/20/2002       | Bus Service Transportation.               |
| 41,596 ..... | Carton Craft Corp. (IAMAW) .....        | Buffalo, NY .....       | 05/08/2002       | Greeting Cards, Paper Back Books.         |
| 41,597 ..... | Maukesha Engine, Dresser (IAMAW) .....  | Waukesha, WI .....      | 05/15/2002       | Gaseous Fuel Engines.                     |
| 41,598 ..... | Sonoco Products Co. (Comp) .....        | Santa Maria, CA .....   | 05/15/2002       | Plastic Bags.                             |
| 41,599 ..... | Clearfield Machine Co (IAMAW) .....     | Clearfield, PA .....    | 02/12/2002       | Grey Iron Casting.                        |
| 41,600 ..... | Columbia Sportswear Co (Wrks) .....     | Portland, OR .....      | 05/21/2002       | Outdoor Sportswear.                       |

[FR Doc. 02-15845 Filed 6-21-02; 8:45 am]

BILLING CODE 4510-30-M

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-40,898]

#### St. Clair Technologies, Inc., Including Leased Workers of Employment Group, Charlotte, Michigan; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 18, 2002, applicable to workers of St. Clair Technologies, Inc., Charlotte, Michigan. The notice was published in the **Federal Register** on March 29, 2002 (67 FR 15226).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. Information provided by the State shows that leased workers of Employment Group were employed at St. Clair Technologies, Inc. to produce wiring harnesses at the Charlotte, Michigan location of the subject firm.

Based on these findings, the Department is amending this certification to include leased workers of Employment Group Charlotte, Michigan employed at St. Clair Technologies, Charlotte, Michigan.

The intent of the Department's certification is to include all workers of St. Clair Technologies who were adversely affected by increased imports.

The amended notice applicable to TA-W-40,898 is hereby issued as follows:

All workers of St. Clair Technologies, Charlotte, Michigan including leased workers of Employment Group, Charlotte, Michigan engaged in employment related to the production of wiring harnesses at St. Clair Technologies, Charlotte, Michigan who became totally or partially separated from employment on or after February 4, 2001, through March 18, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 16th day of May, 2002.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02-15852 Filed 6-21-02; 8:45 am]

BILLING CODE 4510-30-P

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-39,592]

#### Viceroy Gold Corporation, Including Workers of MK Gold Company, Searchlight, NV; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 7, 2001, applicable to workers of Viceroy Gold Corporation, Castle Mountain Mine, Searchlight, Nevada. The notice was published in the **Federal Register** on August 23, 2001 (66 FR 44378).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. New information shows that employees of MK Gold Corporation, Searchlight, Nevada were employed by Viceroy Gold Corp., Castle Mountain Mine to produce gold and silver in dore' bar form at the Searchlight, Nevada location of the subject firm. Worker separations occurred at MK Gold Company as a result of workers separations at Viceroy Gold Corporation, Castle Mountain Mine.

Based on these findings, the Department is amending the certification to include workers of MK Gold Company, Searchlight, Nevada employed at Viceroy Gold Corporation, Castle Mountain Mine, Searchlight, Nevada.

The intent of the Department's certification is to include all workers of Viceroy Gold Corporation, Castle Mountain Mine who were adversely affected by imports.

The amended notice applicable to TA-W-39,592 is hereby issued as follows:

All workers of Viceroy Gold Corporation, Castle Mountain Mine, Searchlight, Nevada and all workers of MK Gold Company, Searchlight, Nevada engaged in employment related to the production of gold and silver in dore' bar form at Viceroy Gold Corporation, Castle Mountain Mine, Searchlight, Nevada who became totally or partially separated from employment on or after June 20, 2000, through August 7, 2003, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 23rd day of April, 2002.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02-15849 Filed 6-21-02; 8:45 am]

BILLING CODE 4510-30-P

## LEGAL SERVICES CORPORATION

### Notice of Availability of Calendar Year 2003 Competitive Grant Funds for Service Areas MNJ, NJ-8, NJ-12, NJ-15, NJ-16, NJ-17, and NJ-18 in New Jersey

**AGENCY:** Legal Services Corporation.

**ACTION:** Solicitation of proposals for the provision of Civil Legal Services for service areas MNJ, NJ-8, NJ-12, NJ-15, NJ-16, NJ-17, and NJ-18 in New Jersey.

**SUMMARY:** The Legal Services Corporation (LSC) is the national organization charged with administering federal funds provided for civil legal services to the poor. Congress has adopted legislation requiring LSC to utilize a system of competitive bidding for the award of grants and contracts.

LSC hereby announces the availability of competitive grant funds and is soliciting grant proposals from interested parties who are qualified to provide effective, efficient and high quality civil legal services to the eligible client population in the Basic Field-General and Basic Field-Migrant service areas in New Jersey. The exact amount of congressionally appropriated funds and the date and terms of their availability for calendar year 2003 are not yet known.

**DATES:** See Supplemental Information section for grants competition dates.

**ADDRESSES:** Legal Services Corporation—Competitive Grants, 750 First Street NE., 10th Floor, Washington, DC 20002-4250.

**FOR FURTHER INFORMATION CONTACT:** Office of Program Performance, competitive grants service desk by fax at 1.877.378.9997, by e-mail at [competition@lsc.gov](mailto:competition@lsc.gov), or visit the LSC competition website at <http://www.ain.lsc.gov>.

**SUPPLEMENTARY INFORMATION:** The Request for Proposals (RFP) is available from <http://www.ain.lsc.gov>. A Notice of Intent to Compete is required. It is due by 5 p.m. ET, July 12, 2002. Grant proposals must be received at LSC by 5 p.m. ET, August 9, 2002. LSC is seeking proposals from non-profit organizations that have as a purpose the furnishing of legal assistance to eligible clients, and from private attorneys, groups of private

attorneys or law firms, state or local governments, and substate regional planning and coordination agencies which are composed of substate areas and whose governing boards are controlled by locally elected officials.

The RFP, containing the grant application, guidelines, proposal content requirements and specific selection criteria, is available at <http://www.ain.lsc.gov>. Descriptions of the New Jersey service areas are available at <http://www.ain.lsc.gov>. LSC will not fax the solicitation package to interested parties.

Issue Date: June 18, 2002.

**Michael A. Genz,**

*Director, Office of Program Performance.*

[FR Doc. 02-15836 Filed 6-21-02; 8:45 am]

BILLING CODE 7050-01-P

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice.

**SUMMARY:** NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted to OMB at the address below on or before July 24, 2002 to be assured of consideration.

**ADDRESSES:** Comments should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Ms. J. Zieher, Desk Officer for NARA, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301-837-1694 or fax number 301-837-3213.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on April 8, 2002 (67 FR 16766 and 16767). No comments were received. NARA has submitted the described

information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. In this notice, NARA is soliciting comments concerning the following information collection:

**Title:** Request Pertaining to Military Records.

**OMB number:** 3095-0029.

**Agency form number:** SF 180.

**Type of review:** Regular.

**Affected public:** Veterans, their authorized representatives, state and local governments, and businesses.

**Estimated number of respondents:** 552,500.

**Estimated time per response:** 5 minutes.

**Frequency of response:** On occasion (when respondent wishes to request information from a military personnel record).

**Estimated total annual burden hours:** 46,042 hours.

**Abstract:** In accordance with rules issued by the Department of Defense (DOD) and Department of Transportation (DOT, US Coast Guard), the National Personnel Records Center (NPRC) of the National Archives and Records Administration (NARA) administers military service records of veterans after discharge, retirement, and death. When veterans and other authorized individuals request information from or copies of documents in military service records, they must provide in forms or in letters certain information about the veteran and the nature of the request. Federal agencies, military departments, veterans, veterans' organizations, and the general public use Standard Forms (SF) 180, Request Pertaining to Military Records, in order to obtain information from military service records stored at NPRC. The authority for this information collection is contained in 36 CFR 1228.168(b).

Dated: June 13, 2002.

**L. Reynolds Cahoon,**

*Assistant Archivist for Human Resources and Information Services.*

[FR Doc. 02-15783 Filed 6-21-02; 8:45 am]

BILLING CODE 7515-01-P

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on July 10-12, 2002, in Conference Room T-2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Monday, November 26, 2001 (66 FR 59034).

#### Wednesday, July 10, 2002

**8:30 a.m.-8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)**—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

**8:35 a.m.-10 a.m.: Pressurized Thermal Shock (PTS) Reevaluation Project: Risk Acceptance Criteria (Open)**—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the risk metrics and associated criteria that can be used in reevaluating the technical basis of the PTS rule.

**10:15 a.m.-11:15 a.m.: Draft Final Revision 1 to Regulatory Guide 1.174, "An Approach to Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis," and Associated Standard Review Plan Chapter 19 (Open)**—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the draft final revision 1 to Regulatory Guide 1.174 and the associated Standard Review Plan Chapter 19, "Use of Probabilistic Risk Assessment in Plant-Specific, Risk-Informed Decisionmaking: General Guidance."

**11:15 a.m.-12:45 p.m.: Discussion of Topics for Meeting with the NRC Commissioners (Open)**—The Committee will discuss topics for meeting with the NRC Commissioners on July 10, 2002.

**2 p.m.-4 p.m.: Meeting with the NRC Commissioners (Open)**—The Committee will meet with the NRC Commissioners, Commissioners' Conference Room, One White Flint North, to discuss the following:

- Overview
- Core Power Uprates and License Renewals
- Future Committee Activities
- Advanced Reactors
- Risk-Informing Special Treatment Requirements of 10 CFR Part 50

- Pressurized Thermal Shock Technical Basis Reevaluation Project

**4:15 p.m.–5:15 p.m.: Risk-Informed Regulation Implementation Plan (Open)**—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the updated version of the Risk-Informed Regulation Implementation Plan.

**5:30 p.m.–7:15 p.m.: Proposed ACRS Reports (Open)**—The Committee will discuss proposed ACRS reports on matters considered during this meeting.

#### Thursday, July 11, 2002

**8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)**—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

**8:35 a.m.–10 a.m.: Advanced Reactors Research Plan (Open)**—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the modifications and updates to the Advanced Reactors Research Plan.

**10:15 a.m.–12 Noon: Overview of NRC Research Activities in the Seismic Area (Open)**—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding ongoing and proposed research activities as well as new research needs in the seismic area.

**1 p.m.–2:30 p.m.: Development of Review Standard for Reviewing Core Power Uprate Applications (Open)**—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the development of a “Review Standard” for use in future reviews of Core Power uprate applications.

**2:45 p.m.–6 p.m.: Proposed ACRS Reports (Open)**—The Committee will discuss proposed ACRS reports.

#### Friday, July 12, 2002

**8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)**—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

**8:35 a.m.–10:15 a.m.: Application of the Probabilistic Fracture Mechanics Methodologies to Reactor Vessel Integrity Assessment (Open)**—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding application of the probabilistic fracture mechanics methodologies (including the FAVOR computer code) to assess reactor pressure vessel integrity.

**10:30 a.m.–2:30 p.m.: Proposed ACRS Reports (Open)**—The Committee will discuss proposed ACRS reports.

**2:45 p.m.–3:30 p.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open)**—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings. Also, it will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, and organizational and personnel matters relating to the ACRS.

**3:30 p.m.–3:45 p.m.: Reconciliation of ACRS Comments and Recommendations (Open)**—The Committee will discuss the responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports and letters. The EDO responses are expected to be made available to the Committee prior to the meeting.

**3:45 p.m.–4:45 p.m.: Format and Content of the 2003 ACRS Report on the NRC Safety Research Program (Open)**—The Committee will discuss the format, content, schedule, and assignments for the 2003 ACRS report to the Commission on the NRC Safety Research Program.

**5 p.m.–6 p.m.: Proposed Papers for the Quadripartite Meeting (Open)**—The Committee will discuss proposed technical papers on specific topics that will be presented at the Quadripartite meeting scheduled to be held on October 23–25, 2002, in Berlin, Germany.

**6 p.m.–6:30 p.m.: Miscellaneous (Open)**—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 3, 2001 (66 FR 50462). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the Associate Director for Technical Support named below five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the

meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman.

Information regarding the time to be set aside for this purpose may be obtained by contacting the Associate Director prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Associate Director if such rescheduling would result in major inconvenience.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting Dr. Sher Bahadur, Associate Director for Technical Support, (telephone 301–415–0138), between 7:30 a.m. and 4:15 p.m., EDT.

ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at [pdr@nrc.gov](mailto:pdr@nrc.gov), or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at <http://www.nrc.gov/NRC/ADAMS/index.html>.

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m., EDT, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: June 18, 2002.

**Andrew L. Bates,**

*Advisory Committee Management Officer.*

[FR Doc. 02–15859 Filed 6–21–02; 8:45 am]

BILLING CODE 7590–01–P

**NUCLEAR REGULATORY COMMISSION****Sunshine Act Meeting**

**AGENCY HOLDING THE MEETING:** Nuclear Regulatory Commission

**DATES:** Weeks of June 24, July 1, 8, 15, 22, 29, 2002.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**MATTERS TO BE CONSIDERED:**

*Week of June 24, 2002—Tentative*

Tuesday, June 25, 2002

1:55 p.m.—Affirmation Session (Public Meeting) (If needed)

Wednesday, June 26, 2002

10:30 a.m.—All Employees Meeting (Public Meeting)

1:30 p.m.—All Employees Meeting (Public Meeting)

*Week of July 1, 2002—Tentative*

Monday, July 1, 2002

2 p.m.—Discussion of International Safeguards Issues (Closed—Ex. 9)

*Week of July 8, 2002—Tentative*

Wednesday, July 10, 2002

9:25 a.m.—Affirmation Session (Public Meeting) (If needed)

9:30 a.m.—Briefing on License Renewal Program and Power Update Review Activities (Public Meeting) (Contacts: Noel Dudley, 301-415-1154, for license renewal program; Mohammed Shuaibi, 301-415-2859, for power uprate review activities)

This meeting will be webcast live at the Web address—<http://www.nrc.gov>

2 p.m.—Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (Contact: John Larkins, 301-415-7360)

This meeting will be webcast live at the Web address—<http://www.nrc.gov>

*Week of July 15, 2002—Tentative*

Thursday, July 18, 2002

1:55 p.m.—Affirmation Session (Public Meeting) (If needed)

*Week of July 22, 2002—Tentative*

There are no meetings scheduled for the week of July 22, 2002.

*Week of July 29, 2002—Tentative*

There are no meetings scheduled for the week of July 29, 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.

The NRC Commission Meeting Schedule can be found on the Internet at: <http://www.nrc.gov/what-we-do/policy-making/schedule.html>

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301-415-1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to [dkw@nrc.gov](mailto:dkw@nrc.gov).

Dated: June 19, 2002.

**Sandra M. Joosten,**

*Executive Assistant, Office of the Secretary.*

[FR Doc. 02-16000 Filed 6-20-02; 2:41 pm]

**BILLING CODE 7590-01-M**

**OFFICE OF PERSONNEL MANAGEMENT****Proposed Collection; Comment Request for Extension of a Currently Approved Collection: OPM Form 1300, Presidential Management Intern Program Application**

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Public Law 104-13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit a request to the Office of Management and Budget (OMB). The OPM is requesting OMB to approve an extension of a currently approved collection associated with the OPM Form 1300, *Presidential Management Intern Program Application*. Approval of the Presidential Management Intern Program (PMI) application is necessary to facilitate the timely nomination, selection and placement of Presidential Management Intern finalists in Federal agencies.

The OPM Form 1300 has been in place since 1996 and no additional collection of information has been added.

Comments are particularly invited on: whether this information is necessary for the proper performance of functions of OPM, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information

on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey at (202) 606-8358, FAX (202) 418-3251 or e-mail to [mbtoomey@opm.gov](mailto:mbtoomey@opm.gov). Please include your mailing address with your request.

**DATES:** Comments on this proposal should be received within sixty (60) calendar days from the date of this publication.

**ADDRESSES:** Send or deliver comments to: U.S. Office of Personnel Management, Employment Service, ATTN: Rob Timmins, 1900 E Street, NW., Room 1425, Washington, DC 20415-9820. E-mail: [ratimmin@opm.gov](mailto:ratimmin@opm.gov).

Office of Personnel Management.

**Kay Coles James,**

*Director.*

[FR Doc. 02-15805 Filed 6-21-02; 8:45 am]

**BILLING CODE 6325-38-P**

**UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS****Sunshine Act Meeting**

**TIMES AND DATES:** 1 p.m., Monday, July 1, 2002; 8:30 a.m., Tuesday, July 2, 2002.

**PLACE:** Anchorage, Alaska, at the Hotel Captain Cook, 4th at K Street, in the Fore Deck Room, Lobby Level.

**STATUS:** July 1—1 p.m. (Closed); July 2—8:30 a.m. (Open).

**MATTERS TO BE CONSIDERED:**

Monday, July 1—1 p.m. (Closed)

1. Financial Performance.
2. Strategic Planning.
3. Personnel Matters and Compensation Issues.

Tuesday, July 2—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, June 3-4, 2002.
2. Remarks of the Postmaster General and CEO.
3. Quarterly Report on Financial Performance.
4. Quarterly Report on Service Performance.

Tuesday, July 1—8:30 a.m. (Open)  
[continued]

5. Report on the Alaska District.
6. Tentative Agenda for the August 5-6, 2002, meeting in Washington, DC.

**CONTACT PERSON FOR MORE INFORMATION:** William T. Johnstone, Secretary of the

Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

**William T. Johnstone,**  
*Secretary.*

[FR Doc. 02–16016 Filed 6–20–02; 2:35 pm]

BILLING CODE 7710–12–M

## SELECTIVE SERVICE SYSTEM

### Forms Submitted to the Office of Management and Budget for Extension of Clearance

**AGENCY:** Selective Service System.

**ACTION:** Notice.

I. The following forms have been submitted to the Office of Management and Budget (OMB) for extension of clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35):

#### SSS–2, 3A&B, 3C

*Title:* The Selective Service System Change of Information, Correction/Change Form and Registration Status Forms.

*Purpose:* To insure the accuracy and completeness of the Selective Service System registration data.

*Respondents:* Registrants are required to report changes or corrections in data submitted on SSS Form 1.

*Frequency:* When changes in a registrant's name or address occur.

*Burden:* The reporting burden is two minutes or less per report.

#### SSS–402

*Title:* Uncompensated Registrar Appointment.

*Purpose:* Is used to verify the official status of applicants for the position of Uncompensated Registrars and to establish authority for those appointed to perform as Selective Service System Registrars.

*Respondents:* United States citizens over the age of 18.

*Frequency:* One-time.

*Burden:* The reporting burden is three minutes or less.

II. The following forms, to be used only in the event that inductions into the armed services are resumed, have been submitted to the Office of Management and Budget (OMB) for the extension of clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35):

#### SSS–9

*Title:* Registrant Claim Form.

*Purpose:* Form is used to submit a claim for postponement of induction or reclassification.

*Respondents:* Registrants filing claims for either postponement or reclassification.

*Frequency:* One-time.

*Burden:* The reporting burden is five minutes or less per individual.

#### SSS–21

*Title:* Claim Documentation Form—Administrative.

*Purpose:* Is used to document those claims for reclassification which can be approved by an Area Office upon the presentation of documentary proof.

*Respondents:* Registrants whose past or present status is reason for reclassification.

*Frequency:* One-time.

*Burden:* The reporting burden is ten minutes or less per individual.

#### SSS–23

*Title:* Claim Documentation Form—Divinity Student.

*Purpose:* Is used to document a claim for classification as a divinity student.

*Respondents:* Registrants who are divinity students.

*Frequency:* One-time.

*Burden:* The reporting burden is 20 minutes or less per individual.

#### SSS–24

*Title:* Claim Documentation Form—Hardship to Dependents.

*Purpose:* Is used to document a claim for classification on the basis of the hardship induction will cause a registrant's dependent(s).

*Respondents:* Registrants whose induction will cause hardship on their dependent(s).

*Frequency:* This form is normally used one-time.

*Burden:* The reporting burden is 30 minutes or less per individual.

#### SSS–25

*Title:* Claim Documentation Form—Minister of Religion.

*Purpose:* Is used to document claims for classification as a regular or duly ordained minister.

*Respondents:* Registrants who are regular or duly ordained ministers.

*Frequency:* One-time

*Burden:* The reporting burden is 20 minutes or less per individual.

#### SSS–26

*Title:* Claim Documentation Form—Alien or Dual National.

*Purpose:* Is used to document a registrant's claim for classification as an Alien, Dual National or Treaty Alien.

*Respondents:* Registrants who wish to be classified as an Alien, Dual National or Treaty Alien.

*Frequency:* One-time.

*Burden:* The reporting burden is 20 minutes or less per individual.

#### SSS–27

*Title:* Claim Documentation Form—Postponement of Induction.

*Purpose:* Is used to document a claim for the postponement of induction.

*Respondents:* Registrants whose present status warrants postponement of induction.

*Frequency:* This form is normally used one-time.

*Burden:* The reporting burden is ten minutes or less per individual.

#### SSS–109

*Title:* Student Certificate.

*Purpose:* Is used to substantiate a claim for postponement of induction because the subject registrant is a student.

*Respondents:* Registrants who are attending school but have not graduated.

*Frequency:* This certificate is normally used one-time.

*Burden:* The reporting burden is six minutes or less per individual.

#### SSS–130

*Title:* Application by Alien for Relief from Training and Service in the Armed Forces of the United States.

*Purpose:* Is used to request relief from training and service based on being a national of a country with which an applicable treaty is in effect, i.e., "Treaty Alien."

*Respondents:* Those registrants who are "Treaty Aliens" and desire not to serve in the Armed Forces of the United States.

*Frequency:* One-time.

*Burden:* The reporting burden is five minutes or less per individual.

Copies of the above identified forms can be obtained upon written request to Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425.

Written comments and recommendations for the proposed extension of clearance of the form(s) should be sent within 60 days of publication of this notice to Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425.

A copy of the comments should be sent to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Selective Service System, Office of Management and Budget, New Executive Office Building, Room 3235, Washington, DC 20503.

Dated: June 10, 2002.

**Lewis C. Brodsky,**

*Deputy Director.*

[FR Doc. 02-15863 Filed 6-21-02; 8:45 am]

BILLING CODE 8015-01-M

## SMALL BUSINESS ADMINISTRATION

### Data Collection Available for Public Comments and Recommendations

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

**DATES:** Submit comments on or before August 23, 2002.

**ADDRESSES:** Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Joseph F. Sobota, Assistant Advocate, Office of Advocacy, Small Business Administration, 409 3rd Street, SW., Suite 7800, Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:** Joseph F. Sobota, Assistant Advocate, (202) 205-6952 or Curtis B. Rich, Management Analyst, (202) 205-7030.

#### SUPPLEMENTARY INFORMATION:

*Title:* SBA Office of Advocacy Veterans Business Ownership Survey.  
*Form No:* N/A.

*Description of Respondents:* Three groups will be surveyed: the general veteran population, veteran business owners, and veterans who have a service connected disability.

*Annual Responses:* 1,600.

*Annual Burden:* 400.

**Jacqueline White,**

*Chief, Administrative Information Branch.*

[FR Doc. 02-15882 Filed 6-21-02; 8:45 am]

BILLING CODE 8025-01-P

## SMALL BUSINESS ADMINISTRATION

### [Declaration of Disaster #3422]

#### State of Indiana; Disaster Loan Areas

As a result of the President's major disaster declaration on June 13, 2002, I find that Dubois, Gibson, Hamilton, Marion, Martin, Pike, Posey, and Vigo Counties in the State of Indiana constitute a disaster area due to

damages caused by severe storms, tornadoes and flooding occurring April 28, 2002 through June 7, 2002.

Applications for loans for physical damage as a result of this disaster may be filed until the close of business on August 12, 2002 and for economic injury until the close of business on March 13, 2003 at the address listed below or other locally announced locations:

U.S. Small Business Administration,  
Disaster Area 2 Office, One  
Baltimore Place, Suite 300, Atlanta,  
GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Boone, Clay, Clinton, Crawford, Daviess, Greene, Hancock, Hendricks, Johnson, Knox, Lawrence, Madison, Morgan, Orange, Parke, Perry, Shelby, Spencer, Sullivan, Tipton, Vanderburgh, Vermillion, and Warrick in the State of Indiana; Clark, Edgar, Edwards, Gallatin, Wabash, and White Counties in the State of Illinois; and Henderson and Union Counties in the Commonwealth of Kentucky.

The interest rates are:

|                                                                                         | Percent |
|-----------------------------------------------------------------------------------------|---------|
| For Physical Damage:                                                                    |         |
| Homeowners with credit available elsewhere .....                                        | 6.750   |
| Homeowners without credit available elsewhere .....                                     | 3.375   |
| Businesses with credit available elsewhere .....                                        | 7.000   |
| Businesses and non-profit organizations without credit available elsewhere .....        | 3.500   |
| Others (including non-profit organizations) with credit available elsewhere .....       | 6.375   |
| For Economic Injury:                                                                    |         |
| Businesses and small agricultural cooperatives without credit available elsewhere ..... | 3.500   |

The number assigned to this disaster for physical damage is 342211. For economic injury the numbers are 9Q1400 for Indiana; 9Q1500 for Illinois; and 9Q1600 for Kentucky.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 17, 2002.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 02-15819 Filed 6-21-02; 8:45 am]

BILLING CODE 8025-01-P

## SMALL BUSINESS ADMINISTRATION

### [Declaration of Disaster #3423]

#### State of Minnesota; Disaster Loan Areas

As a result of the President's major disaster declaration on June 14, 2002, I find that Roseau County in the State of Minnesota constitutes a disaster area due to damages caused by severe storms, flooding and tornadoes occurring on June 9, 2002 and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on August 13, 2002 and for economic injury until the close of business on March 14, 2003 at the address listed below or other locally announced locations:

U.S. Small Business Administration,  
Disaster Area 2 Office, One  
Baltimore Place, Suite 300, Atlanta,  
GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Beltrami, Kittson, Lake of the Woods, and Marshall in the State of Minnesota.

The interest rates are:

|                                                                                         | Percent |
|-----------------------------------------------------------------------------------------|---------|
| For Physical Damage:                                                                    |         |
| Homeowners with credit available elsewhere .....                                        | 6.750   |
| Homeowners without credit available elsewhere .....                                     | 3.375   |
| Businesses with credit available elsewhere .....                                        | 7.000   |
| Businesses and non-profit organizations without credit available elsewhere .....        | 3.500   |
| Others (including non-profit organizations) with credit available elsewhere .....       | 6.375   |
| For Economic Injury:                                                                    |         |
| Businesses and small agricultural cooperatives without credit available elsewhere ..... | 3.500   |

The numbers assigned to this disaster are 342311 for physical damage and 9Q1700 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 17, 2002.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 02-15814 Filed 6-21-02; 8:45 am]

BILLING CODE 8025-01-P

**SMALL BUSINESS ADMINISTRATION****[Declaration of Disaster #3413]****State of Missouri, (Amendment #3); Disaster Loan Areas**

In accordance with a notice received from the Federal Emergency Management Agency, dated June 10, 2002, the above-numbered Declaration is hereby amended to establish the incident period for this disaster as beginning April 24, 2002 and continuing through June 10, 2002.

All other information remains the same, i.e., the deadline for filing applications for physical damage is July 7, 2002, and for loans for economic injury the deadline is February 10, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 13, 2002.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 02-15817 Filed 6-21-02; 8:45 am]

**BILLING CODE 8025-01-P**

**SMALL BUSINESS ADMINISTRATION****[Declaration of Disaster #3366]****Commonwealth of Virginia, (Amendment #1); Disaster Loan Areas**

The above-numbered declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to September 30, 2002.

The deadline for filing applications for economic injury has also been amended to September 30, 2002. All other information remains the same.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 17, 2002.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 02-15816 Filed 6-21-02; 8:45 am]

**BILLING CODE 8025-01-P**

**SMALL BUSINESS ADMINISTRATION****[Declaration of Economic Injury Disaster #9Q13]****State of Washington; Disaster Loan Areas**

San Juan County in the State of Washington constitutes an economic injury disaster area as a result of a fire in downtown Friday Harbor on May 9, 2002. Eligible small businesses and small agricultural cooperatives without

credit available elsewhere may file applications for economic injury assistance for this disaster until the close of business on March 14, 2003 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853-4795.

The interest rate for eligible small businesses and small agricultural cooperatives is 3.5 percent.

The number assigned for economic injury for this disaster is 9Q1300.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: June 14, 2002.

**Hector V. Barreto,**

*Administrator.*

[FR Doc. 02-15813 Filed 6-21-02; 8:45 am]

**BILLING CODE 8025-01-P**

**SMALL BUSINESS ADMINISTRATION****Economic Injury Disaster Loans as a Result of the September 11, 2001 Terrorist Attacks**

**ACTION:** Notice of Extension of Application Deadline.

**FOR FURTHER INFORMATION CONTACT:**

George Camp, Supervisory Program Analyst, Office of Disaster Assistance, 202-205-6734.

**SUPPLEMENTARY INFORMATION:** In response to the President's major disaster declarations with respect to the World Trade Center and the Pentagon and the widespread economic impact caused by the terrorist attacks and the related Federal actions taken directly thereafter, the SBA revised its disaster loan regulations on October 22, 2001. Under the revised regulations, SBA can make economic injury disaster loans (EIDL) to eligible small business concerns outside the declared disaster areas that suffered substantial economic injury as a direct result of the destruction of the World Trade Center or the damage to the Pentagon on September 11, 2001, or as a direct result of any related Federal action taken between September 11, 2001 and October 22, 2001.

As authorized by 13 CFR 123.605, SBA is extending the application deadline for good cause. SBA is extending the deadline to make it consistent with the deadlines established by the disaster declarations made as a result of the September 11, 2001 terrorist attacks on the World Trade Center and the Pentagon. Accordingly, with this Notice, the SBA extends the filing deadline for expanded

economic injury disaster loans under this disaster program from May 22, 2002 to September 30, 2002.

Applications for economic injury disaster loans may be obtained and filed at the SBA disaster office servicing the applicant's state.

The disaster numbers assigned are:

**Area 1**

Connecticut 9TCT, District of Columbia 9TDC, Delaware 9TDE, Maryland 9TMD, Maine 9TME, Massachusetts 9TMA, New Hampshire 9TNH, New Jersey 9TNJ, New York 9TNY, Pennsylvania 9TPA, Rhode Island 9TRI, Virginia 9TVVA, Vermont 9TVT, West Virginia 9TWV, Puerto Rico 9TPR, Virgin Islands 9TVI

**Area 2**

Alabama 9TAL, Florida 9TFL, Georgia 9TGA, Illinois 9TIL, Indiana 9TIN, Kentucky 9TKY, Michigan 9TMI, Minnesota 9TMN, Mississippi 9TMS, North Carolina 9TNC, Ohio 9TOH, South Carolina 9TSC, Tennessee 9TTN, Wisconsin 9TWI

**Area 3**

Arkansas 9TAR, Colorado 9TCO, Iowa 9TIA, Kansas 9TKS, Louisiana 9TLA, Missouri 9TMO, Montana 9TMT, North Dakota 9TND, Nebraska 9TNE, New Mexico 9TNM, South Dakota 9TSD, Oklahoma 9TOK, Texas 9TTX, Utah 9TUT, Wyoming 9TWY

**Area 4**

Alaska 9TAK, Arizona 9TAZ, California 9TCA, Hawaii 9THI, Idaho 9TID, Nevada 9TNV, Oregon 9TOR, Washington 9TWA, American Samoa 9TAS, Federated States of Micronesia 9TFM, Guam 9TGU, Republic of the Marshall Islands 9TMH, Commonwealth of Northern Mariana Islands 9TMP

The interest rate for eligible small businesses is 4 percent.

**Authority:** 13 CFR part 123, subpart G.

Dated: June 17, 2002.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 02-15818 Filed 6-21-02; 8:45 am]

**BILLING CODE 8025-01-P**

**SOCIAL SECURITY ADMINISTRATION****Modifications to the Disability Determination Procedures; Extension of Testing of Some Disability Redesign Features**

**AGENCY:** Social Security Administration (SSA)

**ACTION:** Notice of the extension of tests involving modifications to the disability determination procedures.

**SUMMARY:** We are announcing the extension of tests involving modifications to our disability

determination procedures that we are conducting under the authority of current rules codified at 20 CFR 404.906 and 416.1406. These rules provide authority to test several modifications to the disability determination procedures that we normally follow in adjudicating claims for disability insurance benefits under title II of the Social Security Act (the Act) and for supplemental security income payments based on disability under title XVI of the Act. We have decided to extend the testing of two redesign features of the disability prototype for six months to enable us to address transition issues.

**DATES:** We are extending our selection of cases to be included in these tests from June 28, 2002, until no later than December 30, 2002. If we decide to continue selection of cases for these tests beyond this date, we will publish another notice in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Candace Skurnik, Disability Process Redesign Staff, Office of Disability, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, 410-965-4636.

**SUPPLEMENTARY INFORMATION:** Current regulations at 20 CFR 404.906 and 416.1406 authorize us to test, individually, or in any combination, different modifications to the disability determination procedures. We have conducted several tests under the authority of these rules, including a prototype that incorporates a number of modifications to the disability determination procedures that the State agencies use. The prototype included three redesign features, and we are extending the tests of two of those features: the use of a single decisionmaker, in which a disability examiner may make the initial disability determination in most cases without requiring the signature of a medical consultant; and elimination of the reconsideration level of review. We are not extending the testing of the predecision interview, which we call a claimant conference.

We also have conducted another test involving the use of a single decisionmaker who may make the initial disability determination in most cases without requiring the signature of a medical consultant. We are also extending the period during which we will select cases to be included in this test of the single decisionmaker feature.

#### **Extension of Testing of Some Disability Redesign Features**

On August 30, 1999, we published in the **Federal Register** a notice announcing a prototype that would test

a new disability claims process in 10 States, also called the prototype process (64 FR 47218). On December 23, 1999, we published a notice in the **Federal Register** (65 FR 72134) extending the period during which we would select cases to be included in a separate test of the single decisionmaker feature. In these notices, we stated that selection of cases was expected to be concluded on or about December 31, 2001. We also stated that, if we decided to continue the tests beyond that date, we would publish another notice in the **Federal Register**. On December 28, 2001, we published a notice extending selection of cases for these tests until no later than June 28, 2002 (66 FR 67347). We also stated that, if we decided to continue selection of cases for these tests beyond that date, we would publish another notice in the **Federal Register**. We have decided to extend selection of cases for two features of the prototype process (single decisionmaker and elimination of the reconsideration step), and the separate test of single decisionmaker beyond June 28, 2002. We expect that our selection of cases for these tests will end on or before December 30, 2002.

This extension also applies to the locations in the State of New York that we added to the prototype test in a notice published in the **Federal Register** on December 26, 2000 (65 FR 81553).

Dated: June 14, 2002.

**Martin H. Gerry,**

*Deputy Commissioner for Disability and Income Security Programs.*

[FR Doc. 02-15844 Filed 6-21-02; 8:45 am]

**BILLING CODE 4191-02-P**

## **DEPARTMENT OF STATE**

### **[Public Notice 4052]**

#### **Office To Monitor and Combat Trafficking in Persons (G/TIP)**

**Summary:** G/TIP is seeking proposals from qualified U.S. Organizations and Institutions including Registered Private Voluntary Organizations (PVOs) with the requisite capability and experience to convene a world summit hosted by the State Department to focus world attention and resolve on the plight of persons, especially women and children, caught in commercial sexual exploitation, including developing a conference support management plan, providing logistics support, and disseminating plenary materials. DOS intends to award a cooperative agreement not to exceed \$1.8 million.

Application packages are due July 22, 2002 at 4 p.m. EST.

Interested applicants may obtain detailed application instructions from the following website:

[www.statebuy.gov](http://www.statebuy.gov); click on grant opportunities. For questions, please contact Linda Gower, Grants Officer, at (202) 776-8774 or [gowerlg@state.gov](mailto:gowerlg@state.gov).

Dated: June 21, 2002.

**Nancy Ely-Raphel,**

*Director, G/TIP, Department of State.*

[FR Doc. 02-15891 Filed 6-21-02; 8:45 am]

**BILLING CODE 4710-17-U**

## **DEPARTMENT OF TRANSPORTATION**

### **Office of the Secretary**

#### **Fitness Determination of Arizona Express Airlines, Inc.**

**AGENCY:** Department of Transportation.

**ACTION:** Notice of Order to Show Cause (Order 2002-6-7), Docket OST-01-10529.

**SUMMARY:** The Department of Transportation is proposing to find that Arizona Express Airlines, Inc., is fit, willing, and able, to provide commuter air service under 49 U.S.C. 41738.

**RESPONSES:** Objections and answers to objections should be filed in Docket OST-01-10529 and addressed to the Department of Transportation Dockets, PL-401, 400 Seventh Street, SW., Washington, DC 20590, and should be served on all persons listed in Attachment A to the order. Persons wishing to file objections should do so no later than July 1, 2002.

**FOR FURTHER INFORMATION CONTACT:** Ms. Delores King, Air Carrier Fitness Division (X-56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2343.

Dated: June 17, 2002.

**Read C. Van De Water,**

*Assistant Secretary for Aviation, and International Affairs.*

[FR Doc. 02-15797 Filed 6-21-02; 8:45 am]

**BILLING CODE 4910-62-P**

## **DEPARTMENT OF TRANSPORTATION**

### **Office of the Secretary**

**[Docket No. OST-2002-12170]**

#### **Surface Transportation Reauthorization**

**AGENCY:** Office of the Secretary, Department of Transportation.

**ACTION:** Notice; request for comments.

**SUMMARY:** As a means of outreach to the traveling public and all users of the nation's surface transportation system, the United States Department of Transportation will establish a new surface transportation reauthorization page on the world wide web at <http://www.dot.gov> and will make available a brochure on this subject. This outreach through the web page and the brochure is intended to stimulate public input and comments concerning the Department's proposal for reauthorization of the surface transportation programs which will succeed the Transportation Equity Act for the 21st Century (TEA-21) which is due to expire at the end of September 2003.

The web page and the brochure are also intended to provide a description of the Department's approach in the reauthorization of TEA-21. The principles found in the brochure and web page represent the Department's current approach and are included here as a means of stimulating public comment, and are not intended to be exclusive of other ideas. The web page will be updated regularly. The web page will also serve as a link to other transportation related web sites.

**DATES:** Comments may be submitted at any time before January 1, 2003.

**ADDRESSES:** Comments concerning the reauthorization of TEA-21 are strongly encouraged in electronic form. Instructions for submitting comments electronically will be found on the web page at <http://www.dot.gov>.

Comments may also be submitted in written form by mailing them to the Dockets Management System, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001. Comments should identify Docket Number OST-2002-12170.

Due to the expectation of large volumes of public comments, the Department will not be able to respond directly to individual comments in either electronic or written form. All comments will, however, be posted to the public web site and therefore will be available for viewing by the general public. The comments will also be compiled and reviewed by the Department. Submitters using the electronic form may choose to receive additional TEA-21 information in the future.

**FOR FURTHER INFORMATION CONTACT:** 1 (800) 647-5527, U.S. Department of Transportation Docket Services.

**SUPPLEMENTARY INFORMATION:**

### Building On TEA-21—Core Principles

- Assure adequate and predictable funding for investment in the Nation's transportation system. This funding can contribute to the long-term health of the economy and, by enhancing the mobility of people and goods, promote greater productivity and efficiency.
- Preserve State and local government funding flexibility to allow the broadest application of funds to transportation solutions.
- Build on the intermodal approaches of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and TEA-21.
- Expand and improve innovative financing programs in order to encourage greater private sector investment in the transportation system, and examine other means to augment existing trust funds and revenue streams.
- Address the security of the Nation's surface transportation system.
- Make substantial improvements in the safety of the Nation's surface transportation system. It is not acceptable that the Nation suffers 41,000 deaths and over 3 million injuries annually on the highway system.
- Strengthen the efficiency and integration of the Nation's system of goods movement by improving international gateways and points of intermodal connection.
- Simplify Federal transportation programs and continue efforts to streamline project approval and implementation.
- Develop the data and analyses critical to sound transportation decision making.
- Foster intelligent transportation systems as a means to improve safety, reduce congestion and protect the environment.
- Improve on the performance of the entire transportation system through better planning, management, construction, operations, asset management, maintenance and construction.
- Increase accessibility to transportation so that all Americans can enjoy its benefits.
- Ensure an efficient infrastructure while retaining environmental protections that enhance our quality of life.

Issued in Washington DC on June 18, 2002.

**Sean B. O'Hollaren,**

*Assistant Secretary for Governmental Affairs.*

[FR Doc. 02-15803 Filed 6-21-02; 8:45 am]

**BILLING CODE 4910-62-P**

### DEPARTMENT OF TRANSPORTATION

#### Coast Guard

[USCG-2000-8229]

#### Notice of the Record of Decision for the Integrated Deepwater System Project

**AGENCY:** U.S. Coast Guard, DOT.

**ACTION:** Notice; record of decision.

**SUMMARY:** This notice advises the public of the U.S. Coast Guard's Record of Decision for the Integrated Deepwater System Project. The full text of the Record of Decision is included below under **SUPPLEMENTARY INFORMATION**.

**ADDRESSES:** The Department of Transportation Docket Management Facility maintains the public docket for the Integrated Deepwater System Project Programmatic Environmental Impact Statement. The Record of Decision will become part of this docket and will be available along with the Final Programmatic Environmental Impact Statement for inspection or copying at Room PL-401, located on the Plaza Level of the Nassif Building, 400 Seventh Street SW., Washington, DC 20590-0001, between 9 a.m. and 5 p.m., Monday through Friday, except for Federal holidays. You may also view this docket, including this record of decision, on the Internet at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on the Record of Decision, the Final Programmatic Environmental Impact Statement, or the Integrated Deepwater System, call LCDR Eric Johnson, Deepwater Environmental Planner, by telephone at 202-267-1665 or by e-mail at [ejohnson@comdt.uscg.mil](mailto:ejohnson@comdt.uscg.mil) or read the Coast Guard's Deepwater EIS Web page at <http://www.deepwatereis.com/>. If you have questions on viewing material on the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202-366-9329.

**SUPPLEMENTARY INFORMATION:** The Coast Guard has issued its Record of Decision for the Integrated Deepwater System Project. The full text of the Record of Decision follows:

U.S. Coast Guard,  
Record of Decision

The United States Coast Guard has published a Final Programmatic Environmental Impact Statement (PEIS) on the following project:  
Integrated Deepwater System Project  
Nation-wide

## Purpose and Need

Most of the U.S. Coast Guard's mandated missions involve Deepwater operations. Deepwater operations are generally defined as those that require an extended on-scene presence, long transit times to reach the operating area, and/or the forward deployment of forces. The existing system of Deepwater assets has excessive operating and maintenance costs and lacks essential capabilities in speed, sensors, and interoperability, that limit overall Deepwater mission effectiveness and efficiency. Moreover, most of these assets will reach the end of their economically useful lives within the next 10 years (block obsolescence). The Coast Guard's fleet of medium and high endurance cutters are older than 36 of the world's 39 major naval fleets. This comes at a time when the demand on Deepwater missions is steadily increasing. The most recent increase in demand is in the area of homeland security. The need to defend our country against terrorism and rogue nations' hostilities has put a very large demand on the Coast Guard's limited resources. To address these issues, the Coast Guard is proposing to acquire an integrated system of new and/or modernized surface and air assets and logistics, communication, and sensor systems. This system of systems is designed to maximize operational effectiveness at the lowest possible cost to the taxpayer. It will minimize total ownership costs because new equipment is not as expensive to staff, operate and maintain. It will facilitate readiness. It will increase interoperability of assets among different mission areas and geographic districts. It will minimize disposal costs by utilizing more environmentally friendly components.

## Alternatives Examined

**No-Action Alternative:** The Coast Guard would continue to operate existing assets, performing periodic upgrades to those assets until the end of their service lives. The Coast Guard would continue to replace assets on an asset-by-asset basis, as is traditionally done. One of the major problems with this alternative is that the Coast Guard would not have an integrated system; thus assets would not be able to communicate in real time, they would operate at different levels of efficiency (resulting in decreased efficiency throughout the system) and their maintenance costs would be higher.

**Action Alternative:** The Coast Guard would replace the existing collection of Deepwater assets with a system of

integrated new assets. The new system of assets would be designed to work together to deliver maximum operational effectiveness for the lowest possible total ownership cost. The Coast Guard would continue to operate existing assets for as long as they can contribute to the maximum operational effectiveness/lowest total ownership cost concept.

## Environmental Consequences

Environmental consequences of the Action Alternative would, in general, have a net minor to moderate beneficial impact on most resource areas. Specific impacts would vary across specific resources and regions; however, the overall collective effect would be better for the environment than the No Action Alternative. This is primarily due to the fact that the Action Alternative provides an efficient and integrated system of assets that would provide shorter response times and increased levels of protection for biological resources over the No Action Alternative. All current policies and guidelines designed to safeguard the environment from Coast Guard operations will continue under the Action Alternative.

## Decision

The decision is the Action Alternative because it best meets the Coast Guard's mission needs in the 21st Century.

## Environmentally Preferable Alternative

The environmentally preferable alternative is the Action Alternative because it provides an efficient and integrated system of assets that would provide shorter response times and increased levels of protection for biological resources over the No Action Alternative.

## Relevant Decision Factors

The following are the economic, technical, USCG statutory missions, national policy considerations that were weighed in reaching my decision.

**Economic:** From an economic standpoint, the Action Alternative is less expensive in the long-term. Toward the end of an asset's economic service life, it is generally more prohibitive to maintain that asset than replace it. As time progresses, maintenance costs will escalate, resulting in the inefficient use of resources. Newer assets, with more environmentally friendly components will cost less to dispose of at the end of their service life.

**Technical:** From a technical standpoint, the Action Alternative will result in a modern system of systems with increased interoperability and efficiency and effectiveness in carrying

out mandated missions. Due to size, weight, age and power concerns, existing assets cannot fully capture the benefits of changes in technology. The Action Alternative will resolve these problems. Many manufacturers have cancelled production and support for the equipment on existing assets. The Action Alternative will also resolve these problems.

**USCG Statutory Missions:** The Coast Guard must maintain mission effectiveness in all 14 of the currently mandated Deepwater missions. Studies by the Office of Naval Intelligence and others foresee global events, such as the doubling world population, the continued decline in marine fisheries, the end of the Cold War and the associated rise in ethnic and cultural conflicts worldwide, and the tripling of international commerce, as greatly increasing the nation's reliance on the Coast Guard. In addition, increases in the numbers of cruise ships and recreational boats will create more requirements for Coast Guard services. These increases in demand have required the Coast Guard to increase its efforts toward environmental and living marine resources protection, illegal immigration, and drug smuggling, and vessel inspection. The Action Alternative will help to support these increased demands.

**National Policy Considerations:** One of the 14 mandated Coast Guard Deepwater missions is National Defense. In addition, the most recent increase in demand in the area of homeland security has increased the demand on the Coast Guard's limited resources. Homeland security initiatives have also increased the demand for international operations, either individually or jointly with other armed forces. The Action Alternative will help to support these increased demands.

## Mitigation

On a programmatic level, all practical means to avoid or minimize environmental harm from the selected alternative have been adopted. This is due primarily to the three environmental requirements placed on the competing industry teams in the System Performance Specification. These were: (1) Minimize the negative impact on the environment; (2) meet current and projected international, federal, state and local environmental regulations throughout its life cycle; and (3) minimize energy consumption for all Deepwater assets. Environmental harm will be avoided or minimized during design, construction, deployment, operation and disposal of Deepwater assets by the actions of the

Environmental Protection Working Group as described in section 2.2.1 of the Programmatic EIS. The Coast Guard also stated in the Programmatic EIS that all Coast Guard regulations concerning environmental protection will remain in force for the Integrated Deepwater System.

Because of the broad, programmatic nature of the Integrated Deepwater System Project Programmatic EIS, it is not currently possible to state emphatically that all practical means of avoiding or minimizing environmental harm have been adopted at the site-specific level. However, as a means to avoid or minimize environmental harm at the site-specific level, the Coast Guard has stated in the Programmatic EIS and restates here that follow-on NEPA documentation will address site-specific issues including potential mitigation measures. This tiered documentation will be completed on a level as comprehensive as possible while remaining commensurate with Coast Guard decisions being made.

In reaching my decision on the U.S. Coast Guard's proposed action, I have considered the information contained in the Integrated Deepwater System Project Programmatic EIS on the potential for environmental impacts.

Dated: June 18, 2002.

**Robert S. Horowitz,**

*Director of Finance and Procurement, U.S. Coast Guard.*

[FR Doc. 02-15892 Filed 6-21-02; 8:45 am]

BILLING CODE 4910-15-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Aging Transport System Rulemaking Advisory Committee Meeting

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of public meeting.

**SUMMARY:** This notice announces a public meeting of the FAA's Aging Transport Systems Rulemaking Advisory Committee (ATSRAC).

**DATES:** The FAA will hold the meeting on July 9, 10, and 11, 2002, from 9:00 a.m. to 5:00 p.m. on the 9th and 10th and from 8:30 a.m. to 3:30 p.m. on the 11th.

**ADDRESSES:** On July 9th and 10th the meeting will be held at the Federal Aviation Administration, MacCracken Room, 800 Independence Avenue, Washington, DC 20591. Only July 11th the meeting will be held at the Boeing Company, 1200 Wilson Blvd., Rosslyn, Virginia.

#### FOR FURTHER INFORMATION CONTACT:

Shirley Stroman, Office of Rulemaking, ARM-208, FAA, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-7470; fax (202) 267-5075; or e-mail [shirley.stroman@faa.gov](mailto:shirley.stroman@faa.gov).

**SUPPLEMENTARY INFORMATION:** This notice announces a meeting of the Aging Transport Systems Rulemaking Advisory Committee, which will be held at the Federal Aviation Administration, MacCracken Room, 800 Independence Avenue, Washington, DC 20591 on July 9 and 10, 2002, and at the Boeing Company, 1200 Wilson Blvd., Rosslyn, Virginia on July 11th.

The agenda topics for meeting will include the following:

1. Presentation of Draft Final Reports From the Following Harmonization Working Groups:
  - Wire System Certification Requirements
  - Standard Wire Practice Manual
  - Enhanced Training Program for Wire Systems
  - Enhanced Maintenance Criteria for Systems
2. Status Report on Small Transport Airplane Harmonization Working Group
3. Update on the Enhanced Airworthiness Programs for Airplane Systems (EAPAS) Plan
4. Status of FAA's Research and Development Program on Aging Systems
5. Intrusive Inspection Recommendation Status

Meeting attendance is open to the public. However, space will be limited by the size of the available meeting room. The FAA will provide teleconference services to individuals who wish to participate by telephone and who submit their requests before June 28th. If you use the teleconference service from within the Washington, DC metropolitan calling area, the call would be considered local. However, callers from outside this calling area will be responsible for paying long-distance charges. In addition to teleconferencing services, we will provide sign and oral interpretation, as well as a listening device if requests are made within 7 calendar days before the meeting. You may arrange for these services by contacting the person listed under the **FOR FURTHER INFORMATION CONTACT** heading of this notice.

The public may present written statements to the Committee by providing 20 copies of the Committee's Executive Director or by bringing the copies to the meeting. Public statements will only be considered if time permits.

Issued in Washington, on June 14, 2002.

**Anthony F. Fazio,**

*Director, Office of Rulemaking.*

[FR Doc. 02-15780 Filed 6-18-02; 4:55 pm]

BILLING CODE 4910-13-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Notice of Intent To Rule on Application 02-04-C-00-TLH To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Tallahassee Regional Airport, Tallahassee, FL

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Intent to Rule on Application.

**SUMMARY:** These corrections revise information from the previously published notice. In the notice appearing on pages 18671 and 18672 in the issue of Tuesday, April 16, 2002 (Volume 67, Number 73) under **SUPPLEMENTARY INFORMATION** in the first column, in the 15th line, the date the FAA will approve or disapprove the application, in whole or in part, no later than should read, "August 15, 2002". Also, under **SUPPLEMENTARY INFORMATION**, in the first column, in the 21st line, the Proposed charge expiration date should read, "October 1, 2007". Finally, under **SUPPLEMENTARY INFORMATION**, in the first column, in the 24th line, the Total estimated PFC revenue should read, "\$10,072,057".

**DATES:** Comments must be received on or before July 24, 2002.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, Suite 400, 5950 Hazeltine National Drive, Orlando, Florida 32822.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Kenneth Austin, Airport Director of the City of Tallahassee at the following address: Tallahassee Regional Airport, 3300 Capital Circle, SW., Suite 1, Tallahassee, Florida 32310.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Tallahassee under section 158.23 of Part 158.

**FOR FURTHER INFORMATION CONTACT:** Mr. Bill Farris, Program Manager, Orlando Airports District Office, Suite 400, 5950 Hazeltine National Drive, Orlando, Florida, 32822, (407) 812-6331, extension 25. The application may be

reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** On May 16, 2002, the City of Tallahassee submitted a revised application to correct a mathematical discrepancy in total estimated PFC revenue and to change the proposed charge expiration date in the application the FAA found substantially complete on April 2, 2002. On June 11, 2002, the City of Tallahassee submitted a letter requesting that the no later than date of July 16, 2002 for the FAA to approve or disapprove the application, in whole or part, be extended to August 15, 2002.

Issued in Orlando, Florida, on June 12, 2002.

**W. Dean Stringer,**

*Manager, Airports District Office.*

[FR Doc. 02-15801 Filed 6-21-02; 8:45 am]

**BILLING CODE 4910-13-M**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From Requirements

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

#### Docket Number FRA-2002-12175

**Applicant:** CSX Transportation, Incorporated, Mr. Eric G. Peterson, Assistant Chief Engineer, Signal Design and Construction, 4901 Belfort Road, Suite 130 (S/C J-370), Jacksonville, Florida 32256.

CSX Transportation, Incorporated seeks approval of the proposed modification of the signal systems, on three segments of the Baltimore Service Lane, Baltimore Terminal Subdivision, near, Baltimore, Maryland, consisting of the following:

1. Elimination of the present automatic block signal (ABS) Rules 243-246 which are in effect for westward movements on the South Baltimore Industrial Track between Westport and Carroll, on the South Baltimore Branch, and conversion of the method of operation to Rule 105 (Other than main track) and Rule 46 (Operating Speeds on other than main tracks).

2. Elimination of the present traffic control system (TCS) Rules 265-272

which are in effect on the Mt. Winans No.11 Track, and conversion of the method of operation to Rules 105 and 46.

3. Elimination of the present ABS current of traffic Rule D-251 and Yard Limit Rule 93 which are in effect between Westport, milepost BRN0.5 and Mt. Winans Yard Limits, milepost BAS0.5, and conversion of the method of operation to Rules 105 and 46.

The reason given for the proposed changes is that traffic density does not warrant retention of the signal systems through these track segments.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI-401, Washington, DC 20590-0001.

Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) at DOT Central Docket Management Facility, Room PI-401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590-0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at <http://dms.dot.gov>.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on June 13, 2002.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### Denial of Motor Vehicle Recall Petition, RP01-001

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Denial of petition for a hearing on the adequacy of recall notification.

**SUMMARY:** This notice sets forth the reasons for the denial of a petition submitted to NHTSA under 49 U.S.C. 30162, requesting that the agency hold a Public Hearing to determine whether General Motors Corporation (GM) has reasonably met its obligation to notify owners of NHTSA Safety Recall No. 00V-189. The petition is identified as RP01-001.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jonathan White, Office of Defects Investigation (ODI), NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-5226.

**SUPPLEMENTARY INFORMATION:** Mr. Franklin Walter Long, Jr., of Detroit, MI, submitted a petition to NHTSA by facsimile dated October 24, 2001, requesting that the agency hold a Public Hearing to determine whether GM has reasonably met its obligation to notify him of NHTSA Safety Recall No. 00V-189 with respect to his model year 1991 Oldsmobile Cutlass Supreme. The petitioner alleges that GM did not notify him of NHTSA Safety Recall No. 00V-189.

ODI has reviewed its records for this recall, which involved more than 700,000 vehicles, and no other individuals have expressed any concerns to NHTSA regarding notification. When a motor vehicle manufacturer conducts a safety recall, it is required by 49 U.S.C. 30119 to use its records and State motor vehicle records to identify owners of the vehicles covered by the recall. According to records provided by GM, Northern Michigan Loan, Inc., was notified of this recall on September 28, 2000. That entity apparently was identified as the registered owner of the vehicle at that time. Subsequently, Mr. Long was mailed an owner notification with respect to this recall on March 8, 2002. Furthermore, GM has advised NHTSA that it has taken steps to buy back the petitioner's vehicle.

In view of the foregoing, it is unlikely that NHTSA would issue an order to GM regarding the adequacy of the notification under this recall following a hearing such as the one the petitioner

requested. Therefore, in view of the need to allocate and prioritize NHTSA's limited resources to best accomplish the agency's safety mission, the petition is denied.

**Authority:** 49 U.S.C. 30162(d); delegations of authority at CFR 1.50 and 501.8.

Issued on: June 18, 2002.

**Kenneth N. Weinstein,**

*Associate Administrator for Safety Assurance.*

[FR Doc. 02-15798 Filed 6-21-02; 8:45 am]

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## DEPARTMENT OF VETERANS AFFAIRS

### Diseases Not Associated With Exposure to Certain Herbicide Agents

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** As required by law, the Department of Veterans Affairs (VA) hereby gives notice that the Secretary of Veterans Affairs, under the authority granted by the Agent Orange Act of 1991, has determined that a presumption of service connection based on exposure to herbicides used in the Republic of Vietnam during the Vietnam Era is not warranted for the following conditions: Hepatobiliary cancers, nasal and nasopharyngeal cancer, bone cancers, breast cancer, cancers of the female reproductive system, urinary bladder cancer, renal cancer, testicular cancer, leukemia, reproductive effects (abnormal sperm parameters and infertility), Parkinson's disease, chronic persistent peripheral neuropathy, lipid and lipoprotein disorders, gastrointestinal and digestive disease (other than diabetes mellitus), immune system disorders, circulatory disorders, respiratory disorders (other than certain respiratory cancers), skin cancer, cognitive and neuropsychiatric effects, gastrointestinal tract tumors, brain tumors, amyloidosis, and any other condition for which the Secretary has not specifically determined a presumption of service connection is warranted.

**FOR FURTHER INFORMATION CONTACT:** John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273-7213.

**SUPPLEMENTARY INFORMATION:** Section 3 of the Agent Orange Act of 1991, Public Law 102-4, 105 Stat. 11, directed the Secretary to seek to enter into an agreement with the National Academy of Sciences (NAS) to review and

summarize the scientific evidence concerning the association between exposure to herbicides used in support of military operations in the Republic of Vietnam during the Vietnam Era and each disease suspected to be associated with such exposure. Congress mandated that NAS determine, to the extent possible: (1) Whether there is a statistical association between the suspect diseases and herbicide exposure, taking into account the strength of the scientific evidence and the appropriateness of the methods used to detect the association; (2) the increased risk of disease among individuals exposed to herbicides during service in the Republic of Vietnam during the Vietnam Era; and (3) whether there is a plausible biological mechanism or other evidence of a causal relationship between herbicide exposure and the suspect disease. Section 3 of Public Law 102-4 also required that NAS submit reports on its activities every two years (as measured from the date of the first report) for a ten-year period.

Section 2 of Public Law 102-4 provides that whenever the Secretary determines, based on sound medical and scientific evidence, that a positive association (i.e., the credible evidence for the association is equal to or outweighs the credible evidence against the association) exists between exposure of humans to an herbicide agent (i.e., a chemical in an herbicide used in support of the United States and allied military operations in the Republic of Vietnam during the Vietnam Era) and a disease, the Secretary will publish regulations establishing presumptive service connection for that disease. If the Secretary determines that a presumption of service connection is not warranted, he is to publish a notice of that determination, including an explanation of the scientific basis for that determination. The Secretary's determination must be based on consideration of the NAS reports and all other sound medical and scientific information and analysis available to the Secretary.

Although Public Law 102-4 does not define "credible," it does instruct the Secretary to "take into consideration whether the results [of any study] are statistically significant, are capable of replication, and withstand peer review." Simply comparing the number of studies which report a positive relative risk to the number of studies which report a negative relative risk for a particular condition is not a valid method for determining whether the weight of evidence overall supports a finding that there is or is not a positive

association between herbicide exposure and the subsequent development of the particular condition. Because of differences in statistical significance, confidence levels, control for confounding factors, bias, and other pertinent characteristics, some studies are clearly more credible than others, and the Secretary has given the more credible studies more weight in evaluating the overall weight of the evidence concerning specific diseases.

NAS issued its initial report, entitled "Veterans and Agent Orange: Health Effects of Herbicides Used in Vietnam," (VAO) on July 27, 1993. The Secretary subsequently determined that a positive association exists between exposure to herbicides used in the Republic of Vietnam and the subsequent development of Hodgkin's disease, porphyria cutanea tarda, multiple myeloma, and certain respiratory cancers; and that there was no positive association between herbicide exposure and any other condition, other than chloracne, non-Hodgkin's lymphoma, and soft-tissue sarcomas, for which presumptions already existed. A notice of the diseases that the Secretary determined were not associated with exposure to herbicide agents was published on January 4, 1994. (See 59 FR 341 (1994).)

NAS issued its second report, entitled "Veterans and Agent Orange: Update 1996" (Update 1996), on March 14, 1996. The Secretary subsequently determined that a positive association exists between exposure to herbicides used in the Republic of Vietnam and the subsequent development of prostate cancer and acute and subacute peripheral neuropathy in exposed persons. The Secretary further determined that there was no positive association between herbicide exposure and any other condition, other than those for which presumptions already existed. A notice of the diseases that the Secretary determined were not associated with exposure to herbicide agents was published on August 8, 1996. (See 61 FR 41442 (1996).)

NAS issued a third report, entitled "Veterans and Agent Orange: Update 1998" (Update 1998), on February 11, 1999. The focus of this updated review was on new scientific studies published since the release of Update 1996 and updates of scientific studies previously reviewed. After NAS issued Update 1998, the Secretary determined that there was no positive association between herbicide exposure and any other condition, other than those for which presumptions already existed. A notice of the diseases that the Secretary determined were not associated with

exposure to herbicide agents was published on November 2, 1999. (See 64 FR 59232 (1999).)

However, after NAS released Update 1998 the National Institute of Occupational Safety and Health (NIOSH) published a report that noted an association, though not a strong association, between Type 2 diabetes and dioxin exposure. The Secretary concluded that the NIOSH study was potentially important enough that it warranted a full review by NAS as soon as possible, and he directed VA to amend its contract with NAS for the third biennial update to require a special report on herbicide exposure and Type 2 diabetes.

In February 2000, before NAS released its report on herbicide exposure and Type 2 diabetes, the U.S. Air Force released data from its study of participants in operation Ranch Hand (the crews assigned to spray Agent Orange from aircraft in Vietnam) (AFHS. 2000a. Air Force Health Study: An Epidemiologic Investigation of Health Effects in Air Force Personnel Following Exposure to Herbicides. 1997 Follow-up Examination Results. Brook AFB, TX: Air Force Research Laboratory. AFRL-HE-BR-TR-2000-02.) On April 10, 2000, VA asked NAS to include an analysis of the new Ranch Hand data in its report on Type 2 diabetes. NAS agreed to do so.

NAS issued its report, "Veterans and Agent Orange: Herbicide/Dioxin Exposure and Type 2 Diabetes" (VAO: Diabetes) on October 11, 2000. NAS concluded "there is limited/suggestive evidence of an association between exposure to the herbicides used in Vietnam or the contaminant dioxin and Type 2 diabetes." NAS based its conclusion on the totality of the scientific evidence on this issue, not one particular study. (VAO: Diabetes). After considering all of the evidence, the Secretary determined that there is a positive association between exposure to herbicides and Type 2 diabetes and, therefore, a presumption of service connection was warranted. (See 66 FR 2376 [2001].)

NAS issued a fourth report, entitled "Veterans and Agent Orange: Update 2000" (Update 2000), on April 19, 2001. The focus of this updated review was on new scientific studies published since the release of Update 1998 and updates of scientific studies previously reviewed. The Secretary formed a VA task force to review the report and pertinent studies and to make recommendations to assist him in determining whether a positive association exists between herbicide exposure and any condition. The task

force has completed that review and submitted its recommendations to the Secretary. This notice, pursuant to Public Law 102-4, summarizes the scientific data reviewed by NAS in its Update 2000 and conveys the Secretary's determination, which is based on the cumulative scientific data reported by NAS, that there is no positive association between herbicide exposure and hepatobiliary cancers, nasal and nasopharyngeal cancer, bone cancers, breast cancer, cancers of the female reproductive system, urinary bladder cancer, renal cancer, testicular cancer, leukemia, reproductive effects (abnormal sperm parameters and infertility), Parkinson's disease, chronic persistent peripheral neuropathy, lipid and lipoprotein disorders, gastrointestinal and digestive disease (other than diabetes mellitus), immune system disorders, circulatory disorders, respiratory disorders (other than certain respiratory cancers), skin cancer, cognitive and neuropsychiatric effects, gastrointestinal tract tumors, brain tumors, amyloidosis, and any other condition for which the Secretary has not specifically determined a presumption of service connection is warranted.

NAS, in Update 2000 and a special additional report, assigns hepatobiliary cancers, nasal and nasopharyngeal cancer, bone cancers, breast cancer, cancers of the female reproductive system, urinary bladder cancer, renal cancer, testicular cancer, leukemia, reproductive effects (abnormal sperm parameters and infertility), Parkinson's disease, chronic persistent peripheral neuropathy, lipid and lipoprotein disorders, gastrointestinal and digestive disease (except diabetes mellitus), immune system disorders, circulatory disorders, respiratory disorders (other than certain respiratory cancers), skin cancer, cognitive and neuropsychiatric effects, and amyloidosis to a category labeled inadequate/insufficient evidence to determine whether an association exists. This is defined as meaning that the available studies are of insufficient quality, consistency, or statistical power to permit a conclusion regarding the presence or absence of an association with herbicide exposure. In Update 2000, NAS assigned gastrointestinal tract tumors and brain tumors to a category labeled limited or suggestive evidence of no association. This is defined as meaning that the available studies are mutually consistent in not showing a positive association between exposure to herbicides and the outcome at any level of exposure.

## Hepatobiliary Cancers

Hepatobiliary cancers are cancers of the liver and intrahepatic bile ducts. There are a variety of known risk factors, including chronic infections with hepatitis B and C, exposure to aflatoxin, vinyl chloride and polychlorinated biphenyl (PCB) and smoking, that should be considered by a credible study.

NAS noted in VAO and subsequent reports that there were relatively few occupational, environmental, or veteran studies of hepatobiliary cancer. It also noted that most of the few existing studies addressing hepatobiliary cancer contain methodological difficulties such as small study size and inadequate control for life-style-related risk factors, or do not support an association with herbicide exposure.

The largest industrial cohort exposed to dioxins is the group of 5,132 U.S. workers known as the NIOSH cohort. This group was assembled from employees of 12 major chemical manufacturers that produced 2,4,5-trichlorophenol, 2,4,5-T, Silvex, Erbon, Ronnel, and hexachlorophene. Workers engaged in production and maintenance were exposed to 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) as a contaminant in these chemicals. The first study of mortality through 1987 among these workers (Fingerhut et al., 1991, (See 59 FR 341 [1994])) found no elevated risk for cancers of the liver or hepatobiliary duct. This cohort has been updated through 1993 (Steenland K, Piacitelli L, Deddens J, Fingerhut M, Chang LI. 1999. Cancer, heart disease, and diabetes in workers exposed to 2,3,7,8-tetrachlorodibenzo-p-dioxin. *Journal of the National Cancer Institute* 91(9): 779-786.). In Update 2000, NAS noted that the updated analysis of mortality did not find any elevation in liver cancer mortality. Additionally, NAS noted that this study did not adjust for life-style factors.

NAS reported in Update 2000 that a 1998 study of mortality among Danish paper mill workers (Rix BA, Villadsen E, Engholm G, Lynge E. 1998. Hodgkin's disease, pharyngeal cancer, and soft tissue sarcomas in Danish paper mill workers. *Journal of Occupational and Environmental Medicine* 40(1):55-62.) did not find any elevation in liver cancer mortality.

NAS noted that follow-up reports of the people environmentally exposed to TCDD in Seveso, Italy, (Bertazzi PA, Bernucci I, Brambilla G, Consonni D, Pesatori AC. 1998. The Seveso studies on early and long-term effects of dioxin exposure: a review. *Environmental Health Perspectives* 106 (Suppl 2):625-

633; Bertazzi PA, Consonni D, Bachetti S, Rubagotti M, Baccarelli A, Zocchetti C, Pesatori AC. 2001. Health effects of dioxin exposure: a 20-year mortality study. *American Journal of Epidemiology*, 153(11): 1031–1044.) did not add any new information concerning hepatobiliary cancer. Additionally, NAS noted that these follow-up reports did not adjust for life-style factors.

NAS reported that a recent study of Air Force personnel (AFHS. 2000b. *An Epidemiologic Investigation of Health Effects in Air Force Personnel Following Exposure to Herbicides. 1997 Follow-up Examination and Results*. Reston, VA: Science Application International Corporation. F41624–96–C1012.) provides a suggestion of an association between herbicide exposure and liver cancer. However, NAS found that, when considered with the overall body of evidence, this finding was not sufficient to a change its conclusion that there is inadequate or insufficient evidence of an association between exposure to herbicides used in Vietnam and hepatobiliary cancer.

Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and hepatobiliary cancer outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

#### Nasal and Nasopharyngeal Cancer

Nasal and nasopharyngeal cancers are relatively rare in the United States and thus difficult to study epidemiologically. Reported risk factors for nasal cancer include occupational exposure to nickel and chromium compounds, wood dust, and formaldehyde. Studies of nasopharyngeal cancer have reported associations with the consumption of salt-preserved foods, cigarette smoking, and Epstein-Barr virus. NAS noted in VAO and subsequent reports that there was inadequate or insufficient evidence to determine whether an association exists between herbicide exposure and nasal and nasopharyngeal cancer.

NAS reported in Update 2000 that an occupational study (Caplan LS, Hall HI, Levine RS, Zhu K. 2000. Preventable risk factors for nasal cancer. *Annals of Epidemiology* 10:186–191.) evaluated exposures among cases with nasal cancer identified in population-based cancer registries in five metropolitan areas and three states. The cancers were a mixed group that included mostly nasopharyngeal carcinomas, some sarcomas, and lymphomas. NAS found

that this heterogeneity makes attribution of nasopharyngeal carcinoma to particular risk factors difficult.

NAS reported that Bertazzi et al., (2001) did not identify any nasopharyngeal carcinomas in their population of TCDD-exposed residents of Seveso, Italy, and that Ranch Hand participants (AFHS, 2000a) did not show an excess risk of nasopharyngeal cancer.

NAS found that there was no information contained in the research reviewed for Update 2000 to change the conclusion that there is inadequate or insufficient evidence to determine whether an association exists between exposure to herbicides and nasal and nasopharyngeal cancer. Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and nasal and nasopharyngeal cancer outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

#### Bone Cancers

NAS noted that bone cancer is more common in teenagers than adults, and, therefore, the incidence among Vietnam veterans is quite low. Among the risk factors for adults contracting bone and joint cancer are exposure to ionizing radiation from treatment for other cancers and a history of certain noncancerous bone diseases. NAS found in VAO and subsequent reports that there is inadequate or insufficient information to determine whether an association exists between exposure to herbicides and bone cancer.

NAS noted in Update 2000 that Steenland et al., 1999, did not report results for bone cancer, and Rix et al., 1998, found only one case of bone cancer.

NAS found that Bertazzi et al., 1998, did not add any new information to Bertazzi et al., 1997, (See 64 FR 59232 [1999]), and that Bertazzi et al., 2001, did not mention bone cancer mortality. Likewise, NAS noted that in AFHS 2000, bone cancer was not reported as one of the health outcomes of interest.

NAS noted little new information to add to the existing sparse data, and therefore, found there is inadequate or insufficient evidence to determine whether an association exists between exposure to herbicides and bone cancer.

Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and bone cancer outweighs the credible evidence for

such an association, and he has determined that a positive association does not exist.

#### Breast Cancer

NAS noted that breast cancer is the single most common cancer among women in the United States, excluding certain skin cancers. Breast cancer incidence generally increases with age. Risk factors other than aging include a personal or family history of breast cancer and certain reproductive characteristics; specifically, early onset of menarche, late onset of menopause, and either no pregnancies or first full-term pregnancy after 30 years of age. NAS noted in VAO and subsequent reports that there is inadequate or insufficient information to determine whether an association exists between exposure to herbicides and breast cancer.

NAS noted in Update 2000, that Bertazzi et al., 1998, and Bertazzi et al., 2001, found no elevations in mortality from breast cancer.

NAS found that, although there appears to be limited evidence to suggest that there is an epidemiologically defined protective effect of exposure to TCDD in reducing the overall incidence of breast cancer, this should be understood as limited to the narrow context of frequency of new disease. NAS noted that the term "protective" was used in a narrow technical sense of exposure being associated with a reduction in risk. The effect is not necessarily a benefit as it remains possible that exposure to TCDD and Agent Orange may affect lethality, distribution of tissue type, rate of progression, and invasiveness. NAS found limited evidence that this may be the case for organochlorine exposure in general (Demers A, Ayotte P, Brisson J, Dodin S, Robert J, Dewailly E. 2000. Risk and aggressiveness of breast cancer in relation to plasma organochlorine concentrations. *Cancer Epidemiology, Biomarkers and Prevention* 9:161–166.), but the data of another study (Hoyer AP, Jorgensen T, Brock JW, Grandjean P. 2000. Organochlorine exposure and breast cancer survival. *Journal of Clinical Epidemiology* 53(3):323–330.) suggest that the effect is very specific in terms of compound. NAS stated that it is not known whether compounds relevant to Agent Orange exposure have this effect.

NAS noted that there is a possibility that TCDD exposure could adversely affect the natural history of tumors that do arise. NAS cited a finding from Demers et al., 2000, that higher organochlorine exposure is associated with more invasive and progressive

disease, once a cancer does develop. NAS noted that Hoyer *et al.*, 2000, found that higher levels of one organochlorine were associated with poorer prognosis of breast cancer. NAS stated that the relevance to women exposed to Agent Orange is uncertain. Importantly, NAS found no evidence from which to evaluate the possibility that exposure to organochlorine may modify the natural history if exposure takes place at certain sensitive periods during the development of breast tissue, such as puberty and pregnancy.

NAS found no information in the research reviewed for Update 2000 to change the conclusion that there is inadequate or insufficient evidence to determine whether an association exists between exposure to herbicides and breast cancer. Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and breast cancer outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

#### **Cancers of the Female Reproductive System**

NAS noted that the cancers of the female reproductive system include cancers of the cervix, endometrium (also referred to as the corpus uteri), and ovaries. Cervical cancers occur more often in African-American women than in white women, whereas white women are more likely to develop endometrial and ovarian cancers. The incidence of endometrial and ovarian cancer also depends on age, with older women at greater risk. Human papillomavirus infection is the most important risk factor for cervical cancer. Diet, a family history of the disease, and breast cancer are among the risk factors for endometrial and ovarian cancers. NAS noted in VAO and subsequent reports that there is inadequate or insufficient information to determine whether an association exists between exposure to herbicides and cancers of the female reproductive system.

NAS stated in Update 2000 that the evidence from the reviewed studies is inconclusive because most of the published studies include a small number of cases and/or have poor exposure characterization or too short a follow-up period.

NAS noted that Bertazzi *et al.*, 1998 and 2001, found no increases in female reproductive cancers.

NAS found that a case-control study of endometrial cancer in Sweden (Weiderpass E, Adami HO, Baron JA, Wicklund-Glynn A, Aune M, Atuma S,

Persson I. 2000. Organochlorines and endometrial cancer risk. *Cancer Epidemiology, Biomarkers and Prevention* 9:487–493.), after adjustment for age and body mass index, reported no pesticides were associated with endometrial cancer.

NAS reported that a study of female Vietnam veterans from Australia (Commonwealth Department of Veterans' Affairs (CDVA). 1998b. *Morbidity of Vietnam Veterans: A Study of the Health of Australia's Vietnam Community. Volume 2: Female Vietnam Veterans Survey and Community Comparison Outcomes.* Canberra: Department of Veterans' Affairs.) found an excess of all cancers combined. However, NAS noted that the numbers were small, and since the authors did not stratify or adjust for marital status, the findings may be confounded.

NAS found that there was no information contained in the research reviewed for Update 2000 to change the conclusion that there is inadequate or insufficient evidence to determine whether an association exists between exposure to herbicides and cancers of the female reproductive system. Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and cancers of the female reproductive system outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

#### **Urinary Bladder Cancer**

Urinary bladder cancer is the most common of the genitourinary tract cancers. Bladder cancer incidence increases greatly with age for individuals older than 40. The most important known risk factor for bladder cancer is smoking. Occupational exposures to aromatic amines (also called arylamines), polycyclic aromatic hydrocarbons (PAHs), and certain other organic chemicals used in the rubber, leather, textile, paint products, and printing industries are also associated with higher incidence of bladder cancer. High-fat diets have been implicated as risk factors, along with exposure to the parasite *Schistosoma haematobium*.

NAS noted in VAO and Update 1996 that there was limited or suggestive evidence of no association between exposure to herbicides used in Vietnam or the contaminant dioxin and urinary bladder cancer. NAS in Update 1998 changed that conclusion to inadequate or insufficient information regarding an association.

NAS noted in Update 2000 that coexposure to TCDD and the known

bladder carcinogen 4-aminobiphenyl in the Steenland *et al.*, 1999, study makes it very difficult to determine whether dioxin exposure affected the observed incidence of bladder cancer.

NAS reported that the overall results concerning bladder cancer from Bertazzi *et al.*, 1998, and Bertazzi *et al.*, 2001, were statistically indistinguishable from the expected number of bladder cancer cases.

NAS noted that AFHS (2000) combined bladder and kidney cancers for analysis. Since both these cancers have a common association with smoking but are otherwise etiologically distinct diseases, NAS reported that the AFHS results were weakened.

NAS found no information contained in the research reviewed for Update 2000 to change the conclusion that there is inadequate or insufficient evidence to determine whether an association exists between exposure to herbicides and urinary bladder cancer. Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and urinary bladder cancer outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

#### **Renal Cancer**

Renal cancer is twice as common in men as in women. With the exception of Wilm's tumor, which is more likely to occur in children, renal cancer is more common in individuals older than 50. Smoking is a well-established risk factor for renal cancer. Other potential risk factors include diet, weight, and occupational exposure to asbestos and cadmium. Firefighters, who are routinely exposed to the decomposition of organic substances caused by a rise in temperature, are a known higher-risk group.

NAS noted in VAO and subsequent reports that there was inadequate or insufficient information to determine whether an association exists between exposure to herbicides and renal cancer.

NAS stated in Update 2000 that the results of a study of male Dutch production and contract workers (Hooiveld M, Heederik DJ, Kogevinas M, Boffetta P, Needham LL, Patterson DG Jr, Bueno de Mesquita HB. 1998. Second follow-up of a Dutch cohort occupationally exposed to phenoxy herbicides, chlorophenols, and contaminants. *American Journal of Epidemiology* 147(9):891–901.) are limited by the lack of control for smoking.

NAS reported that, because cigarette smoking covaried with the indicators of

herbicide exposure used by AFHS (2000a) researchers, the analysis was confounded. NAS noted that the elevated incidence of renal cancer was seen in AFHS, 2000a, in the low-dioxin category but not the high-dioxin category, which would not be expected if an association existed between exposure and renal cancer.

NAS stated that there is no information contained in the research reviewed for Update 2000 to change the conclusion that there is inadequate or insufficient evidence to determine whether an association exists between exposure to herbicides and renal cancer. Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and renal cancer outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

#### **Testicular Cancer**

Testicular cancer is far more likely in men younger than 40 than in those who are older. Undescended testicles is a major risk factor for testicular cancer. Family history of the disease also appears to be a risk factor for testicular cancer.

NAS noted in VAO and subsequent reports that there was inadequate or insufficient information to determine whether an association exists between exposure to herbicides and testicular cancer.

NAS noted in Update 2000 that, among the studies reviewed, only one (Fleming LE, Bean JA, Rudolph M, Hamilton K. 1999b. Cancer incidence in a cohort of licensed pesticide applicators in Florida. *Journal of Occupational and Environmental Medicine* 41(4):279–288.) reported a statistically significant difference between the observed and expected number of cases of testicular cancer. NAS stated that the pesticide applicators studied by these researchers were likely exposed to a wide variety of chemicals, making it difficult to ascribe any effect to a particular compound.

NAS reported that Bertazzi *et al.*, 1998, did not report testicular cancer separately, but instead included it into a category called "genitourinary cancers." However, NAS noted, no increased risk was reported. Bertazzi *et al.*, 2001, similarly did not report an increased risk for this category.

NAS reported that the government of Australia conducted a mail survey of male veterans (CDVA, 1998a. *Morbidity of Vietnam Veterans: A Study of the Health of Australia's Vietnam Veteran*

*Community. Volume 1: Male Vietnam Veterans Survey and Community Comparison Outcomes.* Canberra: Department of Veterans' Affairs.). A follow-up study was conducted to medically confirm selected conditions (Australian Institute of Health and Welfare (AIHW). 1999. *Morbidity of Vietnam Veterans: A Study of the Health of Australia's Vietnam Veteran Community: Volume 3, Validation Study.* Canberra: AIHW.). NAS noted that the authors found no elevated risk for testicular cancer.

Noting that studies with either large numbers of cases or known TCDD exposures do not show an increased risk for testicular cancer, NAS stated that there is no information contained in the research reviewed for Update 2000 to change the conclusion that there is inadequate or insufficient evidence to determine whether an association exists between exposure to herbicides and testicular cancer. Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and testicular cancer outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

#### **Leukemia**

Acute lymphocytic leukemia (ALL) is a disease of the young and of individuals older than 70, and plays a small role in the age groups that characterize most Vietnam veterans. Exposure to high doses of ionizing radiation is a known risk factor. Acute myeloid leukemia (AML) is the most common leukemia among adults. Risk factors for AML include high doses of ionizing radiation, occupational exposure to benzene, and some medications used in cancer chemotherapy. Genetic disorders including Fanconi's anemia and Down's syndrome are associated with an increased risk for AML. Tobacco smoking has been suggested as a risk factor.

Chronic lymphocytic leukemia (CLL) is the most common type of leukemia in men. It is largely a disease of individuals older than 40, and incidence doubles every 5 years for individuals in the age groups that characterize most Vietnam veterans. Some occupational groups, such as farmers, appear to have a higher incidence of CLL. A family history of the disease and a compromised immune system are additional suspected risk factors. Exposure to ionizing radiation does not appear to be associated with increased incidence of CLL.

The incidence of chronic myeloid leukemia (CML) increases with age for individuals over 30. For individuals in the age groups that characterize most Vietnam Veterans, CML accounts for about one in five leukemias. CML is associated with an acquired chromosomal abnormality known as the "Philadelphia chromosome." Exposure to high doses of ionizing radiation is a known risk factor for CML.

NAS noted in VAO and subsequent reports that there is inadequate or insufficient information to determine whether an association exists between exposure to herbicides and leukemia.

NAS, in Update 2000, reported that Hooiveld *et al.*, 1998, Rix *et al.*, 1998, Steenland *et al.*, 1999, showed no increase risk for leukemia. NAS stated that CDVA, 1998a and 1998b, validated by AIHW, 1999, found no increased risk for leukemia.

NAS stated that the small number of cases found by AFHS (2000a/b) led to nonsignificant results.

NAS reported that there was no information contained in the research reviewed for Update 2000 to change the conclusion that there is inadequate or insufficient evidence to determine whether an association exists between exposure to herbicides and leukemia. Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and leukemia outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

#### **Reproductive Effects**

Reproductive effects on veterans may include sperm quality and infertility.

NAS noted in VAO and subsequent reports that there is inadequate or insufficient information to determine whether an association exists between exposure to herbicides and altered sperm parameters or infertility.

NAS, in Update 2000, reported that studies of Danish farmers (Larsen SB, Joffe M, Bonde JP. 1998. Time to pregnancy and exposure to pesticides in Danish farmers. *Occupational and Environmental Medicine* 55(4): 278–283.) and greenhouse workers (Abell A, Juul S, Bonde JP. 2000. Time to pregnancy among female greenhouse workers. *Scandinavian Journal of Work, Environment, and Health* 26(2):131–136.) lacked information on TCDD level as a contaminant of the pesticides investigated. NAS also noted that studies limited to couples who achieve a pregnancy can be biased, because cases of infertility are excluded

(Sallmen M, Lindbohm ML, Nurminen M. 2000. Paternal exposure to lead and infertility. *Epidemiology* 11(2): 148–152.).

NAS stated that there is no information in the research reviewed for Update 2000 to change the conclusion that there is inadequate or insufficient evidence to determine whether an association exists between exposure to herbicides and altered sperm parameters or infertility.

Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and reproductive effects in veterans outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

#### Parkinson's Disease

Because of the increasing concern that a link exists between Parkinson's disease (PD) and various chemicals used in herbicides, NAS, in VAO and subsequent reports, suggested that as Vietnam veterans move into the age groups when PD is more prevalent, attention be given to the frequency and character of new cases of PD in exposed versus nonexposed individuals.

NAS, in Update 2000, stated that of the 30 studies summarized, only eight provide an estimate of relative risk of PD based on exposure to herbicides. Five of these studies found a significant association between herbicide exposure and PD (Butterfield *et al.*, 1993 (See 61 FR 41442 [1996]); Gorrell *et al.*, 1998 (See 64 FR 59232 [1998]); Liou *et al.*, 1997 (See 64 FR 59232 [1998]); Seidler *et al.*, 1996 (See 64 FR 59232 [1998]); Semchuk *et al.*, 1992 (See 61 FR 41442 [1996])). One study found no association between herbicide exposure and PD (Taylor CA, Saint-Hilaire MH, Cupples LA, Thomas CA, Burchard AE, Feldman RG, Myers RH. 1999. Environmental, medical, and family history risk factors for Parkinson's disease: a New England-based case control study. *American Journal of Medical Genetics (Neuropsychiatric Genetics)* 88: 742–749.). The two remaining studies found a negative association between herbicide exposure and PD (Kuopio A, Marttila RJ, Helenius H, Rinne UK. 1999. Environmental risk factors in Parkinson's disease. *Movement Disorders* 14: 928–939; Stern *et al.*, 1991 (See 61 FR 41442 [1996])). Based on the totality of the evidence, NAS concluded that there remains inadequate or insufficient evidence of an association between exposure to herbicides and PD.

Taking account of the available evidence and NAS' analysis, the

Secretary has found that the credible evidence against an association between herbicide exposure and PD outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

#### Chronic Persistent Peripheral Neuropathy

NAS noted in VAO and subsequent reports that there was inadequate or insufficient evidence of an association between exposure to herbicides and chronic persistent peripheral neuropathy. Data from the Air Force Health Studies, in a large measure, accounted for this conclusion.

In Update 2000, NAS reported that AFHS, 2000, found five cases of peripheral neuropathy in the Ranch Hand ground crew. NAS stated that this finding was consistent with the expected prevalence for peripheral neuropathy in the general population and prevalence increases with age. NAS noted that the development of a peripheral neuropathy associated with a toxic exposure begins when the exposure is occurring or shortly after cessation of the exposure. Furthermore, the peripheral nervous system has the ability to repair itself when the exposure ceases. Therefore, NAS stated that it is not biologically plausible that peripheral neuropathies found for the first time were caused by an exposure to herbicides that occurred 30 years earlier.

NAS concluded that there remains inadequate or insufficient evidence of an association between exposure to herbicides and chronic persistent peripheral neuropathy. Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and chronic persistent peripheral neuropathy outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

#### Lipid and Lipoprotein Disorders

Plasma lipid concentrations (notably cholesterol) have been shown to predict cardiovascular disease and are considered fundamental to the underlying atherosclerotic process. The two major lipids, cholesterol and triglycerides, are carried in the blood attached to proteins to form lipoproteins. NAS in VAO and subsequent reports found there was inadequate or insufficient information to determine whether an association exists between exposure to herbicides and lipid and lipoprotein disorders.

NAS, in Update 2000, stated that AFHS, 2000a/b, provided incomplete and inconsistent evidence on a possible association between dioxin exposure and lipid abnormalities and noted the failure to evaluate the role of obesity. NAS noted that there were no other new studies for it to evaluate on this subject. NAS concluded that there is inadequate or insufficient evidence to determine whether an association exists between exposure to herbicides and lipid and lipoprotein disorders.

Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and lipid and lipoprotein disorders outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

#### Gastrointestinal and Digestive Disease

Gastrointestinal and digestive disease includes diseases of the esophagus, stomach, intestines, rectum, liver, and pancreas. NAS, in VAO and subsequent reports, found there was inadequate or insufficient information to determine whether an association exists between exposure to herbicides and gastrointestinal and digestive disease.

NAS, in Update 2000, stated that most of the studies reviewed for the first time had insufficient numbers of cases to draw confident conclusions. NAS noted that one study with a relatively large number of observations (Vena J, Boffeta P, Becher H, Benn T, Bueno de Mesquita HB, Coggon D, Colin D, Flesch-Janys D, Green L, Kauppinen T, Littorin M, Lynge E, Mathews JD, Neuberger M, Pearce N, Pesatori AC, Saracci R, Steenland K, Kogevinas M. 1998. Exposure to dioxin and nonneoplastic mortality in the expanded IARC international cohort study of phenoxy herbicide and chlorophenol production workers and sprayers. *Environmental Health Perspectives* 106 (Suppl. 2): 645–653.) found lower digestive system disease and liver cirrhosis mortality among exposed workers than unexposed controls.

NAS reported that studies of Australian veterans (CDVA 1998a and 1998b) suggested a higher incidence of stomach and duodenal ulcers in both men and women, but information was self-reported and the analyses were not controlled for confounding influences.

NAS noted that AFHS, 2000a, found a significantly higher percentage of liver disorders among Ranch Hands in the high-dioxin category than among comparisons. NAS found that this data was consistent with an interpretation of a dose-response relationship, but that

other explanations were also plausible. NAS noted that the authors of AFHS, 2000a/b, are preparing a separate report examining the relationship between liver disorders and herbicide exposure in greater detail.

NAS concluded that there was no information contained in the research reviewed for Update 2000 to change the conclusion that there is inadequate or insufficient evidence to determine whether an association exists between exposure to herbicides and gastrointestinal and digestive diseases. Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and gastrointestinal and digestive disease outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

#### **Immune System Disorders**

NAS noted in VAO and subsequent reports that there was inadequate or insufficient information to determine whether an association exists between exposure to herbicides and immune system disorders.

In Update 2000, NAS noted that the immune effects described in humans exposed to TCDD have been marginal and have varied from study to study. Some studies showed increased risk, others decreased risk, and others no effect. Further, workers exposed to high levels of TCDD for several years with body burdens at least ten times higher than the general population had no significant risk for immune system disorders.

NAS reported that immune parameters were measured in veterans of Operation Ranch Hand (Michalek JE, Ketchum NS, Check IL. 1999a Serum dioxin and immunologic response in veterans of Operation Ranch Hand. *American Journal of Epidemiology* 149: 1038–1046; AFHS, 2000a/b). NAS noted that there was no evidence of a consistent relationship between dioxin exposure and immune system alteration.

NAS reported in Update 2000 that there is no information contained in the research reviewed for this report to change the conclusion that there is inadequate or insufficient evidence to determine whether an association exists between exposure to herbicides and immune system disorders. Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between immune system disorders and herbicide exposure outweighs the credible evidence for such an association, and he has

determined that a positive association does not exist.

#### **Circulatory Disorders**

NAS noted in VAO and subsequent reports that there was inadequate or insufficient information to determine whether an association exists between exposure to herbicides and circulatory disorders.

In Update 2000, NAS stated that new studies from occupational epidemiology contain the key limitations recognized in Update 1998: reliance on mortality as an outcome, the unassessed validity of assigned cause of death, and the inability to address potential confounding by other causes of cardiovascular and cerebrovascular disease.

NAS reported that the evidence of increased circulatory disease mortality exists in the follow-up of the Seveso, Italy, population (Bertazzi et al., 2001), but the pattern is somewhat inconsistent across levels of exposure and the statistical power of the study remains limited, particularly for women.

NAS reported that the findings on circulatory conditions from AFHS 2000 tend to be inconsistent and inconclusive. Excess mortality is reported for enlisted ground personnel from Operation Ranch Hand, but this finding is not supported in subsequent analyses of cardiovascular and cerebrovascular morbidity. NAS noted that AFHS 2000 shows no dioxin-related increased risk for myocardial infarction and the combination of stroke and transient ischemic attack.

NAS noted that elevated rates of heart disease were reported in the Australian veterans studies (CDVA, 1998a and 1998b). However, NAS stated that there was some uncertainty in the numbers of cases due to possible misreporting.

NAS concluded that there is no information contained in the research reviewed for Update 2000 to change the conclusion that there is inadequate or insufficient evidence to determine whether an association exists between exposure to herbicides and circulatory disorders. Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and circulatory disorders outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

#### **Respiratory Disorders**

Cigarette smoking is a major, often overwhelming, confounding factor that dominates as a risk for respiratory disorders and may obscure weaker risks.

NAS noted in VAO and subsequent reports that there was inadequate or insufficient information to determine whether an association exists between exposure to herbicides and respiratory disorders.

NAS noted in Update 2000 that new evidence (cited below) suggests that there may be an increased risk for respiratory disorders among individuals exposed to TCDD. However, NAS stated that this association is based on small numbers, is not adjusted for smoking, and is not internally consistent. Other studies of occupationally exposed subjects do not show this association, although some of these studies are large enough to have revealed this association if it were present.

NAS reported that Steenland *et al.*, 1999, showed no risk for respiratory disorders. NAS noted that this study was large enough to have the statistical power to demonstrate such a risk. Also, NAS found that AFHS 2000 showed no increased risk for respiratory disorders.

NAS concluded that there is no information contained in the research reviewed for Update 2000 to change the conclusion that, except for respiratory cancers, there is inadequate or insufficient evidence to determine whether an association exists between exposure to herbicides and respiratory disorders. Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and respiratory disorders other than respiratory cancers outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

#### **Skin Cancer**

NAS noted in VAO and subsequent reports that there was inadequate or insufficient information to determine whether an association exists between exposure to herbicides and skin cancer.

NAS stated that studies reviewed for the first time in Update 2000 provide additional morbidity data and mortality analyses to account for factors that confound the evaluation of melanoma incidence in groups with exposure to chemical agents. NAS reported that Bertazzi *et al.*, 2001, has too few cases of melanoma to be informative. NAS noted that CDVA, 1998a and b, and AFHS 2000 provided some new important data. However, NAS also reported that AFHS 2000 had too few cases of melanoma to be informative. NAS noted that CDVA, 1998a and b, included the use of self-reported cases with no validation through medical record reviews or other means.

According to NAS, CDVA, 1998a and b, did not control for confounders and used a nonmilitary control group.

NAS reported that there are relatively few studies that examine nonmelanomas and fewer that separate basal and squamous cell carcinomas. NAS stated that CDVA, 1998a and 1998b, and AFHS, 2000a/b, provide new morbidity data for these outcomes. However, NAS reported that the small number of cases in AFHS 2000 limited the results. NAS noted that CDVA, 1998a and 1998b, used self-reported cases and failed to control for important confounders. Also, NAS noted that the results for females were based on a very small number of subjects.

NAS concluded that there is no information contained in the research reviewed for Update 2000 to change the conclusion that there is inadequate or insufficient evidence to determine whether an association exists between exposure to herbicides and skin cancer. Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and skin cancer outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

#### **Cognitive and Neuropsychiatric Effects**

NAS noted in VAO and subsequent reports that there was inadequate or insufficient information to determine whether an association exists between exposure to herbicides and cognitive and neuropsychiatric effects.

NAS noted in Update 2000 that AFHS 2000 found an association between dioxin exposure and only one of five disease categories studied, "other" neuroses, which included more than 100 clinically dissimilar classifications of diseases. NAS reported that the biological plausibility for such an association is lacking. NAS noted that, in cases where verified psychological diagnoses from AFHS 2000 were combined with verified psychological diagnoses from previous AFHS studies, it is not clear whether the past diagnoses were active at the time of the AFHS 2000 report. NAS questioned the criteria used for these psychological diagnoses. Also, NAS stated that if these other neuroses were associated with dioxin exposure, the onset of symptoms of specific conditions would have occurred at a much earlier time, when they would be more closely related to actual exposure.

NAS concluded that there is still inadequate or insufficient evidence to determine whether an association exists

between exposure to herbicides and cognitive and neuropsychiatric effects. Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and cognitive and neuropsychiatric effects outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

#### **Gastrointestinal Tract Tumors**

The incidence of stomach, colon, rectal, and pancreatic cancers increases with age for individuals between 45 and 59. Other risk factors vary for these cancers but always include family history of the same form of cancer, certain diseases of the affected organ, and dietary factors.

NAS noted in VAO and subsequent reports that there was limited or suggestive evidence of no association between exposure to herbicides and gastrointestinal (GI) tract tumors.

NAS stated in Update 2000 that, with only rare exceptions, studies on GI tract cancers and exposure to herbicides in production, from agricultural use, from environmental sources, and among veteran populations provided no evidence of any increase in risk. NAS noted that Steenland *et al.*, 1999, did not report site-specific GI cancers, and there was a nonsignificantly elevated excess risk for GI cancers in the highest-exposed subgroups. NAS noted that Rix *et al.*, 1998, found some nonsignificant elevations of GI cancers, but the possible link with dioxin exposure was not well established. NAS noted that Hooiveld *et al.*, 1998, found no significant risk of GI cancer. NAS noted that Bertazzi *et al.*, 2001, found some statistically excess risks, but these were based on relatively small numbers of cases and do not seem to occur with any consistency. Also, NAS noted that among studies of Vietnam veterans (AFHS, 2000a/b; CDVA, 1998a and 1998b; AIHW, 1999) there was no significant evidence of an association between herbicide exposure and any GI cancer.

NAS concluded that there was no new evidence to change the previous determination that there is limited or suggestive evidence of no association between exposure to herbicides and gastrointestinal tract cancer. Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and gastrointestinal tract cancer outweighs the credible evidence for such an association, and he has

determined that a positive association does not exist.

#### **Brain Tumors**

NAS noted in VAO and subsequent reports that there was limited or suggestive evidence of no association between exposure to herbicides and brain tumors.

NAS reported in Update 2000 that the studies reviewed for the first time found small numbers of cases of brain tumors and no excess risk. NAS noted that Hooiveld *et al.*, 1998, found no deaths due to brain cancer. NAS noted that Bertazzi *et al.*, 2001, found no new deaths from brain cancers. NAS noted that AFHS 2000 reported only one case of brain cancer and, consequently, the authors performed no statistical analysis.

NAS concluded that there was no new evidence to change the previous determination that there is limited or suggestive evidence of no association between exposure to herbicides and brain tumors. Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and brain tumors outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

#### **Amyloidosis**

Amyloidosis is a group of bone marrow diseases, poorly understood and relatively rare, characterized by accumulation of insoluble fibrillar proteins (amyloid) in various organs and tissues of the body such that vital function is compromised. Systemic amyloidosis is a complication that occurs in approximately 15–20 percent of patients with multiple myeloma, which is also a bone marrow disease.

VA asked NAS to address the possible association between exposure to herbicides and amyloidosis, a condition not examined in its prior reports.

In Update 2000, NAS identified a single report that addressed exposure to the herbicides and amyloidosis. This report (Tóth K, Somfai-Relle S, Sugár J, Bence J. 1979. Carcinogenicity testing of herbicide 2,4,5-trichlorophenoxyethanol containing dioxin and of pure dioxin in Swiss mice. *Nature* 278(5704):548–549.) described the results of carcinogenicity tests of the herbicide 2,4,5-trichlorophenoxyethanol containing dioxin and of pure dioxin in Swiss mice. NAS reported that the mice developed amyloidosis secondary to skin lesions caused by the chemical exposure. NAS did not identify any literature addressing primary (in

absence of a discernible preceding disease) amyloidosis in animals or people exposed to herbicides or dioxin.

NAS concluded that there is inadequate or insufficient evidence to determine whether an association exists between exposure to herbicides and amyloidosis. Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and amyloidosis outweighs the credible evidence for such an association, and he has

determined that a positive association does not exist.

NAS reviewed scientific and medical articles published since the publication of its first report as an integral part of the process that resulted in "Veterans and Agent Orange: Update 2000." The comprehensive review and evaluation of the available literature which NAS conducted in conjunction with its report has permitted VA to identify all conditions for which the current body of knowledge supports a finding of an association with herbicide exposure.

Accordingly, the Secretary has determined that there is no positive association between exposure to herbicides and any other condition for which he has not specifically determined that a presumption of service connection is warranted.

Approved: June 11, 2002.

**Anthony J. Principi,**

*Secretary of Veterans Affairs.*

[FR Doc. 02-15782 Filed 6-21-02; 8:45 am]

**BILLING CODE 8320-01-P**

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# Corrections

Federal Register

Vol. 67, No. 121

Monday, June 24, 2002

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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.

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**42 CFR Parts 400, 430, 431, 434, 435, 438, 440, and 447**

**[CMS-2104-F]**

**RIN 0938-AK96**

### Medicaid Program; Medicaid Managed Care: New Provisions

#### *Correction*

In rule document 02-14747 beginning on page 40989 in the issue of Friday,

June 14, 2002, make the following correction:

On page 40989, in the first column, under the **EFFECTIVE DATE:** heading, in the third line, "June 16, 2003" should read "August 13, 2003".

[FR Doc. C2-14747 Filed 6-21-02; 8:45 am]

**BILLING CODE 1505-01-D**



# Federal Register

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**Monday,  
June 24, 2002**

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## **Part II**

## **Nuclear Regulatory Commission**

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**10 CFR Parts 170 and 171**

**Revision of Fee Schedules; Fee Recovery  
for FY 2002; Final Rule**

**NUCLEAR REGULATORY COMMISSION****10 CFR Parts 170 and 171**

RIN 3150-AG95

**Revision of Fee Schedules; Fee Recovery for FY 2002****AGENCY:** Nuclear Regulatory Commission.**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending the licensing, inspection, and annual fees charged to its applicants and licensees. The amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), as amended, which requires that the NRC recover approximately 96 percent of its budget authority in fiscal year (FY) 2002, less the amounts appropriated from the Nuclear Waste Fund (NWF) and the General Fund. The amount to be recovered for FY 2002 is approximately \$479.5 million.

**EFFECTIVE DATE:** August 23, 2002.

**ADDRESSES:** The comments received and the agency work papers that support these final changes to 10 CFR parts 170 and 171 are available electronically at the NRC's Public Electronic Reading Room on the Internet at <http://www.nrc.gov/reading-rm/adams.html>. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, or 301-415-4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov). If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR.

Comments received may also be viewed via the NRC's interactive rulemaking Web site (<http://ruleforum.llnl.gov>). This site provides the ability to upload comments as files (any format), if your Web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, 301-415-5905; e-mail [CAG@nrc.gov](mailto:CAG@nrc.gov).

For a period of 90 days after the effective date of this final rule, the work papers may also be examined at the NRC Public Document Room, Room O-1F22, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738.

**FOR FURTHER INFORMATION CONTACT:** Glenda Jackson; Telephone 301-415-

6057 or Robert Carlson; Telephone 301-415-8165, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

**SUPPLEMENTARY INFORMATION:**

- I. Background
- II. Response to Comments
- III. Final Action
- IV. Voluntary Consensus Standards
- V. Environmental Impact: Categorical Exclusion
- VI. Paperwork Reduction Act Statement
- VII. Regulatory Analysis
- VIII. Regulatory Flexibility Analysis
- IX. Backfit Analysis
- X. Small Business Regulatory Enforcement Fairness Act

**I. Background**

For FYs 1991 through 2000, OBRA-90, as amended, required that the NRC recover approximately 100 percent of its budget authority, less the amount appropriated from the U.S. Department of Energy (DOE) administered NWF, by assessing fees. To address fairness and equity concerns raised by the NRC related to charging NRC license holders for agency expenses that do not provide a direct benefit to the licensee, the FY 2001 Energy and Water Development Appropriations Act amended OBRA-90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005. As a result, the NRC is required to recover approximately 96 percent of its FY 2002 budget authority, less the amounts appropriated from the NWF, through fees and other offsetting receipts. In addition, \$36.0 million has been appropriated from the General Fund for activities related to homeland security. The FY 2002 Defense Appropriations Act states that this \$36.0 million shall be excluded from license fee revenues. The total amount to be recovered in fees and other offsetting receipts for FY 2002 is approximately \$479.5 million.

The NRC assesses two types of fees to meet the requirements of OBRA-90, as amended. First, license and inspection fees, established in 10 CFR part 170 under the authority of the Independent Offices Appropriation Act of 1952 (IOAA), 31 U.S.C. 9701, recover the NRC's costs of providing special benefits to identifiable applicants and licensees. Examples of the services provided by the NRC for which these fees are assessed are the review of applications for new licenses, and for certain types of existing licenses, the review of renewal applications, the review of amendment requests, and inspections. Second, annual fees established in 10 CFR part 171 under

the authority of OBRA-90, recover generic and other regulatory costs not otherwise recovered through 10 CFR part 170 fees.

**II. Response to Comments**

The NRC published the FY 2002 proposed fee rule on March 27, 2002 (67 FR 14818), to solicit public comment on its proposed revisions to 10 CFR parts 170 and 171. The NRC received 11 comments before the comment period ended on April 26, 2002, and three additional comments by May 24, 2002, for a total of 14 comments that were considered in this fee rulemaking. Many of the commenters raised similar issues. As such, these comments have been grouped according to similar issues, and are addressed in a collective response.

The comments and NRC's responses are as follows:

**A. Legal Issues****1. Information Provided by NRC in Support of Proposed Rule**

*Comment.* One commenter urged the NRC to provide licensees and the public with a more detailed explanation of the specific activities and associated costs that form the basis for the part 171 annual fees, including detailed information on the outstanding major contracts, their purpose, and their costs. The commenter indicated that more detailed information would allow stakeholders to provide more effective feedback on the efficiency of NRC's regulatory activities and would propel the Commission to exercise its authority to promote increased fiscal responsibility. The commenter acknowledged the ability to access the agency work papers through the NRC's Public Document Room or by using the Agencywide Documents Access and Management System (ADAMS), but finds this supporting material to be indecipherable.

*Response.* Consistent with the requirements of OBRA-90, as amended, the purpose of this rulemaking is to establish fees necessary to recover 96 percent of the NRC's FY 2002 budget authority, less the amounts appropriated from the NWF and the General Fund, from the various classes of licensees. The efficiencies of NRC's regulatory activities and the manner in which NRC carries out its fiscal responsibilities are not addressed in this final rule since the NRC's budget and the manner in which the NRC carries out its activities are outside the scope of this rulemaking. The proposed rule described the types of activities included in the proposed fees and explained how the fees were calculated to recover the budgeted costs

for those activities. Therefore, the NRC believes that ample information was available on which to base constructive comments on the proposed revisions to parts 170 and 171.

The NRC acknowledges that the work papers supporting the proposed fee rule contain very detailed information. The work papers reflect the complexity of the fee calculation process that is necessary to ensure that the fees are fair and equitable to all licensees. The work papers show the total budgeted FTE and contract costs at the planned accomplishment level for each activity. The work papers also include extensive information detailing the allocation of the budgeted costs for each planned accomplishment within each program of each strategic arena to the various classes of licensees.

In addition to the detailed budget information contained in the work papers, the NRC has made available in the Public Document Room NUREG-1100, Volume 17, "Budget Estimates and Performance Plan, Fiscal Year 2002 (April 2001)," which discusses the NRC's budget for FY 2002, including the activities to be performed in each strategic arena. The NRC also has made this document available on its public Web site at <http://www.nrc.gov/who-we-are/plans.html>. The extensive information available to the public meets all legal requirements and the NRC believes it provides the public with sufficient information on which to base their comments on the proposed fee rule. Additionally, the contacts listed in the proposed fee rule were available during the public comment period to answer any questions that commenters had on the development of the proposed fees. No inquiries of this nature were received during the comment period.

#### B. Specific Part 170 Issues

##### 1. Hourly Rates

*Comment.* Several commenters opposed the \$152 proposed hourly rate for the materials program. The commenters stated that the hourly rate is excessive, is more than the professional hourly rates charged by national consulting firms, and is counterproductive to NRC's apparent efforts to reduce the total fee burden to uranium recovery licensees.

*Response.* The NRC's hourly rates are based on budgeted costs and must be established at the revised levels to meet the fee recovery requirements. The hourly rates include not only average salaries and benefits for professional employees, but also a prorated share of overhead costs, such as supervisory and secretarial support and information

technology overhead costs, as well as general and administrative costs, such as rent, utilities, supplies, and payroll and human resources staffs.

The increase in the hourly rates is primarily due to the Government-wide pay increase in FY 2002. The revised hourly rates, coupled with the direct contract costs, recover through part 170 fees the full cost to the NRC of providing special services to specifically identifiable beneficiaries as provided by the IOAA. The revised hourly rates plus direct contract costs recover through part 171 annual fees the required amount of NRC's budgeted costs for activities not recovered through part 170 fees, as required by OBRA-90, as amended. The NRC is establishing in this final rule the revised hourly rates necessary to accomplish the fee recovery requirements. The professional hourly rate for the reactor program is \$156, compared to \$150 in FY 2001, and the professional hourly rate for the materials program is \$152, compared to \$144 in FY 2001. For part 170 activities, the rates will be assessed for professional staff time expended on or after the effective date of this final rule.

##### 2. Fee Exemptions for Special Projects

*Comment.* Five comments were received opposing the NRC's proposed modifications to the fee waiver provisions for special projects, most of which criticized the proposed rule for the anticipated chilling effect the "primary beneficiary" criterion will have on encouraging and supporting "ground-breaking" actions by licensees. These commenters believe that the proposed revisions would discourage cooperative efforts between the NRC and industry to address safety issues and opportunities for generic regulatory improvement. Some commenters asserted that the changes are inconsistent with the NRC's goals to improve regulatory efficiency and effectiveness, to reduce unnecessary burden on stakeholders, and to promote increased realism in regulatory decision-making. Several commenters stated that without some relief from fees, there is no incentive for a licensee to take the lead on an industry initiative that may contribute to generic regulatory activity and which may serve as a model for other licensees. Two commenters stated that relocating the fee waiver requirements to 10 CFR 170.11(a)(1) adds a degree of formality to the process and that such formality costs the industry and the NRC resources and time. The commenters urged the NRC to revise the provisions to encourage industry to work

cooperatively with the NRC on generic regulatory improvements or efforts.

As part of its commentary on what it views as the evolution of the fee waiver provision, one commenter suggested that the NRC's FY 2001 fee rule change adding the word "NRC's" in the third fee waiver criteria was an attempt to distinguish between waiver requests based on the industry's future use of the documents, in contrast to reports being submitted, reviewed, and approved for the purpose of NRC's generic regulatory improvements. The commenter asserted that the proposed change for the FY 2002 fee rule goes further in establishing barriers to unsolicited industry proposals for generic regulatory improvements. The commenter claimed that these interpretations are inconsistent with the history of the fee rule and many generic industry initiatives reviewed by NRC without a fee, prior to 1999. This commenter predicted that the proposed change will discourage industry initiatives and penalize self-generated industry-wide generic initiatives, which it contended is inconsistent with Commission and NRC management encouragement of industry initiatives. The commenter pointed to SECY-00-0016, "Industry Initiatives in the Regulatory Process," in which the staff discussed how industry initiatives would save resources and improve timeliness of actions. The commenter also referred to the Commission's direction to the staff, in response to SECY-96-062, "to evaluate, on a case-by-case basis, initiatives proposing further NRC reliance on industry activities as an alternative to NRC activities."

The same commenter stated that it is difficult to determine if an industry report will be used for generic regulatory improvement prior to NRC review. The commenter also complained that its intended purpose stated at the time of submittal, and associated fee waiver requests, typically have been rejected by the NRC's Chief Financial Officer (CFO), making it "difficult for the staff to make an informed decision as to the intended use of the submittal." The commenter goes on to say that the NRC staff is reluctant to discuss fee or usage matters with the commenter, although these discussions are needed to assist the staff in making a recommendation on the fee waiver.

The commenter also disagreed with basing the fee waiver on which organization—the NRC or industry—is the primary beneficiary. The commenter stated that waiving the fees for generic industry proposals that facilitate regulatory improvement will encourage

initiatives which benefit both industry and NRC, pointing to the NRC's Strategic Performance Goals of reducing unnecessary regulatory burden and achieving greater realism in regulatory decisions. The commenter argued that the NRC should not impose a policy that encourages industry to ignore the best science and instead tell the NRC staff what it wants to hear in order to obtain a waiver of review fees.

The commenter argued that NRC's budget is not enhanced by imposing part 170 fees for services, since whatever is not recovered through part 170 fees will be made up by charging part 171 annual fees. This suggests that there is no budgetary imperative for charging part 170 fees (sought to be relieved by these fee waiver requests), rather than allowing the costs to be absorbed through the imposition of annual fees. In the commenter's words, "granting or denying a waiver is 'revenue neutral'," however, the commenter stated that fees for services present a serious budgetary problem for industry organizations. According to the commenter, these organizations operate on tight budgets that do not normally cover NRC review fees. Imposition of these fees reduces the amount of research work the commenter's organization can do to support the membership, and slows down efforts on risk informed initiatives.

To address these concerns, the commenter recommended the fee waiver provision be revised so it applies not only to those submittals requested by the NRC, but also to those proposals for generic regulatory improvements submitted by industry organizations representing all licensees, including those which are unsolicited and need NRC review, and are supported by the membership as a generic submittal. The commenter stated it would ensure that its fee waiver requests are reviewed and supported by its members, and that its membership agrees to NRC cost recovery for these reviews through part 171 annual fees.

*Response.* As previously stated in the proposed fee rule, the modifications to the fee waiver criteria do not represent a change in NRC policy. Rather, the changes are clarifications intended to assist applicants in determining in advance whether their submittals are likely to meet the fee waiver criteria.

The NRC has consistently applied its policy of waiving the part 170 fees for special projects submitted to the NRC for the purpose of supporting NRC's generic regulatory improvements, and assessing part 170 fees for the review of special projects that are submitted for other purposes, including those that

support industry generic improvements. Part 170 fees are based on the provisions of the Independent Offices Appropriations Act of 1952 (IOAA). This statute allows Federal agencies to assess fees to recover costs incurred in providing special benefits to identifiable recipients. While the NRC has the authority to grant waivers from the part 170 fee requirements, fee exemptions are granted very sparingly in order to meet the requirements of OBRA-90 that almost all of the agency's budget authority be recovered through IOAA and annual fees.

The NRC finds no justification for granting a part 170 fee waiver to an industry organization seeking an NRC approval of an industry initiative, unless the initiative will be used for NRC's generic regulatory improvements, and the initiative was submitted specifically for that purpose. In the latter case, the NRC's review and approval is part of the process of developing the NRC's generic regulatory program, and therefore the review activities are similar to other NRC generic regulatory activities whose costs are recovered through part 171 annual fees. Conversely, reviews of submittals that are for the industry's generic improvements or use are considered services provided to identifiable recipients. These are subject to IOAA fees, under applicable caselaw. *See, e.g., Mississippi Power & Light Co. v. U.S. Nuclear Regulatory Commission*, 601 F. 2d 233 (C.A. 5, 1979), cert. den. 444 U.S. 1102 (1980). Further, the "primary beneficiary" concept is solidly rooted in pertinent caselaw, which authorizes the assessment of fees for specific services/benefits against identifiable beneficiaries, even if the service confers a benefit beyond that, *i.e.*, upon the general public as well. *Engine Mfrs. Ass'n v. E.P.A.*, 20 F. 3d 1177 (C.A.D.C. 1994).

To say that the CFO's rejection of the submitter's stated purpose and the related fee waiver request "makes it difficult for the staff to make an informed decision as to the intended use of the submittal" reverses the proper order of things. The staff must provide technical advice and recommendations to assist the CFO in making the appropriate determination of fee waiver entitlement. The submittal, and thus, potential for fee waiver, is to be weighed on the merits and how it relates to the NRC's regulatory initiatives, from which fee considerations flow, not the other way around. Moreover, while the program staff certainly should be able to communicate freely with the submitter on the technical merits of the submittal, it is appropriate for the program staff to

be reluctant to discuss fee matters with the submitter because that is not the program staff's area of expertise. Fee issues and discussions are the responsibility of the CFO's staff; and therefore, to avoid confusion and misunderstanding, fee matters should be discussed with the CFO's staff instead of the program staff. On the other hand, the submitter is encouraged to have discussions with the technical staff as to those submissions that support the NRC's generic regulatory improvements or efforts. Submitters have a legitimate interest in advance information about the fee implications that will attend a submission, and interactions with both technical and CFO staff on relevant matters are fully appropriate.

The NRC has consistently declined to base its fees on the financial status of NRC licensees and applicants, except the impacts of the fees on small entities the NRC is required to consider under the provisions of the Regulatory Flexibility Act. Therefore, the NRC does not base fee waivers on the budgetary constraints of those requesting NRC services. Further, the determination of whether a fee waiver should be granted is independent of whether there is willingness of the organization's members to pay the costs through part 171 fees. If the organization's members are willing to pay the costs of NRC's fees, the organization can seek reimbursement from its members. The IOAA prescribes the standards for charging fees to identifiable recipients for services or things of value, and there is nothing in the statute that authorizes fee-shifting through consensus.

For this reason, it is also unpersuasive to argue that the NRC should liberally grant part 170 fee waivers based on "revenue neutrality." Under that theory, the NRC need never charge part 170 fees, because whatever is not recouped there will be recovered through part 171 fees. Although the budgeted costs still would be recovered regardless of how the charges are assessed, that is not the standard for fee assessment under the IOAA, nor should it be for purposes of granting or denying fee waiver requests.

Moreover the NRC's fee schedule is not an incentive program. Fees are established in accordance with applicable legal requirements and not meant to be either inducements or disincentives. Rather, they are established to recover the NRC's costs, as required by law. Further, the assessment of part 170 fees for special projects is fully consistent with the NRC's policies on industry initiatives. In SECY 97-303, "The Role of Industry (DSI-13) and Use of Industry Initiatives," the staff stated that fees will

be assessed unless the fee waiver criteria is met. As always, under the fee waiver criteria, NRC will waive the review fees for special projects submitted for the purpose of supporting NRC's regulatory improvements as long as the NRC staff agrees that it will be used by the NRC in developing or improving its regulatory framework. Not every submittal results in a safety improvement, burden reduction, or improved process. The NRC encourages any special project applicant who believes that its proposal will help improve NRC's regulatory process to discuss its proposal with the cognizant NRC program office staff prior to requesting a fee waiver from the Chief Financial Officer.

With regard to fee waivers for "ground breaking" licensing actions, the fee exemption provision for special projects does not apply to licensing actions. As defined in § 170.3, special projects are those requests submitted to the NRC for review for which fees are not otherwise specified in part 170. Part 170 specifies fees for licensing actions, therefore, first-of-a-kind licensing actions are not special projects for purposes of part 170. The waiver criteria that were previously in footnote 4 of § 170.21 and footnote 5 of § 170.31, which in this final rule the NRC is moving to § 170.11, have always specifically referred to special projects (*see* § 170.11(a)(1)). The NRC is not changing its practice for exemption requests for first-of-a-kind licensing actions and will continue to address such exemption requests on a case-by-case basis under § 170.11(b).

The NRC believes the modifications to the fee waiver criteria language have the potential to save both NRC and industry resources because the industry will have more definitive guidelines on the types of submission that will be granted a fee waiver. The NRC believes these clarifications will better inform the industry, so they will not request fee waivers for those types of special projects which do not meet the waiver criteria. Further, it is unclear how relocating the fee waiver criteria to the exemption section of part 170 adds any formality to the process or how such purported formality will cost the industry or NRC resources and time as some commenters contend. Moving the criteria neither changes the process nor enhances its legal status. The NRC believes that it is more appropriate to have the fee exemption provisions for special projects with the existing part 170 fee exemption provisions.

The NRC, in this final rule, is revising the fee waiver criteria to clarify the fee exemption provisions. In addition, the

exemption section of § 170.11 is being revised to include the language that was previously located in footnote 4 to § 170.21 and footnote 5 to § 170.31.

### 3. Invoice Information

*Comment.* One commenter asserted that NRC's invoices lack adequate explanations of the work done by NRC staff and NRC contractors. The commenter urged the NRC to continue its efforts to provide invoices that contain more detailed information on the specific costs. While recognizing that this would require major revisions to NRC's billing system, the commenter contended that the change would serve the NRC, its licensees, and the public well.

*Response.* As the NRC has stated in the past, the NRC believes that sufficient information is provided on the invoices for licensees and applicants to base payment of the costs assessed under part 170. For NRC staff effort, specific policies and procedures are in place for NRC staff to follow in recording time in the Human Resources Management System (HRMS), which is the NRC's current system for tracking staff hours expended. The system contains specific codes for the various types of licensing reviews, leave, training, general administration effort, etc. From HRMS, the fee billing system captures the NRC staff hours for activities billable under part 170 as well as the work effort code descriptions for those billable hours. For these activities, the staff hours, work effort codes, the name of the staff member performing the work, and the date the work was completed, if applicable, are printed on the enclosure to the part 170 invoices. Additionally, the inspection report number is provided on inspection fee bills. The work effort codes are the only available data describing the work performed, and they are the lowest level of detail available in HRMS. However, the NRC believes that the summary work descriptions shown on the invoices are sufficient to allow licensees to identify the subject of the NRC's efforts.

For contractor costs billed to uranium recovery licensees under part 170, the NRC includes copies of the contractors' summary cost reports with the invoices. Upon specific request, the NRC will send all available information in support of the bill to any licensee or applicant who does not understand the charges or needs more information in order to understand the bill. This has always been an option available to licensees and applicants who feel they need more information on the costs billed.

The NRC does not plan to develop new systems solely to provide additional information on its fee invoices. Office of Management and Budget Circular A-25, which provides guidelines for Federal agencies to assess fees for Government services, provides that new cost accounting systems do not need to be established solely for the purpose of determining or estimating full cost.

### C. Specific Part 171 Issues

#### 1. Mixed Oxide Fuel (MOX) Contested Hearing Costs

*Comment.* One nuclear industry group commented that the NRC's proposal to assess MOX contested hearing costs to the fuel facility class is unfair, and that it is a violation of OBRA-90 to charge licensees for an agency activity or program from which the licensees receive no benefit. In this case, the commenter asserts that fuel facility licensees should not be responsible for bearing the costs of hearings associated with MOX fabrication because this process has no relation to the NRC's regulatory services from which fuel facility licensees obtain a benefit. Specifically, the MOX program is a Federal government initiative to ensure national security through the disposition of plutonium stockpiles. The commenter further adds that the beneficiaries of the MOX program are the Federal government and the nation's citizenry because it will aid in the reduction of weapons-grade plutonium. As such, the commenter contends that commercial fuel facility licensees should not have to subsidize the Federal government's efforts to ensure national security, and that such costs should be appropriated through the General Fund and removed from the NRC fee base. The commenter also states that NRC distributes hearing costs for license applications among the affected class of licensees, and to the extent that they benefit the entire class, this approach is logical. However, the commenter further indicates that hearing costs related to the disposition of plutonium under the MOX program do not meet the threshold of benefitting other licensees in the class, and therefore should not be assessed as such. The commenter makes a final point about the NRC's fee allocation methodology for hearing costs being problematic in that when applied to certain types of licensees whose numbers are few, this could conceivably lead to a competitor having to bear the hearing costs of its competition during NRC licensing proceedings.

*Response.* OBRA-90 mandates that the NRC collect IOAA (part 170) and annual fees (part 171) to recover almost all of its budgeted costs, less the amounts appropriated from the NWF. Therefore, the NRC must recover hearing costs through part 170 fees for services or through part 171 annual fees. OBRA-90 also requires that, to the maximum extent practicable, the annual charges shall have a reasonable relationship to the cost of providing regulatory services. The NRC has a longstanding policy of charging the affected applicant or licensee part 170 fees for uncontested hearings (*i.e.*, those required as part of the licensing process), and not charging part 170 fees for contested hearings. As a result, the costs for contested hearings are recovered through part 171 annual fees assessed to the affected class of licensee. This policy has been reconfirmed in the statement of considerations and in responses to comments received from the public during many past fee rulemakings, in court pleadings, and in an NRC report to Congress on fees.

The Commission believes there is merit to the comment regarding assessing annual fees for the MOX contested hearing since the hearing is related to a U.S. Government national security initiative. Thus, as a change to the proposed rule, the Commission will not impose the entire budget of the MOX contested license proceeding for FY 2002 on the fuel facility licensee class. This proceeding pertains to the license application for MOX fuel fabrication facility, a U.S. Government national security initiative to dispose of plutonium stockpiles. Since a rulemaking to propose recovery of MOX and other U.S. Government national security initiative contested hearing costs through part 170 fees could not be promulgated and made effective before FY 2003, the Commission is making an interim change for FY 2002 only. This change will recover the \$433,000 budgeted for MOX contested hearing activities through part 171 annual fees assessed to all classes of licensees, based on their respective percentages of the NRC's budget. As a result, the amount assessed to the fuel facility class has decreased by approximately \$408,000, while the total amount assessed to most of the other classes of licensees has increased correspondingly. Thus, the amounts assessed to each of the affected classes for the FY 2002 MOX contested hearing costs are as follows: *operating reactors*—\$345,000; *spent fuel storage/reactor decommissioning*—\$33,000; *non-power reactors*—\$400; *fuel*

*facility*—\$25,000; *materials users*—\$19,000; *transportation*—\$5000; *rare earth facilities*—\$1000; and *uranium recovery*—\$4000. For example, this equates to approximately \$4,000 per licensee in the power reactor class, which is obtained by dividing the \$345,000 by the 104 licensees (due to rounding, dollar amounts are not exact). For the other affected classes of licensees and their respective fee categories, the increases or decreases in annual fee amounts for individual licensees, due to assessment of MOX contested hearing costs, are set forth in the agency work papers. Due to rounding, the annual fees for certain individual licensees in some of the affected classes did not change.

The Commission intends, in the near future, to issue a proposed rule for public comment that would recover the cost for contested hearings involving U.S. Government national security initiatives through part 170 fees assessed to the affected applicant or licensee. The NRC plans to conduct this rulemaking so that any proposed change, if adopted in a final rule, would be effective in early FY 2003.

With regard to the commenter's recommendation for the NRC to obtain separate appropriations from the General Fund to cover the MOX contested hearing costs, this is not practicable for FY 2002. The Congress has already passed the FY 2002 Energy and Water Development Appropriations Act, and the NRC is well into implementing its budget under this authority. Furthermore, the commenter is incorrect about how NRC hearing fees are assessed to licensees. As discussed above, the NRC assesses the specific applicant or licensee part 170 fees for the costs of uncontested hearings that are part of the required license application process. However, for contested hearings, the NRC assesses the affected class of licensees the associated costs of the hearing through part 171 annual fees. Similarly, the commenter's point about one licensee conceivably subsidizing the costs of a competitor's licensing hearing is incorrect for the aforementioned reason. Costs associated with a contested hearing are not assessed to a specific category of licensee as mentioned by the commenter, but instead are assessed to the entire affected class of licensees. As stated in the NRC fee schedules, some classes of licensees consist of multiple fee categories.

## 2. Annual Fees for Materials Users, Including Small Entities

*Comment.* Two nuclear density gauge users and one manufacturer commented

that their fees are too high, and create a significant financial burden on small business owners. One commenter stated that the combined license application fee and annual fee for this category equals 80 percent of the cost of the gauge device. The commenter further asserted that Agreement States' fees average about one-fourth of NRC's proposed fees, causing an unfair disparity in the industry. Another commenter indicated only a small fraction of the company's revenues was generated from NRC licensed activities, but that it was essential to maintain this segment of business in order to retain other contracts not related to its NRC license. Therefore, the commenter contended that only income generated from NRC licensed activities should be considered when establishing fees. With respect to the NRC's upper fee level for small entities, the third commenter stated that the broad revenue range encompassing \$350,000 to \$5,000,000 in gross annual receipts tends to favor larger firms while burdening smaller businesses. Thus, the NRC should consider adding more tiers for small businesses to reduce the license fee burden on smaller entities.

*Response.* The NRC has responded to similar comments in previous fee rulemakings, both from materials users and other licensees, regarding the impact of fees on industry. In summary, the NRC has stated since FY 1991, when the 100 percent fee recovery requirement was first implemented, that it recognizes the assessment of fees to recover the agency's costs may result in a substantial financial hardship for some licensees. However, consistent with the OBRA-90 requirement that annual fees must have, to the maximum extent practicable, a reasonable relationship to the cost of providing regulatory services, the annual fees for each class of license, including materials users, reflect the NRC's budgeted cost of its regulatory services to the class. The NRC determined the budgeted costs to be allocated to each class of licensee through a comprehensive review of every planned accomplishment in each of the agency's major program areas. Furthermore, a reduction in the fees assessed to one class of licensees would require a corresponding increase in the fees assessed to other classes. Accordingly, the NRC has not based its annual fees on licensees' economic status, market conditions, or the inability of licensees to pass through the costs to its customers. Instead, the NRC has only considered the impacts it is required to address by law.

Based on the provisions of the Regulatory Flexibility Act (RFA), the NRC provides reduced annual fees for licensees who qualify as small entities under the NRC's size standards. The materials users class has the most licensees who qualify for these reduced fees of any class. As such, the materials user class receives the largest amount of annual fee reductions of any class. The FY 2002 total estimated fee amount that will not be collected from licensees who pay reduced annual fees based on their small entity status is approximately \$4.5 million, which must be collected from other NRC licensees in the form of a surcharge. Further reductions in fees for materials users would create an additional fee burden on other licensees, thus raising fairness and equity concerns.

As stated in 10 CFR 2.810, *NRC size standards*, the NRC uses the Small Business Administration's (SBA) definition of receipts. Based on the SBA definition, revenue from all sources, not solely receipts from NRC licensed activities, is considered in determining whether a licensee qualifies as a small entity under the NRC's revenue-based size standards.

The NRC believes that the two tiers of reduced annual fees currently in place provide substantial fee relief for small entities, including those with relatively low annual gross revenues. As noted previously, reductions in fees for small entities must be paid by other NRC licensees in order to comply with the OBRA-90 requirement to recover most of the agency's budget authority through fees. While establishing additional tiers would provide further fee relief to some small entities, it would result in an increase of the small entity subsidy paid by other licensees. The NRC must maintain a reasonable balance between the provisions of OBRA-90 and the RFA requirement for the agency to examine ways to minimize significant impacts that its rules may have on a substantial number of small entities. Therefore, the NRC is not providing any modification to its small entity fee structure, nor any further reduction in annual fees beyond that already provided for small entities.

### 3. Annual Fees for Uranium Recovery Licensees

*Comment.* Two uranium recovery industry groups and one licensee commented on the FY 2002 proposed fee rule. All unanimously supported the NRC's revised methodology for allocating uranium recovery budgeted costs, which results in reduced annual fees for the commercial uranium recovery licensees. However, despite the proposed reductions, these commenters

felt that the NRC's annual fees are excessive and represent a tremendous burden to the uranium recovery industry, which is already experiencing a severe economic downturn because of the depressed uranium market. The commenters all believe there is excessive regulatory oversight by the NRC of the uranium recovery industry, especially in light of the NRC's performance-based licensing approach, which they contend should result in a reduced regulatory effort. Thus, the commenters assert that the NRC should consider a more balanced approach to uranium recovery regulation, resulting in less regulatory oversight and lower costs. Additionally, the commenters stated that the NRC has failed to adequately deal with the issue of decreasing numbers of uranium recovery licensees, or charging annual fees to licensees whose facilities are in standby status. Specifically, as more states become Agreement States and/or additional sites are decommissioned, the number of NRC regulated sites continues to decline, leaving fewer licensees to pay a larger share of the NRC's regulatory costs. As such, the commenters argue that there is a lack of reasonable relationship between annual fees and regulatory services rendered by the NRC. One commenter indicated that the NRC's policy of charging annual fees to licensees in standby status, who require minimal oversight, is not commensurate with the benefit of holding a license, and unfairly penalizes those licensees who are waiting for market conditions to improve before they become operational again.

These commenters also supported the revised Office of Nuclear Material Safety and Safeguards' policy for assigning Project Managers. Two of the commenters stated that the change benefits licensees in a standby mode because they do not generally use much of the Project Manager's time. The third commenter stated that recovering more of these costs through annual fees is more equitable because the costs are spread across a range of licensees.

*Response.* The NRC has responded to the concerns raised by these commenters in several previous fee rulemakings. The NRC acknowledges that the uranium recovery industry is experiencing an economic downturn in the market for uranium. However, since FY 1991, when the 100 percent fee recovery requirement was enacted under OBRA-90, the Commission has consistently taken the position that it will not consider economic factors when establishing fees, except for reduced fees provided for small entities based on the provisions of the RFA. To

grant fee relief to the uranium recovery industry on the basis of its economic conditions or business practices (e.g., a licensee's decision whether to remain operational or go into a standby status) could set an untenable precedent for the NRC with the potential to unravel the stability and viability of the entire fee system. Not only would other classes of licensees be required to subsidize the uranium recovery industry through increased fees, but other categories of licensees may also request similar treatment based on analogous economic considerations. Thus, it would be difficult to develop a rationale for waiving the fees for uranium recovery licensees while denying similar requests from other NRC licensees, such as well loggers or licensed medical facilities whose industries may also be experiencing economic downturns.

The NRC has conducted numerous analyses concerning the issue of decreasing numbers of licensees, and the effect this has on annual fees. Although a decreasing licensee base is only one of several factors affecting annual fees, it presents a clear dilemma for both the uranium recovery group in its efforts to maintain a viable industry and the NRC which must recoup its budgeted costs from the licensees it regulates. In the wide range of scenarios the NRC evaluated during its analyses, most potential remedies to this problem involved establishing arbitrary fee caps or thresholds for certain classes of licensees. Other potential solutions involved combining fee categories. As noted previously, given the requirements of OBRA-90, as amended, to collect most of NRC's budget authority through fees, failure to fully recover costs from certain classes of licensees due to caps or thresholds would result in other classes of licensees bearing these costs. Combining fee categories would also have the potential to increase the annual fees for certain licensees in the new combined category to cover part of the cost for the licensees whose fees were reduced by this action. The NRC considers that alternatives involving caps or thresholds, and combining fee categories, raise fairness and equity concerns. As such, the Commission has not adopted any of these approaches. Also, the NRC notes that commenters opposed a similarly postulated 50 percent cap on annual fee increases in response to this issue in the FY 1999 proposed fee rule. Thus, the NRC concluded that the most equitable option under the agency's current fee collection mandate was to maintain its existing fee policy, but continue to seek

cost efficiencies through its annual reviews conducted as part of the budget process.

The issue of charging licensees in standby status has been discussed in many previous fee rules. In summary, the Commission has stated that the existing policy of assessing annual fees based on whether a licensee holds a valid NRC license authorizing possession and use of nuclear material, irrespective of the licensee's intent to operate its facility or remain in standby, represents the fairest option available under current legislation. This policy is based on the premise that the benefit the NRC provides a licensee is the authority to use licensed material. Whether or not a licensee decides to exercise this authority is a business decision outside the realm of NRC jurisdiction. Additionally, licensees in a standby status continue to benefit from NRC's generic guidance and rules applicable to the uranium recovery class of licensees, and therefore should continue to pay annual fees. Furthermore, based on fee recovery requirements of OBRA-90, reducing the number of licensees paying annual fees by granting relief for licensees in a standby status would ultimately increase the annual fees assessed to the remaining licensees. In effect, providing such fee relief would exacerbate the existing condition of decreasing numbers of licensees, which is an ongoing concern of the commenters. Nonetheless, the Commission will reexamine this issue prior to publishing the FY 2003 fee rule.

In this rulemaking, the Commission has adopted the proposed revised methodology for allocating uranium recovery budgeted costs. Moreover, the FY 2002 annual fees reflect the Office of Nuclear Material Safety and Safeguards' revised policy for assigning PMs. As explained previously, part 171 annual fees for the uranium recovery class includes a prorated share of the FY 2002 budgeted costs for the MOX contested hearing.

#### 4. Annual Fees for Power Reactor Licensees

*Comment.* Three commenters addressed the proposed annual fees for the power reactor class. Two of these commenters agreed with the NRC's policy, clarified in the proposed fee rule, of charging annual fees on a per license basis, and not on a reactor-unit basis. However, according to one of the commenters on this issue, this approach would not be equitable if the NRC assesses two separate annual fees to a dual unit standard reactor facility, such as those certified under part 52, Appendix C, if the sum of these fees

exceeded the annual fee charged to multi-unit reactor modular facilities, providing these modular facilities had a single license. The other commenter on this subject asserts the NRC should make it clear in the FY 2002 final rule that the agency's underlying intent is to assess multi-unit reactor modular facilities a single annual fee, regardless of whether the licensee holds a single or multiple combined operating license(s). One commenter stated the industry objects to the NRC's approach of allocating generic costs through part 171, indicating that the power reactor class of licensees bear a large share of the annual fee burden.

*Response.* In the proposed fee rule, the NRC stated its intent to revise § 171.15(a) to clarify that annual fees are assessed on a per license basis, and not for each reactor unit. The NRC reiterates that this clarification is not a change to its existing policy of charging annual fees for each license. Furthermore, the NRC is not proposing a specific annual fee category or amount for part 52 combined licenses because there are no such existing licenses at this time. The NRC's intent when proposing these revisions was to make potential applicants for part 52 combined licenses aware that they would be subject to annual fees. At this time, the NRC does not have the information required to make a decision with respect to assessing annual fees for part 52 combined licenses for multi-unit modular reactors. In the future, when the NRC determines its fee structure for part 52 combined licenses, the fees will be assessed in a fair and equitable manner, and to the maximum extent practicable, will reflect a reasonable relationship to the cost of the regulatory services provided.

The part 171 power reactor annual fees are established to recover the costs for generic activities related to power reactors such as rulemakings and guidance development, as well as costs for other activities for the class not recovered through part 170 fees (e.g., allegations, contested hearings, special projects for which fee waivers are granted, orders issued under 10 CFR 2.202 or responses to such orders, etc.). The final annual fees this year for power reactors also include a prorated share of the FY 2002 budgeted MOX contested hearing costs as previously explained. The annual fees for each class also includes a share of the total surcharge costs to be recovered through annual fees assessed to NRC licensees. The surcharge is established to recover the costs for NRC activities that are not attributable to an existing NRC licensee or class of licensee, activities that are

exempt from part 170 fees based on law or Commission policy, and those activities that support NRC operating licensees and others. The surcharge is required in order for the NRC to meet the statutory requirement of OBRA-90, as amended, that almost all of the NRC's budget be recovered through IOAA and annual fees. To address fairness and equity concerns raised by the NRC related to charging NRC license holders for these expenses that do not directly benefit them, the FY 2001 Energy and Water Development Appropriations Act amended OBRA-90 to decrease the NRC's fee recovery amount by two percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005. Thus, it is anticipated that the necessity for the NRC to charge licensees for costs that are not directly related to them or to their class will be eliminated, or almost eliminated, by FY 2005.

The agency work papers supporting both the proposed and final fee rules show the budgeted costs for each activity at the NRC's planned accomplishment level, and the classes of licenses to which these costs are allocated. Furthermore, the work papers show by class the total costs allocated, and the estimated part 170 collections. The annual fees are established to recover the difference between the NRC's total recoverable budgeted costs (less the Nuclear Waste Fund and General Fund) and the estimated part 170 collections, in accordance with OBRA-90, as amended.

#### 5. Annual Fees for Fuel Facilities Licensees

*Comment.* One comment was received opposing the NRC's proposed annual fee increase for the uranium hexafluoride conversion category within the fuel facility class, stating that these fees should remain the same as the previous year. The commenter maintained that its conversion facility, which is the only one in the United States, has been unprofitable for the last three years, asserting this is in part due to the U.S. Government's uranium policies. The commenter added that the reduced worldwide demand for uranium has jeopardized the viability of the facility. Additionally, the commenter contended that the NRC's requirement for additional security upgrades for its facility since the September 11, 2001, terrorist attacks, placed additional financial strains on the company. Finally, the commenter indicated that the costs incurred by the company as a result of NRC fees and security requirements will significantly impact the viability of the facility.

*Response.* The NRC has addressed similar issues from other commenters regarding the impact of fees on industry, both in this fee rule and in previous years' fee rules. As earlier stated, consistent with the requirements of OBRA-90, as amended, the NRC must collect most of its budgeted costs through assessment of fees. These budgeted costs are the resources necessary for the NRC to execute its regulatory oversight of the various licensee classes. The NRC determined the budgeted costs to be allocated to each class of licensee through a comprehensive review of every planned accomplishment in each of the agency's major program areas. The annual fees for the various categories of licensees in the fuel facility class are based on the budgeted costs that must be recovered from the class to meet the requirements of OBRA-90, as amended. Although this may create a financial hardship for some licensees, a reduction in the fees assessed to one class or category of licensees would require a corresponding increase in the fees assessed to other licensees. Consequently, the NRC has not based its fees on licensees' economic status, market conditions, or the ability of licensees to pass through the costs to its customers.

The final annual fees this year for the fuel facility class, including the uranium hexafluoride conversion category of licensees, have been adjusted to reflect the Commission's decision with respect to recovering FY 2002 costs for the MOX contested hearing. Specifically, the FY 2002 budgeted costs for the MOX contested hearing will be assessed to all classes of licensees in their annual fees. In the proposed fee rule, 100 percent of these costs were included in the annual fees for the fuel facility class alone. As a result of this change, the final FY 2002 annual fees for the fuel facility licensees are less than the proposed annual fees.

### C. Other Issues

#### 1. NRC Budget

*Comment.* One commenter stated that the NRC's overall budget should be reduced by more efficient use of resources resulting from the agency's revised regulatory approach. Specifically, under the NRC's reactor oversight program, there has been a reduction in the number of regional initiative inspections, yet these reductions are not accounted for in the proposed fees. Moreover, according to the commenter, successful implementation of the reactor oversight program provides the NRC an opportunity to reallocate existing resources to meet the challenges of risk-informing regulations and licensing new reactor designs. The commenter indicated that the NRC should consider consolidating the regional offices in the near term, and eliminating them altogether in the longer term, in order to save agency resources. Another commenter stated that there should be a decrease in fees based on changes in the NRC's regulatory approach and industry's excellent performance.

*Response.* As noted in several previous fee rules, the NRC's budget and the manner in which the agency implements its programs are not within the scope of this rulemaking. Therefore, this final rule does not address comments concerning the NRC's budget or the use of its resources. The NRC's budget is submitted to the Office of Management and Budget and then to Congress for review and approval. The Congressionally approved budget resulting from this process reflects the resources necessary for NRC to execute its statutory obligations. In compliance with OBRA-90, as amended, the fees are established to recover the required percentage of the approved budget.

### III. Final Action

The NRC is amending its licensing, inspection, and annual fees to recover

approximately 96 percent of its FY 2002 budget authority, including the budget authority for its Office of the Inspector General, less the appropriations received from the NWF and the General Fund. The NRC's total budget authority for FY 2002 is \$559.1 million, of which approximately \$23.7 million has been appropriated from the NWF. In addition, \$36.0 million has been appropriated from the General Fund for activities related to homeland security. Based on the 96 percent fee recovery requirement, the NRC must collect approximately \$479.5 million in FY 2002 through part 170 licensing and inspection fees, part 171 annual fees, and other offsetting receipts. The total amount to be recovered through fees and other offsetting receipts for FY 2002 is \$26.2 million more than the amount estimated for recovery in FY 2001.

The FY 2002 fee recovery amount is reduced by a \$1.7 million carryover from additional collections in FY 2001 that were unanticipated at the time the final FY 2001 fee rule was published. This leaves approximately \$477.8 million to be recovered in FY 2002 through part 170 licensing and inspection fees, part 171 annual fees, and other offsetting receipts.

The NRC estimates that approximately \$124.0 million will be recovered in FY 2002 from part 170 fees and other offsetting receipts. For FY 2002, the NRC also estimates a net adjustment of approximately \$8.2 million for FY 2002 invoices that the NRC estimates will not be paid during the fiscal year, and for payments received in FY 2002 for FY 2001 invoices. The remaining \$345.6 million will be recovered through the part 171 annual fees, compared to \$331.6 million for FY 2001.

Table I summarizes the budget and fee recovery amounts for FY 2002. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

TABLE I.—BUDGET AND FEE RECOVERY AMOUNTS FOR FY 2002

[Dollars in millions]

|                                                              |         |
|--------------------------------------------------------------|---------|
| Total Budget Authority .....                                 | \$559.1 |
| Less NWF .....                                               | – 23.7  |
| Less General Fund .....                                      | – 36.0  |
| Balance .....                                                | \$499.5 |
| Fee Recovery Rate for FY 2002 .....                          | × 96.0% |
| Total Amount to be Recovered For FY 2002 .....               | \$479.5 |
| Less Carryover from FY 2001 .....                            | – 1.7   |
| Amount to be Recovered Through Fees and Other Receipts ..... | \$477.8 |
| Less Estimated Part 170 Fees and Other Receipts .....        | – 124.0 |

TABLE I.—BUDGET AND FEE RECOVERY AMOUNTS FOR FY 2002—Continued

[Dollars in millions]

|                                                                             |         |
|-----------------------------------------------------------------------------|---------|
| Part 171 Fee Collections Required .....                                     | \$353.8 |
| Part 171 Billing Adjustments:                                               |         |
| Unpaid FY 2002 Invoices (estimated) .....                                   | 2.9     |
| Less Payments Received in FY 2002 for Prior Year Invoices (estimated) ..... | – 11.1  |
| Subtotal .....                                                              | – 8.2   |
| Adjusted Part 171 Collections Required .....                                | \$345.6 |

The FY 2002 final fee rule is a “major” final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996. Therefore, the NRC’s fees for FY 2002 will become effective 60 days after publication of the final rule in the **Federal Register**. The NRC will send an invoice for the amount of the annual fee to reactors and major fuel cycle facilities upon publication of the FY 2002 final rule. For these licensees, payment will be due on the effective date of the FY 2002 rule. Those materials licensees whose license anniversary date during FY 2002 falls before the effective date of the final FY 2002 rule will be billed for the annual fee during the anniversary month of the license at the FY 2001 annual fee rate. Those materials licensees whose license anniversary date falls on or after the effective date of the final FY 2002 rule will be billed for the annual fee at the FY 2002 annual fee rate during the anniversary month of the license, and payment will be due on the date of the invoice.

As noted in the FY 2002 proposed fee rule, the National Mining Association (NMA) filed a petition requesting the commencement of a rulemaking proceeding which would result in a modification of the existing fee schedules to waive all fees for commercial uranium recovery licensees. Alternatively, the NMA requested the waiver of fees associated with a contemplated rulemaking that would establish requirements for licensing uranium and thorium facilities. The NRC published the NMA’s petition in the **Federal Register** for public comment (66 FR 55604; November 2, 2001). Because fees would increase for other licensees should the Commission grant the petition, the NRC invited those that had arguments to place before the Commission that were not submitted in response to the November 2, 2001, **Federal Register** document to do so during the comment period for the FY 2002 proposed fee rule. After careful evaluation of NMA’s request and all comments received, the Commission

has decided to deny the NMA petition. Additional detail on this petition and the Commission’s denial will be published in the **Federal Register** in the near future.

In accordance with its FY 1998 announcement, the NRC has discontinued mailing the final rule to all licensees as a cost-saving measure. Accordingly, the NRC does not plan to routinely mail the FY 2002 final rule or future final fee rules to licensees. However, the NRC will send the final rule to any licensee or other person upon specific request. To request a copy, contact the License Fee and Accounts Receivable Branch, Division of Accounting and Finance, Office of the Chief Financial Officer, at 301–415–7554, or e-mail us at [fees@nrc.gov](mailto:fees@nrc.gov). In addition to publication in the **Federal Register**, the final rule will be available on the Internet at <http://ruleforum.llnl.gov> for at least 90 days after the effective date of the final rule.

The NRC is amending 10 CFR parts 170 and 171 as discussed in Sections A and B below.

*A. Amendments to 10 CFR part 170: Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services Under the Atomic Energy Act of 1954, as Amended*

The NRC is revising the hourly rates used to calculate fees and is adjusting the part 170 fees based on the revised hourly rates. Additionally, the NRC is revising part 170 to clarify that full cost fees will be assessed for amendments and inspections related to the storage of reactor-related Greater than Class C (GTCC) waste under part 72, and to clarify the fee waiver provisions for special projects, including topical reports.

The amendments are as follows:

1. Hourly Rates

The NRC is revising the two professional hourly rates for NRC staff time established in § 170.20. These rates are based on the number of FY 2002 direct program full time equivalents (FTEs) and the FY 2002 NRC budget,

excluding direct program support costs and NRC’s appropriations from the NWF and the General Fund. These rates are used to determine the part 170 fees. The hourly rate for the reactor program is \$156 per hour (\$276,345 per direct FTE). This rate is applicable to all activities for which fees are assessed under § 170.21 of the fee regulations. The hourly rate for the materials program (nuclear materials and nuclear waste programs) is \$152 per hour (\$269,451 per direct FTE). This rate is applicable to all activities for which fees are assessed under § 170.31 of the fee regulations. In the FY 2001 final fee rule, the reactor and materials program rates were \$150 and \$144, respectively. The increases are primarily due to the Government-wide pay increase in FY 2002.

The method used to determine the two professional hourly rates is as follows:

a. Direct program FTE levels are identified for the reactor program and the materials program (nuclear materials and nuclear waste programs).

b. Direct contract support, which is the use of contract or other services in support of the line organization’s direct program, is excluded from the calculation of the hourly rates because the costs for direct contract support are charged directly through the various categories of fees.

c. All other program costs (*i.e.*, Salaries and Benefits, Travel) represent “in-house” costs and are to be collected by dividing them uniformly by the total number of direct FTEs for the program. In addition, salaries and benefits plus contracts for non-program direct management and support, and for the Office of the Inspector General, are allocated to each program based on that program’s direct costs. This method results in the following costs which are included in the hourly rates. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

TABLE II.—FY 2002 BUDGET AUTHORITY INCLUDED IN HOURLY RATES

|                                                                             | Reactor program | Materials program |
|-----------------------------------------------------------------------------|-----------------|-------------------|
| Direct Program Salaries & Benefits .....                                    | \$117.0M        | \$32.2M           |
| Overhead Salaries & Benefits, Program Travel and Other Support .....        | 59.2M           | 15.6M             |
| Allocated Agency Management and Support .....                               | 106.9M          | 29.0M             |
| Subtotal .....                                                              | \$283.1M        | \$76.8M           |
| Less offsetting receipts .....                                              | – 0.1M          | – 0.00M           |
| Total Budget Included in Hourly Rate .....                                  | \$283.0M        | \$76.8M           |
| Program Direct FTEs .....                                                   | 1024.0          | 285.1             |
| Rate per Direct FTE .....                                                   | 276,345         | 269,451           |
| Professional Hourly Rate (Rate per direct FTE divided by 1,776 hours) ..... | \$156           | \$152             |

As shown in Table II, dividing the \$283.0 million budgeted amount (rounded) included in the hourly rate for the reactor program by the reactor program direct FTEs (1024.0) results in a rate for the reactor program of \$276,345 per FTE for FY 2002. The Direct FTE Hourly Rate for the reactor program is \$156 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE (\$276,345) by the number of productive hours in one year (1,776 hours) as set forth in the revised OMB Circular A–76, “Performance of Commercial Activities.” Similarly, dividing the \$76.8 million budgeted amount (rounded) included in the hourly rate for the materials program by the program direct FTEs (285.1) results in a rate of \$269,451 per FTE for FY 2002. The Direct FTE Hourly Rate for the materials program is \$152 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE (\$269,451) by the number of productive hours in one year (1,776 hours).

## 2. Fees for Storage of Greater than Class C Waste Under Part 72

On October 11, 2001 (66 FR 51823), the NRC published a final rule revising part 72 to allow licensing for the interim storage of reactor-related Greater than Class C (GTCC) waste in a manner that is consistent with current licensing for the interim storage of spent fuel. As provided in § 72.6, reactor-related GTCC waste can only be stored under the provisions of a specific license. The NRC stated in the statement of considerations for the part 72 final rule that subsequent to issuing the final revision of part 72, part 170 would be amended to clarify that full cost fees will be assessed for amendments and inspections related to the storage of reactor-related GTCC waste under part 72. Therefore, the NRC is revising Category 1.B. of § 170.31 to specifically include storage of reactor-related GTCC

waste licensed under part 72. Category 1.B. of § 170.31 previously referred only to specific licenses for receipt and storage of spent fuel at an independent storage installation.

## 3. Fee Adjustments

The NRC is adjusting the current part 170 fees in §§ 170.21 and 170.31 to reflect the changes in the revised hourly rates. The full cost fees assessed under §§ 170.21 and 170.31 are based on the professional hourly rates and any direct program support (contractual services) costs expended by the NRC. Any professional hours expended on or after the effective date of the final rule will be assessed at the FY 2002 hourly rates.

The fees in §§ 170.21 and 170.31 that are based on the average time to review an application (“flat” fees) have been adjusted to reflect the increase in the professional hourly rates from FY 2001. The amounts of the materials licensing “flat” fees are rounded as follows: fees under \$1,000 are rounded to the nearest \$10; fees that are greater than \$1,000 but less than \$100,000 are rounded to the nearest \$100; and fees that are greater than \$100,000 are rounded to the nearest \$1,000.

The licensing “flat” fees are applicable to fee categories K.1 through K.5 of § 170.21, and fee categories 1C, 1D, 2B, 2C, 3A through 3P, 4B through 9D, 10B, 15A through 15E, and 16 of § 170.31. Applications filed on or after the effective date of the final rule will be subject to the revised fees in this final rule.

## 4. Fee Waivers

In the FY 2001 final fee rule (66 FR 32452; June 14, 2001), the NRC revised criterion (c) of Footnote 4 to § 170.21 and criterion (c) of Footnote 5 to § 170.31 to clarify that fees will not be assessed for requests or reports submitted to the NRC as a means of exchanging information between industry organizations and the NRC for the purpose of supporting the NRC’s

generic regulatory improvements or efforts. However, the NRC has continued to receive requests for fee exemptions that do not meet the intent of the waiver provisions. In addition, Footnote 4 to § 170.21, Footnote 5 to § 170.31, and material in the definition of Special Projects in § 170.3 concerning these types of requests and reports provide information that is more suitable for inclusion in § 170.11, Exemptions.

Therefore, the NRC is deleting Footnote 4 to § 170.21 and Footnote 5 to § 170.31, modifying the language that was in those footnotes, and is adding the revised fee waiver provisions to the Exemption section as § 170.11(a)(1). The NRC is also removing the language relating to certain reports and requests submitted to the NRC for review from the definition of *Special Projects* in § 170.3. The fee waiver provisions have been revised to specifically state that the fee waiver criteria apply only when it has been demonstrated that the report or request has been submitted to the NRC for the specific purpose of supporting the generic regulatory improvements or efforts of the NRC, rather than the industry, and that the NRC, at the time of the submission, plans to use the submission for that purpose. The modification also clarifies that the waiver provisions do not apply to reports or documents submitted for the NRC’s review that the NRC, at the time of the submission, does not plan to use to improve its regulatory program, and that therefore will primarily provide only a special benefit to identifiable recipients, such as the industry, vendors, or specific licensees. These criteria will allow the NRC to make waiver determinations soon after the documents are submitted. As provided in § 170.5, fee exemption requests should be made to the NRC’s Chief Financial Officer. To further assist applicants in determining in advance whether their submittals meet the fee waiver criteria, specific examples of the

types of submissions that meet the fee waiver criteria and those that do not are provided in § 170.11(a)(1).

In summary, the NRC is amending 10 CFR part 170 to—

1. Revise the materials and reactor program FTE hourly rates;
2. Revise the licensing fees to be assessed to reflect the revised hourly rates;
3. Revise fee category 1.B. of § 170.31 to clarify that full cost fees will be assessed for amendments and inspections related to the storage of GTCC Waste under part 72; and
4. Add to § 170.11, Exemptions, the fee waiver provisions that are currently in Footnote 4 to § 170.21 and Footnote 5 to § 170.31, and clarify the fee waiver provisions currently in criterion (c) of these Footnotes. These Footnotes, as well as material in the definition of *Special Projects* in § 170.3 related to certain special requests and reports submitted to NRC for review, have been deleted.

*B. Amendments to 10 CFR part 171: Annual Fees for Reactor Licenses, and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals, and Government Agencies Licensed by the NRC*

The NRC is revising the annual fees for FY 2002, amending part 171 to specifically cover combined licenses issued under part 52, clarifying the annual fee exemption provision for reactors, and modifying the methodology for allocating the uranium recovery annual fee amount among the types of uranium recovery licenses. As explained previously, the final annual fees for this year reflect the Commission's decision that the FY 2002 budgeted costs for the MOX contested hearing should be assessed to all licensees in their annual fees, instead of being charged only to the fuel facility class of licensees. Accordingly, these costs have been treated as a fee adjustment and assessed to all classes of licensees based on their respective percentages of the NRC's budget. The amendments are as follows.

**1. Annual Fees**

The NRC is establishing rebaselined annual fees for FY 2002. The Commission's policy commitment, made in the statement of considerations accompanying the FY 1995 fee rule (60 FR 32225; June 20, 1995), and further explained in the statement of considerations accompanying the FY 1999 fee rule (64 FR 31448; June 10, 1999), establishes that base annual fees

will be re-established (rebaselined) at least every third year, and more frequently if there is a substantial change in the total NRC budget or in the magnitude of the budget allocated to a specific class of licenses. The fees were last rebaselined in FY 2001. Based on the change in the magnitude of the budget to be recovered through fees, the Commission has determined that it is appropriate to rebaseline the annual fees again this year. Rebasing fees will result in increased annual fees for all classes of licenses, except for the non-power reactor and spent fuel storage/reactor decommissioning classes, which will have annual fee decreases.

The annual fees in §§ 171.15 and 171.16 are revised for FY 2002 to recover approximately 96 percent of the NRC's FY 2002 budget authority, less the estimated amount to be recovered through part 170 fees and the amounts appropriated from the NWF and the General Fund. The total amount to be recovered through annual fees for FY 2002 is \$345.6 million, compared to \$331.6 million for FY 2001.

The FY 2002 annual fees reflect an increase for most categories of licenses and decrease for others from the previous year. The increases in annual fees range from approximately 4.9 percent for the power reactor class to approximately 129 percent for rare earth facilities. The decreases in annual fees range from approximately 3.5 percent for non-power reactors, to approximately 17 percent for the Title II uranium recovery specific licenses. The final annual fees reflect the revised estimates for part 170 collections for FY 2002. The final annual fees have also been adjusted to reflect the Commission's decision that, for FY 2002 only, the budgeted costs for the MOX contested hearing should be assessed to all classes of licensees in their annual fees. For the proposed rule, these costs were assessed only to the fuel facility class of licensees. As a result, the amount assessed to the fuel facility class has decreased by approximately \$408,000, while the total amount assessed to most of the other classes of licensees has increased correspondingly. Thus, the amounts assessed to each of the affected classes for the FY 2002 MOX contested hearing costs are as follows: *operating reactors*—\$345,000; *spent fuel storage/reactor decommissioning*—\$33,000; *non-power reactors*—\$400; *fuel facility*—\$25,000; *materials users*—\$19,000; *transportation*—\$5,000; *rare earth facilities*—\$1000; and *uranium recovery*—\$4,000. Due to rounding, the annual fees for certain individual

licensees in some of the affected classes did not change.

Factors affecting the changes to the annual fee amounts from FY 2001 include changes in budgeted costs for the different classes of licenses, the reduction in the fee recovery rate from 98 percent for FY 2001 to 96 percent for FY 2002, the estimated part 170 collections for the various classes of licenses, a \$1.7 million carryover from additional collections in FY 2001 that were unanticipated at the time the final FY 2001 fee rule was published (compared to a \$3.1 million carryover from FY 2000 which reduced FY 2001 annual fees), the increased hourly rates, and decreases in the numbers of licensees for certain categories of licenses. In addition, the decreases for the Title II uranium recovery specific licenses are based on a change to the methodology for allocating the annual fee amount for the uranium recovery class among Title I and Title II licensees. This change is described in detail in section B below.

In addition, for some classes of materials licenses, a change in policy for assigning Project Managers (PMs) has contributed to the annual fee increases. In the last few years, part 170 fees have increased for certain classes of licenses due to initiatives to recover costs for additional activities through fees for services rather than annual fees. One such initiative was the policy for full cost recovery under part 170 for PMs, which became effective with the FY 1999 final fee rule (64 FR 31448; June 10, 1999). However, in response to concerns expressed by materials licensees, the Office of Nuclear Material Safety and Safeguards (NMSS) in July 2001 changed its policy for assigning PMs. The revised NMSS policy has resulted in classifying approximately four staff members as PMs at this time, compared to approximately 97 in FY 2000. Under NMSS's revised policy, if project management duties to support a licensee/facility do not exceed 75 percent of the assigned person's time for any given two week period, then the staff member will be considered a "Point of Contact." As a result, that person's time which is not specifically associated with a licensing action or inspection is now recovered under part 171.

Although the change in policy for assigning PMs causes a decrease in estimated part 170 collections for some classes, it also results in more of the budgeted costs for that class being recovered through annual fees. However, the change does not result in an increase in total fees paid by these classes. Licensees in the rare earth

facility class, for example, have an annual fee increase of approximately 129 percent, although the total budgeted costs for the class actually decreased

from FY 2001. The increase in annual fees is primarily the result of the change in PM policy which caused a shift in cost recovery from part 170 to part 171.

The effect of this change on the part 170 fees, part 171 fees, and the total fees for the class compared to FY 2001 is illustrated in Table III below.

TABLE III.—FEES FOR THE RARE EARTH CLASS FOR FY 2001 AND FY 2002

[In millions]

|                               | FY 2001 | FY 2002 | Difference |
|-------------------------------|---------|---------|------------|
| Estimated part 170 fees ..... | \$ .81  | \$ .50  | – \$.31    |
| Total annual fee amount ..... | .09     | .21     | + .12      |
| Total .....                   | .90     | .71     | – .19      |

Table IV below shows the rebaselined annual fees for FY 2002 for representative categories of licenses.

TABLE IV.—REBASELINED ANNUAL FEES FOR FY 2002

| Class/category of licenses                                                                       | FY 2002<br>Annual fee |
|--------------------------------------------------------------------------------------------------|-----------------------|
| Operating Power Reactors (including Spent Fuel Storage/Reactor Decommissioning annual fee) ..... | \$2,849,000           |
| Spent Fuel Storage/Reactor Decommissioning .....                                                 | 239,000               |
| Nonpower Reactors .....                                                                          | 71,400                |
| High Enriched Uranium Fuel Facility .....                                                        | 3,834,000             |
| Low Enriched Uranium Fuel Facility .....                                                         | 1,286,000             |
| UF <sub>6</sub> Conversion Facility .....                                                        | 551,000               |
| Uranium Mills .....                                                                              | 77,900                |
| Transportation:                                                                                  |                       |
| Users/Fabricators .....                                                                          | 72,900                |
| Users Only .....                                                                                 | 7,300                 |
| Typical Materials Users:                                                                         |                       |
| Radiographers .....                                                                              | 13,700                |
| Well Loggers .....                                                                               | 10,000                |
| Gauge Users .....                                                                                | 2,700                 |
| Broad Scope Medical .....                                                                        | 26,100                |

The annual fees assessed to each class of licenses include a surcharge to recover those NRC budgeted costs that are not directly or solely attributable to the classes of licenses, but must be recovered from licensees to comply with the requirements of OBRA–90, as amended. Based on the FY 2001 Energy

and Water Appropriations Act which amended OBRA–90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005, the total surcharge costs for FY 2002 are reduced by about \$20.0 million. The total FY 2002 budgeted

costs for these activities and the reduction to these amounts for fee recovery purposes are shown in Table V. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

TABLE V.—SURCHARGE COSTS

[Dollars in millions]

| Category of costs                                                                                                                     | FY 2002<br>budgeted<br>costs |
|---------------------------------------------------------------------------------------------------------------------------------------|------------------------------|
| 1. Activities not attributable to an existing NRC licensee or class of licensee:                                                      |                              |
| a. International activities .....                                                                                                     | \$8.4                        |
| b. Agreement State oversight .....                                                                                                    | 8.7                          |
| c. Low-level waste disposal generic activities .....                                                                                  | 1.5                          |
| d. Site decommissioning management plan activities not recovered under part 170 .....                                                 | 8.3                          |
| 2. Activities not assessed part 170 licensing and inspection fees or part 171 annual fees based on existing law or Commission policy: |                              |
| a. Fee exemption for nonprofit educational institutions .....                                                                         | 7.9                          |
| b. Licensing and inspection activities associated with other Federal agencies .....                                                   | 3.7                          |
| c. Costs not recovered from small entities under 10 CFR 171.16(c) .....                                                               | 4.5                          |
| 3. Activities supporting NRC operating licensees and others:                                                                          |                              |
| a. Regulatory support to Agreement States .....                                                                                       | 13.0                         |
| b. Generic decommissioning/reclamation (except those related to power reactors) .....                                                 | 8.3                          |
| Total surcharge costs .....                                                                                                           | 64.4                         |
| Less 4 percent of NRC's FY 2002 total budget (minus NWF and General Fund amounts) .....                                               | – 20.0                       |
| Total Surcharge Costs to be Recovered .....                                                                                           | 44.4                         |

As shown in Table V, the total surcharge cost allocated to the various classes of licenses for FY 2002 is \$44.4 million. The NRC has continued to allocate the surcharge costs, except Low-Level Waste (LLW) surcharge costs, to each class of licenses based on the

percent of the budget for that class. The NRC has continued to allocate the LLW surcharge costs based on the volume of LLW disposed of by certain classes of licenses. The surcharge costs allocated to each class are included in the annual fee assessed to each licensee. The FY

2002 final surcharge costs allocated to each class of licenses are shown in Table VI. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

TABLE VI.—ALLOCATION OF SURCHARGE

|                                         | LLW surcharge |            | Non-LLW surcharge |             | Total surcharge<br>\$,M |
|-----------------------------------------|---------------|------------|-------------------|-------------|-------------------------|
|                                         | Percent       | \$,M       | Percent           | \$,M        |                         |
| Operating Power Reactors .....          | 74            | 1.1        | 79.7              | 34.1        | 35.3                    |
| Spent Fuel Storage/Reactor Decomm ..... |               |            | 7.7               | 3.3         | 3.3                     |
| Nonpower Reactors .....                 |               |            | 0.1               | 0.0         | 0.0                     |
| Fuel Facilities .....                   | 8             | 0.1        | 5.8               | 2.5         | 2.6                     |
| Materials Users .....                   | 18            | 0.3        | 4.5               | 1.9         | 2.2                     |
| Transportation .....                    |               |            | 1.3               | 0.5         | 0.5                     |
| Rare Earth Facilities .....             |               |            | 0.2               | 0.1         | 0.1                     |
| Uranium Recovery .....                  |               |            | 0.9               | 0.4         | 0.4                     |
| <b>Total Surcharge .....</b>            | <b>100</b>    | <b>1.5</b> | <b>100.0</b>      | <b>42.9</b> | <b>44.4</b>             |

The budgeted costs allocated to each class of licenses and the calculations of the rebaselined fees are described in A. through H. below. The work papers which support this final rule show in detail the allocation of NRC's budgeted resources for each class of licenses and how the fees are calculated. The work papers are available electronically at the NRC's Public Electronic Reading Room on the Internet at Web site address <http://www.gov/reading-rm/adams.html>. For a period of 90 days after the effective date of this final rule, the work papers may also be examined at the NRC Public Document Room located at One White Flint North, Room O-1F22, 11555 Rockville Pike, Rockville, MD 20852-2738.

Because the FY 2002 fee rule is a "major" final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC's fees for FY 2002 will become effective 60 days after publication of the final rule in the **Federal Register**. The NRC will send an invoice for the amount of the annual fee upon publication of the FY 2002 final rule to reactors and major fuel cycle facilities. For these licensees, payment will be due on the effective date of the FY 2002 rule. Those materials licensees whose license anniversary date during FY 2002 falls before the effective date of the FY 2002 final rule will be billed for the annual fee during the anniversary month of the license, and continue to pay annual fees at the FY 2001 rate in FY 2002. However, those materials licensees whose license anniversary date falls on or after the effective date of the FY 2002 final rule will be billed for the annual fee at the FY 2002 rate

during the anniversary month of the license, and payment will be due on the date of the invoice.

#### A. Fuel Facilities

The FY 2002 budgeted costs to be recovered in annual fees assessed to the fuel facility class of licenses is approximately \$17.7 million. This amount includes the LLW and other surcharges allocated to the fuel facility class. The costs are allocated to the individual fuel facility licensees based on the fuel facility matrix established in the FY 1999 final fee rule (64 FR 31448; June 10, 1999). In this matrix, licensees are grouped into five categories according to their licensed activities (*i.e.*, nuclear material enrichment, processing operations, and material form) and according to the level, scope, depth of coverage, and rigor of generic regulatory programmatic effort applicable to each category from a safety and safeguards perspective. This methodology can be applied to determine fees for new and current licensees, licensees in unique license situations, and certificate holders.

The methodology allows for changes in the number of licensees or certificate holders, licensed-certified material/activities, and total programmatic resources to be recovered through annual fees. When a license or certificate is modified, this fuel facility fee methodology may result in a change in fee category and may have an effect on the fees assessed to other licensees and certificate holders. For example, if a fuel facility licensee amended its license/certificate in such a way that it resulted in the licensee not being

subject to part 171 fees applicable to fuel facilities, the budgeted costs included in the annual fee will be spread among the remaining licensees/certificate holders, and result in a higher fee for those remaining in that fee category.

Prior to the beginning of FY 2002, one low enriched uranium fuel facility permanently ceased licensed operations and filed for an amendment to place its license in a decommissioning status. The annual fees for the fuel facility class reflect this change in the number of licensees subject to annual fees.

The methodology is applied as follows. First, a fee category is assigned based on the nuclear material and activity authorized by the license or certificate. Although a licensee/certificate holder may elect not to fully utilize a license/certificate, it is still used as the basis for determining authorized nuclear material possession and use/activity. Next, the category and license/certificate information are used to determine where the licensee/certificate holder fits into the matrix. The matrix depicts the categorization of licensee/certificate holders by authorized material types and use/activities and the relative programmatic effort associated with each category. The programmatic effort (expressed as a numeric value in the matrix) reflects the safety and safeguards risk significance associated with the nuclear material and use/activity, and the commensurate generic regulatory program (*i.e.*, scope, depth, and rigor).

The effort factors for the various subclasses of fuel facility licenses are summarized in Table VII below.

TABLE VII.—EFFORT FACTORS FOR FUEL FACILITIES

| Facility type                     | Number of facilities | Effort factors |            |
|-----------------------------------|----------------------|----------------|------------|
|                                   |                      | Safety         | Safeguards |
| High Enriched Uranium Fuel .....  | 2                    | 91 (36.0%)     | 76 (57.1%) |
| Enrichment .....                  | 2                    | 70 (27.7%)     | 34 (25.6%) |
| Low Enriched Uranium Fuel .....   | 3                    | 66 (26.1%)     | 18 (13.5%) |
| UF <sub>6</sub> Conversion .....  | 1                    | 12 (4.7%)      | 0 (0%)     |
| Limited Operations Facility ..... | 1                    | 8 (3.2%)       | 3 (2.3%)   |
| Others .....                      | 1                    | 6 (2.4%)       | 2 (1.5%)   |

Applying these factors to the safety, safeguards, and surcharge components of the \$17.7 million total annual fee amount for the fuel facility class results in the annual fees for each licensee within the subcategories of this class summarized in the table below.

TABLE VIII.—ANNUAL FEES FOR FUEL FACILITIES

| Facility type                     | FY 2002 annual fee |
|-----------------------------------|--------------------|
| High Enriched Uranium Fuel .....  | \$3,834,000        |
| Uranium Enrichment .....          | 2,387,000          |
| Low Enriched Uranium .....        | 1,286,000          |
| UF <sub>6</sub> Conversion .....  | 551,000            |
| Limited Operations Facility ..... | 505,000            |
| Others .....                      | 367,000            |

#### B. Uranium Recovery Facilities

The FY 2002 budgeted costs, including surcharge costs, to be recovered through annual fees assessed to the uranium recovery class is approximately \$1.7 million. Based on the following change in the way NRC allocates these costs, approximately \$1.0 million of this amount will be assessed to DOE. The remaining \$0.7 million will be recovered through annual fees assessed to conventional mills, in-situ leach solution mining facilities, and 11e.(2) mill tailings disposal facilities.

The NRC has adopted the revised methodology for allocating uranium recovery budgeted costs to be recovered through annual fees among the two major types of programs in the uranium recovery class. The first type is the NRC's Title I program for DOE sites under the Uranium Mill Tailings Radiation Control Act (UMTRCA) of 1978. The second type is the NRC's

UMTRCA Title II program; specifically, commercial solution mining facilities, conventional mills, and 11e.(2) mill tailings disposal facilities. Although the Title I program is part of the uranium recovery class, DOE has not previously been assessed a portion of the NRC budgeted costs attributed to generic/other activities for the uranium recovery program. As a consequence, licensees under the NRC's specific licensing program (UMTRCA Title II) were previously assessed the entire cost of these activities.

In recognizing that the uranium recovery class is comprised of two types of licensees falling under either the NRC's Title I or Title II program, the Commission determined that it is appropriate to divide the generic and other costs included in the uranium recovery annual fee evenly among the two programs. Furthermore, DOE stands to gain from NRC's generic regulatory efforts because DOE eventually will also

accept the Title II specifically licensed sites under a general license from the NRC for long term surveillance and care.

Therefore, the methodology allocates the total annual fee amount, less the amounts specifically budgeted for Title I activities, equally between Title I and Title II licensees. This results in an annual fee being assessed to DOE to recover the costs specifically budgeted for NRC's Title I activities plus 50 percent of the remaining annual fee amount, including the surcharge, for the uranium recovery class. The remaining surcharge, generic, and other costs are to be assessed to the NRC Title II program licensees that are subject to annual fees. The costs to be recovered through annual fees assessed to the uranium recovery class are shown below. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

#### DOE Annual Fee Amount (UMTRCA Title I and Title II general licenses):

|                                                              |             |
|--------------------------------------------------------------|-------------|
| UMTRCA Title I budgeted costs .....                          | \$377,232   |
| 50% of generic/other uranium recovery budgeted costs .....   | 491,173     |
| 50% of uranium recovery surcharge .....                      | 189,509     |
| Total Annual Fee Amount for DOE .....                        | \$1,057,914 |
| Annual Fee Amount for UMTRCA Title II Specific Licenses:     |             |
| 50% of generic/other uranium recovery budgeted costs .....   | \$491,173   |
| 50% of uranium recovery surcharge .....                      | 189,509     |
| Total Annual Fee Amount for Title II Specific Licenses ..... | \$680,682   |

The costs allocated to the various categories of Title II specific licensees

are based on the uranium recovery matrix established in the FY 1999 final

fee rule (64 FR 31448; June 10, 1999). The methodology for establishing part

171 annual fees for Title II uranium recovery licensees has not changed and is as follows:

(1) The methodology identifies three categories of licenses: conventional uranium mills (Class I facilities), uranium solution mining facilities (Class II facilities), and mill tailings disposal facilities (11e.(2) disposal facilities). Each of these categories benefits from the generic uranium recovery program efforts (e.g., rulemakings, staff guidance documents);

(2) The matrix relates the category and the level of benefit by program element and subelement;

(3) The two major program elements of the generic uranium recovery

program are activities related to facility operations and those related to facility closure;

(4) Each of the major program elements was further divided into three subelements;

(5) The three major subelements of generic activities associated with uranium facility operations are regulatory efforts related to the operation of mills, handling and disposal of waste, and prevention of groundwater contamination. The three major subelements of generic activities associated with uranium facility closure are regulatory efforts related to decommissioning of facilities and land

clean-up, reclamation and closure of tailings impoundments, and groundwater clean-up. Weighted values were assigned to each program element and subelement considering health and safety implications and the associated effort to regulate these activities. The applicability of the generic program in each subelement to each uranium recovery category was qualitatively estimated as either significant, some, minor, or none.

The relative weighted factors per facility type for the various subclasses of specifically licensed Title II uranium recovery licensees are as follows:

TABLE IX.—WEIGHTED FACTORS FOR URANIUM RECOVERY LICENSES

| Facility type                                              | Number of facilities | Level of benefit |              |         |
|------------------------------------------------------------|----------------------|------------------|--------------|---------|
|                                                            |                      | Category weight  | Total weight |         |
|                                                            |                      |                  | Value        | Percent |
| Class I (conventional mills) .....                         | 3                    | 770              | 2,310        | 34      |
| Class II (solution mining) .....                           | 6                    | 645              | 3,870        | 58      |
| 11e.(2) disposal .....                                     | 1                    | 475              | 475          | 7       |
| 11e.(2) disposal incident to existing tailings sites ..... | 1                    | 75               | 75           | 1       |

Applying these factors to the \$0.7 million in budgeted costs to be recovered from Title II specific licensees results in the following annual fees:

TABLE X.—ANNUAL FEES FOR TITLE II SPECIFIC LICENSES

| Facility type                                                | FY 2002 annual fee |
|--------------------------------------------------------------|--------------------|
| Class I (conventional mills) .....                           | \$77,900           |
| Class II (solution mining) .....                             | 65,200             |
| 11e.(2) disposal .....                                       | 48,000             |
| 11e.(2) disposal incidental to existing tailings sites ..... | 7,600              |

In the FY 2001 final rule (66 FR 32478, June 14, 2001), the NRC revised § 171.19 to establish a quarterly billing schedule for the Class I and Class II licensees, regardless of the annual fee amount. Therefore, as provided in § 171.19(b), if the amounts collected in the first three quarters of FY 2002 exceed the amount of the revised annual fee, the overpayment will be refunded. The remaining categories of Title II facilities are subject to billing based on the anniversary date of the license as provided in § 171.19(c).

#### C. Power Reactors

The approximately \$271.4 million in budgeted costs to be recovered through FY 2002 annual fees assessed to the power reactor class is divided equally among the 104 power reactors licensed to operate. This results in a FY 2002 annual fee of \$2,610,000 per reactor. Additionally, each power reactor licensed to operate will be assessed the

FY 2002 spent fuel storage/reactor decommissioning annual fee of \$239,000. This results in a total FY 2002 annual fee of \$2,849,000 for each power reactor licensed to operate.

#### D. Spent Fuel Storage/Reactor Decommissioning

For FY 2002, budgeted costs of approximately \$28.9 million for spent fuel storage/reactor decommissioning are to be recovered through annual fees assessed to part 50 power reactors, and to part 72 licensees who do not hold a part 50 license. Those reactor licensees that have ceased operations and have no fuel onsite are not subject to these annual fees. The cost is divided equally among the 121 licensees, resulting in a FY 2002 annual fee of \$239,000 per licensee.

#### E. Non-Power Reactors

Approximately \$285,400 in budgeted costs is to be recovered through annual

fees assessed to the non-power reactor class of licenses for FY 2002. This amount is divided equally among the four non-power reactors subject to annual fees. This results in a FY 2002 annual fee of \$71,400 for each licensee.

#### F. Rare Earth Facilities

The FY 2002 budgeted costs of approximately \$205,900 for rare earth facilities to be recovered through annual fees is divided equally among the three licensees who have a specific license for receipt and processing of source material. The result is a FY 2002 annual fee of \$68,600 for each rare earth facility.

As explained previously, the increase in annual fees for the rare earth class is not the result of increased budgeted costs for the class, but rather the result of the change in NMSS's revised PM policy, which resulted in a shift of cost recovery for certain activities from part 170 to part 171.

### G. Materials Users

To equitably and fairly allocate the \$25.0 million in FY 2002 budgeted costs to be recovered in annual fees assessed to the approximately 5,000 diverse materials users and registrants, the NRC has continued to use the FY 1999 methodology to establish baseline annual fees for this class. The annual fees are based on the part 170 application fees and an estimated cost for inspections. Because the application fees and inspection costs are indicative of the complexity of the license, this approach continues to provide a proxy for allocating the generic and other regulatory costs to the diverse categories of licenses based on how much it costs the NRC to regulate each category. The fee calculation also continues to consider the inspection frequency (priority), which is indicative of the safety risk and resulting regulatory costs associated with the categories of licenses. The annual fee for these categories of licenses is developed as follows:

$$\text{Annual fee} = \text{Constant} \times [\text{Application Fee} + (\text{Average Inspection Cost divided by Inspection Priority}) + \text{Inspection Multiplier} \times (\text{Average Inspection Cost divided by Inspection Priority}) + \text{Unique Category Costs}].$$

The constant is the multiple necessary to recover approximately \$17.4 million in general costs and is 1.07 for FY 2002. The inspection multiplier is the multiple necessary to recover approximately \$5.3 million in inspection costs for FY 2002, and is 1.1 for FY 2002. The unique category costs are any special costs that the NRC has budgeted for a specific category of licenses. For FY 2002, of the unique costs attributable to medical licensees for the medical development program, approximately \$126,900 is allocated to NRC medical licensees.

The annual fee assessed to each licensee also includes a share of the \$1.9 million in surcharge costs allocated to the materials user class of licenses and, for certain categories of these licenses, a share of the approximately \$300,000 in LLW surcharge costs allocated to the class. The annual fee for each fee category is shown in § 171.16(d).

#### 1. Transportation

Of the approximately \$4.8 million in FY 2002 budgeted costs to be recovered through annual fees assessed to the transportation class of licenses, approximately \$1.4 million will be recovered from annual fees assessed to DOE based on the number of part 71 Certificates of Compliance that it holds. Of the remaining \$3.4 million,

approximately 25 percent is allocated to the 77 quality assurance plans authorizing use only and the 39 quality assurance plans authorizing use and design/fabrication. The remaining 75 percent is allocated only to the 39 quality assurance plans authorizing use and design/fabrication. This results in an annual fee of \$7,300 for each of the holders of quality assurance plans that authorize use only, and an annual fee of \$72,900 for each of the holders of quality assurance plans that authorize use and design/fabrication.

#### 2. Part 52 Combined Licenses

The NRC is revising part 171 to: authorize assessment of annual fees for holders of combined licenses issued under part 52; clarify that the annual fees will be assessed for each license, and not for each unit; and establish when assessment of annual fees will begin.

Part 171 previously covered annual fees for part 50 licenses, but did not specifically cover annual fees for combined licenses issued under part 52. Additionally, neither part 52 nor part 171 addressed when NRC would begin to assess an annual fee to a part 52 license holder. The NRC is revising § 171.3 "Scope" to specify that the annual fee regulations also apply to any person holding a combined license issued under part 52.

The annual fees for a part 52 combined license will be assessed only after construction has been completed, all regulatory requirements have been met, and the Commission has authorized operation of the reactor(s). This approach is consistent with the Commission's policy of not imposing annual fees on those entities only holding a power reactor construction permit.

Previously, § 171.15(a) provided that reactor licensees shall pay an annual fee " \* \* for each unit for each license held \* \* ". It is the agency's present practice to charge annual fees per license, and the NRC is revising § 171.15(a) to clarify that the annual fees are assessed for each license, and not for each unit.

At this time, the NRC is not establishing a specific annual fee category or amount for part 52 combined licenses because there are no existing combined licenses issued under part 52. However, the NRC is making these changes so potential applicants for a part 52 combined license are aware that such a license will be subject to annual fees in the future.

#### 3. Fee Exemption for Reactors in 10 CFR 171.11

The NRC is modifying § 171.11(c) to clarify that the annual fee exemption provision applies only to reactors licensed to operate. This change is consistent with the statement of considerations in the 1986 final fee rule (51 FR 33224; September 18, 1986), which added this specific fee exemption to the regulation. Therein the Commission stated it had considered calculating the annual fee for power reactors with "operating" licenses based on the thermal megawatt ratings of those reactors. However, the Commission decided against determining its fees based on the size of the reactor because the NRC found no necessary relationship between the thermal megawatt rating of a reactor and the agency's regulatory costs. Nevertheless, the NRC stated because it was not the Commission's intent to promulgate a fee schedule that would have the effect of forcing smaller, older reactors to shut down, it was adding an annual fee exemption provision in § 171.11 which takes reactor size, age, and other relevant factors into consideration. In the section-by-section analysis for § 171.11, the NRC stated that the added exemption section " \* \* provides that the holder of a license to 'operate' a power reactor \* \* may apply to the Commission for partial relief from annual fee[s]."

In the FY 1999 final fee rule (64 FR 31448; June 10, 1999), the NRC established the Spent Fuel Storage/Reactor Decommissioning (SFSRD) class with an annual fee to be assessed to all reactor licensees having fuel onsite, regardless of their operating status. In the statement of considerations for the FY 1999 fee rule, the NRC stated that the Commission determined all reactors, including those which are shut down, should pay the SFSRD annual fee to recover the NRC's costs related to generic reactor decommissioning and spent fuel storage activities. It is clear from the statement of considerations that the Commission did not intend to relieve reactors that are not operating from the annual fee requirements unless they had permanently ceased operations and had no fuel onsite.

The Commission reemphasizes that all communications concerning annual fees, including exemption requests, should be addressed to the Chief Financial Officer, U.S. NRC, Washington, DC 20555-0001 in accordance with § 171.9.

#### 4. Administrative Amendment

The NRC is modifying Category 1.B. of § 171.16(d) to specifically include licenses issued under part 72 for reactor-related GTCC waste. This is an administrative change that is being made only to ensure consistency with the description for fee category 1.B. of § 170.31 as described in A. above. The NRC is not establishing an annual fee for this category of license.

In summary, the NRC has—

1. Established rebaselined annual fees for FY 2002;
2. Modified part 171 to specifically authorize assessment of annual fees for part 52 combined licenses;
3. Clarified that the annual fee exemption provision in § 171.11(c) applies only to reactors licensed to operate;
4. Made an administrative change to fee category 1.B. of § 171.16(d) to be consistent with the change to category 1.B. of § 170.31.

#### IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this final rule, the NRC is amending the licensing, inspection, and annual fees charged to its licensees and applicants as necessary to recover approximately 96 percent of its budget authority in FY 2002 as is required by the Omnibus Budget Reconciliation Act of 1990, as amended. This action does not constitute the establishment of a standard that contains generally applicable requirements.

#### V. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental assessment nor an environmental impact statement has been prepared for the final regulation. By its very nature, this regulatory action does not affect the environment and, therefore, no environmental justice issues are raised.

#### VI. Paperwork Reduction Act Statement

This final rule does not contain information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### VII. Regulatory Analysis

With respect to 10 CFR part 170, this final rule was developed pursuant to Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee guidelines. When developing these guidelines the Commission took into account guidance provided by the U.S. Supreme Court on March 4, 1974, in *National Cable Television Association, Inc. v. United States*, 415 U.S. 36 (1974) and *Federal Power Commission v. New England Power Company*, 415 U.S. 345 (1974). In these decisions, the Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the "value to the recipient" of the agency service. The meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia: *National Cable Television Association v. Federal Communications Commission*, 554 F.2d 1094 (D.C. Cir. 1976); *National Association of Broadcasters v. Federal Communications Commission*, 554 F.2d 1118 (D.C. Cir. 1976); *Electronic Industries Association v. Federal Communications Commission*, 554 F.2d 1109 (D.C. Cir. 1976); and *Capital Cities Communication, Inc. v. Federal Communications Commission*, 554 F.2d 1135 (D.C. Cir. 1976). The Commission's fee guidelines were developed based on these legal decisions.

The Commission's fee guidelines were upheld on August 24, 1979, by the U.S. Court of Appeals for the Fifth Circuit in *Mississippi Power and Light Co. v. U.S. Nuclear Regulatory Commission*, 601 F.2d 223 (5th Cir. 1979), *cert. denied*, 444 U.S. 1102 (1980). This court held that—

- (1) The NRC had the authority to recover the full cost of providing services to identifiable beneficiaries;
- (2) The NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act and with applicable regulations;
- (3) The NRC could charge for costs incurred in conducting environmental reviews required by NEPA;
- (4) The NRC properly included the costs of uncontested hearings and of administrative and technical support services in the fee schedule;
- (5) The NRC could assess a fee for renewing a license to operate a low-level radioactive waste burial site; and
- (6) The NRC's fees were not arbitrary or capricious.

With respect to 10 CFR part 171, on November 5, 1990, the Congress passed

Pub. L. 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), which required that, for FYs 1991 through 1995, approximately 100 percent of the NRC budget authority be recovered through the assessment of fees. OBRA–90 was subsequently amended to extend the 100 percent fee recovery requirement through FY 2000. The FY 2001 Energy and Water Development Appropriations Act amended OBRA–90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005. The NRC's fee recovery amount for FY 2002 is 96 percent. To comply with this statutory requirement and in accordance with § 171.13, the NRC is publishing the amount of the FY 2002 annual fees for reactor licensees, fuel cycle licensees, materials licensees, and holders of Certificates of Compliance, registrations of sealed source and devices and QA program approvals, and Government agencies. OBRA–90, consistent with the accompanying Conference Committee Report, and the amendments to OBRA–90, provide that—

- (1) The annual fees be based on approximately 96 percent of the Commission's FY 2002 budget of \$559.1 million less the amounts collected from part 170 fees and funds directly appropriated from the NWF to cover the NRC's high level waste program;
- (2) The annual fees shall, to the maximum extent practicable, have a reasonable relationship to the cost of regulatory services provided by the Commission; and
- (3) The annual fees be assessed to those licensees the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment.

In addition, \$36.0 million has been appropriated from the General Fund for activities related to homeland security. The FY 2002 Defense Appropriations Act states that this \$36.0 million shall be excluded from license fee revenues.

10 CFR part 171, which established annual fees for operating power reactors effective October 20, 1986 (51 FR 33224; September 18, 1986), was challenged and upheld in its entirety in *Florida Power and Light Company v. United States*, 846 F.2d 765 (D.C. Cir. 1988), *cert. denied*, 490 U.S. 1045 (1989). Further, the NRC's FY 1991 annual fee rule methodology was upheld by the D.C. Circuit Court of Appeals in *Allied Signal v. NRC*, 988 F.2d 146 (D.C. Cir. 1993).

## VIII. Regulatory Flexibility Analysis

The NRC is required by the Omnibus Budget Reconciliation Act of 1990, as amended, to recover approximately 96 percent of its FY 2002 budget authority through the assessment of user fees. This act further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges among licensees.

This final rule establishes the schedules of fees that are necessary to implement the Congressional mandate for FY 2002. The final rule results in increases in the annual fees charged to certain licensees and holders of certificates, registrations, and approvals, and decreases in annual fees for others. Licensees affected by the annual fee increases and decreases include those that qualify as a small entity under NRC's size standards in 10 CFR 2.810. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as Appendix A to this final rule.

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) was signed into law on March 29, 1996. The SBREFA requires all Federal agencies to prepare a written compliance guide for each rule for which the agency is required by 5 U.S.C. 604 to prepare a regulatory flexibility analysis. Therefore, in compliance with the law, Attachment 1 to the Regulatory Flexibility Analysis is the small entity compliance guide for FY 2002.

## IX. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and that a backfit analysis is not required for this final rule. The backfit analysis is not required because these final amendments do not require the modification of or additions to systems, structures, components, or the design of a facility or the design approval or manufacturing license for a facility or the procedures or organization required to design, construct, or operate a facility.

## X. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104-121, the NRC has determined that this action is a major rule and has verified the determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

## List of Subjects

### 10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

### 10 CFR Part 171

Annual charges, Byproduct material, Holders of certificates, Registrations, Approvals, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 170 and 171.

### PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

1. The authority citation for part 170 continues to read as follows:

**Authority:** sec. 9701, Pub. L. 97-258, 96 Stat. 1051 (31 U.S.C. 9701); sec. 301, Pub. L. 92-314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93-438, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205a, Pub. L. 101-576, 104 Stat. 2842, as amended (31 U.S.C. 901, 902).

2. Section 170.3 is amended by revising the definition of *Special projects* and adding in alphabetical order, the definition for *Greater than Class C Waste* or *GTCC Waste* to read as follows:

#### § 170.3 Definitions.

\* \* \* \* \*

*Greater than Class C Waste* or *GTCC Waste* means low-level radioactive waste that exceeds the concentration limits of radionuclides established for Class C waste in 10 CFR 61.55.

\* \* \* \* \*

*Special projects* means those requests submitted to the Commission for review for which fees are not otherwise specified in this chapter. Examples of special projects include, but are not limited to, topical report reviews, early site reviews, waste solidification facilities, route approvals for shipment of radioactive materials, services provided to certify licensee, vendor, or other private industry personnel as

instructors for part 55 reactor operators, reviews of financial assurance submittals that do not require a license amendment, reviews of responses to Confirmatory Action Letters, reviews of uranium recovery licensees' land-use survey reports, and reviews of 10 CFR 50.71 final safety analysis reports.

\* \* \* \* \*

3. In § 170.11, paragraph (a)(1) is added to read as follows:

#### § 170.11 Exemptions.

(a) \* \* \*

(1) A special project that is a request/report submitted to the NRC—

(i) In response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter, or does not involve an unreviewed safety issue;

(ii) In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety, safeguards, or environmental issue, or to assist NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or

(iii) As a means of exchanging information between industry organizations and the NRC for the specific purpose of supporting the NRC's generic regulatory improvements or efforts.

(A) This fee exemption applies only when:

(1) It has been demonstrated that the report/request has been submitted to the NRC specifically for the purpose of supporting NRC's development of generic guidance and regulations (e.g., rules, regulations, guides and policy statements); and

(2) The NRC, at the time the document is submitted, plans to use it for one of the purposes given in paragraph (a)(1)(iii)(A)(1) of this section. In this case, the exemption applies even if ultimately the NRC does not use the document as planned.

(B) An example of the type of document that meets the fee exemption criteria is a topical report that is submitted to the NRC for the specific purpose of supporting the NRC's development of a Regulatory Guide, and which the NRC plans to use in the development of that Regulatory Guide.

(C) Fees will not be waived for reports/requests that are not submitted specifically for the purpose of supporting the NRC's generic regulatory improvements or efforts, because the primary beneficiary of the NRC's review and approval of such documents is the requesting organization. In this case, the

waiver provision does not apply even though the NRC may realize some benefits from its review and approval of the document.

(D) An example of the type of document that does not meet the fee waiver criteria is a topical report submitted for the purpose of obtaining NRC approval so that the report can be used by the industry in the future to address licensing or safety issues.

\* \* \* \* \*

4. Section 170.20 is revised to read as follows:

**§ 170.20 Average cost per professional staff-hour.**

Fees for permits, licenses, amendments, renewals, special projects, part 55 re-qualification and replacement examinations and tests, other required reviews, approvals, and inspections under §§ 170.21 and 170.31 will be calculated using the following applicable professional staff-hour rates:

- (a) Reactor Program (\$ 170.21 Activities) \$156 per hour.
- (b) Nuclear Materials and Nuclear Waste Program (\$ 170.31 Activities) \$152 per hour.

5. In § 170.21, the introductory text, and in the table, Category J, Category K, and footnotes 1, 2, and 3 to the table are

revised and footnote 4 is removed to read as follows:

**§ 170.21 Schedule of fees for production and utilization facilities, review of standard referenced design approvals, special projects, inspections and import and export licenses.**

Applicants for construction permits, manufacturing licenses, operating licenses, import and export licenses, approvals of facility standard reference designs, re-qualification and replacement examinations for reactor operators, and special projects and holders of construction permits, licenses, and other approvals shall pay fees for the following categories of services:

**SCHEDULE OF FACILITY FEES**

(See footnotes at end of table)

| Facility categories and type of fees                                                                                                                                                                             |   |   |   |   |   | Fees <sup>1 2</sup> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|---|---|---|---|---------------------|
|                                                                                                                                                                                                                  | * | * | * | * | * | *                   |
| J. Special projects:                                                                                                                                                                                             |   |   |   |   |   |                     |
| Approvals and preapplication/licensing activities .....                                                                                                                                                          |   |   |   |   |   | Full Cost.          |
| Inspections <sup>3</sup> .....                                                                                                                                                                                   |   |   |   |   |   | Full Cost.          |
| K. Import and export licenses:                                                                                                                                                                                   |   |   |   |   |   |                     |
| Licenses for the import and export only of production and utilization facilities or the export only of components for production and utilization facilities issued under 10 CFR part 110.                        |   |   |   |   |   |                     |
| 1. Application for import or export of reactors and other facilities and exports of components which must be reviewed by the Commissioners and the Executive Branch, for example, actions under 10 CFR 110.40(b) |   |   |   |   |   |                     |
| Application—new license .....                                                                                                                                                                                    |   |   |   |   |   | \$9,900             |
| Amendment .....                                                                                                                                                                                                  |   |   |   |   |   | \$9,900             |
| 2. Application for export of reactor and other components requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(1)–(8)                                                       |   |   |   |   |   |                     |
| Application—new license .....                                                                                                                                                                                    |   |   |   |   |   | \$5,800             |
| Amendment .....                                                                                                                                                                                                  |   |   |   |   |   | \$5,800             |
| 3. Application for export of components requiring foreign government assurances only                                                                                                                             |   |   |   |   |   |                     |
| Application—new license .....                                                                                                                                                                                    |   |   |   |   |   | \$1,800             |
| Amendment .....                                                                                                                                                                                                  |   |   |   |   |   | \$1,800             |
| 4. Application for export of facility components and equipment not requiring Commissioner review, Executive Branch review, or foreign government assurances                                                      |   |   |   |   |   |                     |
| Application—new license .....                                                                                                                                                                                    |   |   |   |   |   | \$1,200             |
| Amendment .....                                                                                                                                                                                                  |   |   |   |   |   | \$1,200             |
| 5. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require in-depth analysis or review                          |   |   |   |   |   |                     |
| Amendment .....                                                                                                                                                                                                  |   |   |   |   |   | \$230               |

<sup>1</sup> Fees will not be charged for orders issued by the Commission under § 2.202 of this chapter or for amendments resulting specifically from the requirements of these types of Commission orders. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., 10 CFR 50.12, 73.5) and any other sections in effect now or in the future, regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. Fees for licenses in this schedule that are initially issued for less than full power are based on review through the issuance of a full power license (generally full power is considered 100 percent of the facility's full rated power). Thus, if a licensee received a low power license or a temporary license for less than full power and subsequently receives full power authority (by way of license amendment or otherwise), the total costs for the license will be determined through that period when authority is granted for full power operation. If a situation arises in which the Commission determines that full operating power for a particular facility should be less than 100 percent of full rated power, the total costs for the license will be at that determined lower operating power level and not at the 100 percent capacity.

<sup>2</sup> Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect at the time the service was provided. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed \$50,000. Costs which exceed \$50,000 for any topical report, amendment, revision or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.

<sup>3</sup> Inspections covered by this schedule are both routine and non-routine safety and safeguards inspections performed by NRC for the purpose of review or follow-up of a licensed program. Inspections are performed through the full term of the license to ensure that the authorized activities are being conducted in accordance with the Atomic Energy Act of 1954, as amended, other legislation, Commission regulations or orders, and the terms and conditions of the license. Non-routine inspections that result from third-party allegations will not be subject to fees.

6. Section 170.31 is revised to read as follows:

**§ 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.**

Applicants for materials licenses, import and export licenses, and other regulatory services, and holders of

materials licenses or import and export licenses shall pay fees for the following categories of services. The following schedule includes fees for health and safety and safeguards inspections where applicable:

**SCHEDULE OF MATERIALS FEES**

[See footnotes at end of table]

| Category of materials licenses and type of fees <sup>1</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Fees <sup>2 3</sup> |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|
| 1. Special nuclear material:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                     |
| A. Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U-235 in unsealed form or 200 grams or more of U-233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing possession only:                                                                                                                                                                                                                                                                                            |                     |
| Licensing and inspection .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Full Cost.          |
| B. Licenses for receipt and storage of spent fuel and/or reactor-related Greater than Class C (GTCC) waste at an independent spent fuel storage installation (ISFSI):                                                                                                                                                                                                                                                                                                                                                                                                                       |                     |
| Licensing and inspection .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Full Cost.          |
| C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers: <sup>4</sup>                                                                                                                                                                                                                                                                                                                                                                                            |                     |
| Application .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | \$700               |
| D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1A: <sup>4</sup>                                                                                                                                                                                                                                                                               |                     |
| Application .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | \$1,400             |
| E. Licenses or certificates for construction and operation of a uranium enrichment facility:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                     |
| Licensing and inspection .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Full Cost.          |
| 2. Source material:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                     |
| A.(1) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, refining uranium mill concentrates to uranium hexafluoride, ore buying stations, and ion exchange facilities, and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode: |                     |
| Licensing and inspection .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Full Cost.          |
| (2) Licenses that authorize the receipt of byproduct material, as defined in Section 11e(2) of the Atomic Energy Act, from other persons for possession and disposal except those licenses subject to fees in Category 2A(1):                                                                                                                                                                                                                                                                                                                                                               |                     |
| Licensing and inspection .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Full Cost.          |
| (3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2A(1):                                                                                                                                                                                                                                                  |                     |
| Licensing and inspection .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Full Cost.          |
| B. Licenses which authorize the possession, use, and/or installation of source material for shielding:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                     |
| Application .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | \$170               |
| C. All other source material licenses:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                     |
| Application .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | \$6,000             |
| 3. Byproduct material:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                     |
| A. Licenses of broad scope for the possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:                                                                                                                                                                                                                                                                                                                                                                |                     |
| Application .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | \$7,100             |
| B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:                                                                                                                                                                                                                                                                                                                                                                                     |                     |
| Application .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | \$2,300             |
| C. Licenses issued under §§ 32.72, 32.73, and/or 32.74 of this chapter that authorize the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 170.11(a)(4). These licenses are covered by fee Category 3D.                                                                                                                |                     |
| Application .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | \$9,200             |
| D. Licenses and approvals issued under §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources or devices not involving processing of byproduct material. This category includes licenses issued under §§ 32.72, 32.73, and/or 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under § 170.11(a)(4).                                                                                                                             |                     |
| Application .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | \$2,600             |
| E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units):                                                                                                                                                                                                                                                                                                                                                                                                           |                     |
| Application .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | \$1,800             |
| F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.                                                                                                                                                                                                                                                       |                     |
| Application .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | \$3,600             |
| G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.                                                                                                                                                                                                                                                         |                     |

## SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

| Category of materials licenses and type of fees <sup>1</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Fees <sup>2 3</sup> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|
| Application .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | \$8,500             |
| H. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter. The category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter:                                                                                                                                                  |                     |
| Application .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | \$2,400             |
| I. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter:                                                                                                  |                     |
| Application .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | \$3,600             |
| J. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter:                                                                                                                                                              |                     |
| Application .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | \$1,100             |
| K. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter:                                                                                                                   |                     |
| Application .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | \$620               |
| L. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution:                                                                                                                                                                                                                                                                                                                                                                                       |                     |
| Application .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | \$6,000             |
| M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution:                                                                                                                                                                                                                                                                                                                                                                                                        |                     |
| Application .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | \$2,600             |
| N. Licenses that authorize services for other licensees, except:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                     |
| (1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                     |
| (2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C:                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                     |
| Application .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | \$2,700             |
| O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations:                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                     |
| Application .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | \$4,400             |
| P. All other specific byproduct material licenses, except those in Categories 4A through 9D:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                     |
| Application .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | \$1,400             |
| Q. Registration of a device(s) generally licensed under part 31 of this chapter:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                     |
| Registration .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | \$450               |
| 4. Waste disposal and processing:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                     |
| A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material: |                     |
| Licensing and inspection .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Full Cost.          |
| B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:                                                                                                                                                                                                                                                      |                     |
| Application .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | \$1,800             |
| C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:                                                                                                                                                                                                                                                                                                   |                     |
| Application .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | \$2,700             |
| 5. Well logging:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                     |
| A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies:                                                                                                                                                                                                                                                                                                                                                                                |                     |
| Application .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | \$5,900             |
| B. Licenses for possession and use of byproduct material for field flooding tracer studies:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                     |
| Licensing .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Full Cost.          |
| 6. Nuclear laundries:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                     |
| A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material:                                                                                                                                                                                                                                                                                                                                                                                                                                         |                     |
| Application .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | \$12,100            |
| 7. Medical licenses:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                     |
| A. Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:                                                                                                                                                                                                                                                                                                                                                                                |                     |
| Application .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | \$6,600             |
| B. Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:                                                                                                                                                                                                                       |                     |

## SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

| Category of materials licenses and type of fees <sup>1</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Fees <sup>2 3</sup> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|
| Application .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | \$4,700             |
| C. Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:                                                                                                                                                                                                                                                                                                   |                     |
| Application .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | \$2,300             |
| 8. Civil defense:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                     |
| A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities:                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                     |
| Application .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | \$350               |
| 9. Device, product, or sealed source safety evaluation:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                     |
| A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution:                                                                                                                                                                                                                                                                                                                                                                                                                        |                     |
| Application—each device .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | \$5,600             |
| B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices:                                                                                                                                                                                                                                                                                                                                                    |                     |
| Application—each device .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | \$5,600             |
| C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution:                                                                                                                                                                                                                                                                                                                                                                                                                                     |                     |
| Application—each source .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | \$1,700             |
| D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel:                                                                                                                                                                                                                                                                                                                                                                |                     |
| Application—each source .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | \$580               |
| 10. Transportation of radioactive material:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                     |
| A. Evaluation of casks, packages, and shipping containers:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                     |
| Licensing and inspections .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Full Cost.          |
| B. Evaluation of 10 CFR part 71 quality assurance programs:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                     |
| Application .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | \$680               |
| Inspections .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Full Cost.          |
| 11. Review of standardized spent fuel facilities:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                     |
| Licensing and inspection .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Full Cost.          |
| 12. Special projects:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                     |
| Approvals and preapplication/Licensing activities .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Full Cost.          |
| Inspections .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Full Cost.          |
| 13. A. Spent fuel storage cask Certificate of Compliance: Licensing .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Full Cost.          |
| B. Inspections related to spent fuel storage cask Certificate of Compliance .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Full Cost.          |
| C. Inspections related to storage of spent fuel under § 72.210 of this chapter .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Full Cost.          |
| 14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under parts 30, 40, 70, 72, and 76 of this chapter:                                                                                                                                                                                                                                                                                                                                                                             |                     |
| Licensing and inspection .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Full Cost.          |
| 15. Import and Export licenses:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                     |
| Licenses issued under part 110 of this chapter for the import and export only of special nuclear material, source material, tritium and other byproduct material, heavy water, or nuclear grade graphite.                                                                                                                                                                                                                                                                                                                                                                                                 |                     |
| A. Application for export or import of high enriched uranium and other materials, including radioactive waste, which must be reviewed by the Commissioners and the Executive Branch, for example, those actions under 10 CFR 110.40(b). This category includes application for export or import of radioactive wastes in multiple forms from multiple generators or brokers in the exporting country and/or going to multiple treatment, storage or disposal facilities in one or more receiving countries.                                                                                               |                     |
| Application—new license .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | \$9,900             |
| Amendment .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | \$9,900             |
| B. Application for export or import of special nuclear material, source material, tritium and other byproduct material, heavy water, or nuclear grade graphite, including radioactive waste, requiring Executive Branch review but not Commissioner review. This category includes application for the export or import of radioactive waste involving a single form of waste from a single class of generator in the exporting country to a single treatment, storage and/or disposal facility in the receiving country.                                                                                 |                     |
| Application—new license .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | \$5,800             |
| Amendment .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | \$5,800             |
| C. Application for export of routine reloads of low enriched uranium reactor fuel and exports of source material requiring only foreign government assurances under the Atomic Energy Act.                                                                                                                                                                                                                                                                                                                                                                                                                |                     |
| Application—new license .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | \$1,800             |
| Amendment .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | \$1,800             |
| D. Application for export or import of other materials, including radioactive waste, not requiring Commissioner review, Executive Branch review, or foreign government assurances under the Atomic Energy Act. This category includes application for export or import of radioactive waste where the NRC has previously authorized the export or import of the same form of waste to or from the same or similar parties, requiring only confirmation from the receiving facility and licensing authorities that the shipments may proceed according to previously agreed understandings and procedures. |                     |
| Application—new license .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | \$1,200             |
| Amendment .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | \$1,200             |
| E. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require in-depth analysis, review, or consultations with other agencies or foreign governments.                                                                                                                                                                                                                                                                                                                                                       |                     |
| Amendment .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | \$230               |
| 16. Reciprocity:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                     |

## SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

| Category of materials licenses and type of fees <sup>1</sup>                                        | Fees <sup>2 3</sup> |
|-----------------------------------------------------------------------------------------------------|---------------------|
| Agreement State licensees who conduct activities under the reciprocity provisions of 10 CFR 150.20. |                     |
| Application .....                                                                                   | \$1,400             |

<sup>1</sup> *Types of fees*—Separate charges, as shown in the schedule, will be assessed for pre-application consultations and reviews and applications for new licenses and approvals, issuance of new licenses and approvals, certain amendments and renewals to existing licenses and approvals, safety evaluations of sealed sources and devices, generally licensed device registrations, and certain inspections. The following guidelines apply to these charges:

(a) *Application and registration fees.* Applications for new materials licenses and export and import licenses; applications to reinstate expired, terminated, or inactive licenses except those subject to fees assessed at full costs; applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20; and applications for amendments to materials licenses that would place the license in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for each category.

(1) Applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category.

(2) Applications for new licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application fee for fee Category 1C only.

(b) *Licensing fees.* Fees for reviews of applications for new licenses and for renewals and amendments to existing licenses, for pre-application consultations and for reviews of other documents submitted to NRC for review, and for project manager time for fee categories subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(b).

(c) *Amendment fees.* Applications for amendments to export and import licenses must be accompanied by the prescribed amendment fee for each license affected. An application for an amendment to a license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories, in which case the amendment fee for the highest fee category would apply.

(d) *Inspection fees.* Inspections resulting from investigations conducted by the Office of Investigations and non-routine inspections that result from third-party allegations are not subject to fees. Inspection fees are due upon notification by the Commission in accordance with § 170.12(c).

(e) *Generally licensed device registrations under 10 CFR 31.5.* Submittals of registration information must be accompanied by the prescribed fee.

<sup>2</sup> Fees will not be charged for orders issued by the Commission under 10 CFR 2.202 or for amendments resulting specifically from the requirements of these types of Commission orders. However, fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections in effect now or in the future), regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9A through 9D.

<sup>3</sup> Full cost fees will be determined based on the professional staff time multiplied by the appropriate professional hourly rate established in § 170.20 in effect at the time the service is provided, and the appropriate contractual support services expended. For applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed \$50,000. Costs which exceed \$50,000 for each topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.

<sup>4</sup> Licensees paying fees under Categories 1A, 1B, and 1E are not subject to fees under Categories 1C and 1D for sealed sources authorized in the same license except for an application that deals only with the sealed sources authorized by the license.

## PART 171—ANNUAL FEES FOR REACTOR LICENSES AND FUEL CYCLE LICENSES AND MATERIAL LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC

7. The authority citation for part 171 continues to read as follows:

**Authority:** sec. 7601, Pub. L. 99-272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100-203, 101 Stat. 1330, as amended by sec. 3201, Pub. L. 101-239, 103 Stat. 2132, as amended by sec. 6101, Pub. L. 101-508, 104 Stat. 1388, as amended by sec. 2903a, Pub. L. 102-486, 106 Stat. 3125 (42 U.S.C. 2213, 2214); sec. 301, Pub. L. 92-314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93-438, 88 Stat. 1242, as amended (42 U.S.C. 5841).

8. Section 171.3 is revised to read as follows:

### § 171.3. Scope.

The regulations in this part apply to any person holding a license for a power

reactor, test reactor or research reactor issued under part 50 of this chapter and to any person holding a combined license issued under part 52 of this chapter that authorizes operation of a power reactor. The regulations in this part also apply to any person holding a materials license as defined in this part, a Certificate of Compliance, a sealed source or device registration, a quality assurance program approval, and to a Government agency as defined in this part.

9. In § 171.5, the definition of *Greater than Class C Waste* or *GTCC Waste* is added in alphabetical order to read as follows:

### § 171.5 Definitions.

\* \* \* \* \*

*Greater than Class C Waste* or *GTCC Waste* means low-level radioactive waste that exceeds the concentration limits of radionuclides established for Class C waste in 10 CFR 61.55.

\* \* \* \* \*

10. In § 171.11, paragraph (c) is revised to read as follows:

### § 171.11 Exemptions.

\* \* \* \* \*

(c) An exemption for reactors licensed to operate may be granted by the Commission taking into consideration each of the following factors:

- (1) Age of the reactor;
- (2) Size of the reactor;
- (3) Number of customers in rate base;
- (4) Net increase in KWh cost for each customer directly related to the annual fee assessed under this part; and
- (5) Any other relevant matter which the licensee believes justifies the reduction of the annual fee.

\* \* \* \* \*

11. Section 171.15 is revised to read as follows:

### § 171.15 Annual Fees: Reactor licenses and independent spent fuel storage licenses.

(a) Each person licensed to operate a power, test, or research reactor; each person holding a part 50 power reactor

license that is in decommissioning or possession only status, except those that have no spent fuel on-site; and each person holding a part 72 license who does not hold a part 50 license shall pay the annual fee for each license held at any time during the Federal FY in which the fee is due. This paragraph does not apply to test and research reactors exempted under § 171.11(a).

(b)(1) The FY 2002 annual fee for power reactors licensed to operate is \$2,849,000.

(2) The FY 2002 annual fee is comprised of a base annual fee for power reactors licensed to operate, a base spent fuel storage/reactor decommissioning annual fee, and associated additional charges (surcharges). The activities comprising the FY 2002 spent storage/reactor decommissioning base annual fee are shown in paragraph (c)(2)(i) and (ii) of this section. The activities comprising the FY 2002 surcharge are shown in paragraph (d)(1) of this section. The activities comprising the FY 2002 base annual fee for operating power reactors are as follows:

(i) Power reactor safety and safeguards regulation except licensing and inspection activities recovered under part 170 of this chapter and generic reactor decommissioning activities.

(ii) Research activities directly related to the regulation of power reactors, except those activities specifically related to reactor decommissioning.

(iii) Generic activities required largely for NRC to regulate power reactors, *e.g.*, updating part 50 of this chapter, or operating the Incident Response Center. The base annual fee for operating power reactors does not include generic activities specifically related to reactor decommissioning.

(c)(1) The FY 2002 annual fee for each power reactor holding a part 50 license that is in a decommissioning or possession only status and has spent fuel on-site and each independent spent fuel storage part 72 licensee who does not hold a part 50 license is \$239,000.

(2) The FY 2002 annual fee is comprised of a base spent fuel storage/reactor decommissioning annual fee (which is also included in the operating power reactor annual fee shown in paragraph (b) of this section), and an additional charge (surcharge). The activities comprising the FY 2002 surcharge are shown in paragraph (d)(1) of this section. The activities comprising the FY 2002 spent fuel storage/reactor decommissioning rebaselined annual fee are:

(i) Generic and other research activities directly related to reactor

decommissioning and spent fuel storage; and

(ii) Other safety, environmental, and safeguards activities related to reactor decommissioning and spent fuel storage, except costs for licensing and inspection activities that are recovered under part 170 of this chapter.

(d)(1) The activities comprising the FY 2002 surcharge are as follows:

(i) Low level waste disposal generic activities;

(ii) Activities not attributable to an existing NRC licensee or class of licenses (*e.g.*, international cooperative safety program and international safeguards activities, support for the Agreement State program, and site decommissioning management plan (SDMP) activities); and

(iii) Activities not currently subject to 10 CFR part 170 licensing and inspection fees based on existing law or Commission policy, *e.g.*, reviews and inspections conducted of nonprofit educational institutions, licensing actions for Federal agencies, and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

(2) The total FY 2002 surcharge allocated to the operating power reactor class of licenses is approximately \$35.3 million, not including the amount allocated to the spent fuel storage/reactor decommissioning class. The FY 2002 operating power reactor surcharge to be assessed to each power reactor licensed to operate is approximately \$339,400. This amount is calculated by dividing the total operating power reactor surcharge (\$35.3 million) by the number of power reactors licensed to operate (104).

(3) The FY 2002 surcharge allocated to the spent fuel storage/reactor decommissioning class of licenses is approximately \$3.3 million. The FY 2002 spent fuel storage/reactor decommissioning surcharge to be assessed to each power reactor licensed to operate, each power reactor in decommissioning or possession only status that has spent fuel onsite, and to each independent spent fuel storage part 72 licensee who does not hold a part 50 license is \$27,300. This amount is calculated by dividing the total surcharge costs allocated to this class by the total number of power reactor licenses (except those that permanently ceased operations and have no fuel on site) and part 72 licensees who do not hold a part 50 license.

(e) The FY 2002 annual fees for licensees authorized to operate a non-power (test and research) reactor licensed under part 50 of this chapter,

unless the reactor is exempted from fees under § 171.11(a), are as follows:

|                        |          |
|------------------------|----------|
| Research reactor ..... | \$71,400 |
| Test reactor .....     | 71,400   |

12. In § 171.16, paragraphs (c), (d), and (e) are revised to read as follows:

**§ 171.16 Annual Fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals and Government Agencies Licensed by the NRC.**

\* \* \* \* \*

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification along with its annual fee payment, the licensee may pay reduced annual fees as shown in the following table. Failure to file a small entity certification in a timely manner could result in the denial of any refund that might otherwise be due. The small entity fees are as follows:

|                                                                                                               | Maximum annual fee per licensed category |
|---------------------------------------------------------------------------------------------------------------|------------------------------------------|
| Small businesses not engaged in manufacturing and small not-for-profit organizations (gross annual receipts): |                                          |
| \$350,000 to \$5 million .....                                                                                | \$2,300                                  |
| Less than \$350,000 .....                                                                                     | 500                                      |
| Manufacturing entities that have an average of 500 employees or less:                                         |                                          |
| 35 to 500 employees .....                                                                                     | 2,300                                    |
| Less than 35 employees ...                                                                                    | 500                                      |
| Small governmental jurisdictions (including publicly supported educational institutions) (population):        |                                          |
| 20,000 to 50,000 .....                                                                                        | 2,300                                    |
| Less than 20,000 .....                                                                                        | 500                                      |
| Educational institutions that are not State or publicly supported, and have 500 employees or less:            |                                          |
| 35 to 500 employees .....                                                                                     | 2,300                                    |
| Less than 35 employees ...                                                                                    | 500                                      |

(1) A licensee qualifies as a small entity if it meets the size standards established by the NRC (See 10 CFR 2.810).

(2) A licensee who seeks to establish status as a small entity for the purpose of paying the annual fees required under this section must file a certification statement with the NRC. The licensee must file the required certification on NRC Form 526 for each license under which it is billed. NRC Form 526 can be accessed through the NRC's web site at

<http://www.nrc.gov>. For licensees who cannot access the NRC's web site, NRC Form 526 may be obtained through the local point of contact listed in the NRC's "Materials Annual Fee Billing Handbook," NUREG/BR-0238, which is enclosed with each annual fee billing. The form can also be obtained by calling the fee staff at 301-415-7554, or by e-mailing the fee staff at <fees@nrc.gov>

(3) For purposes of this section, the licensee must submit a new certification with its annual fee payment each year.

(4) The maximum annual fee a small entity is required to pay is \$2,300 for each category applicable to the license(s).

(d) The FY 2002 annual fees are comprised of a base annual fee and an additional charge (surcharge). The

activities comprising the FY 2002 surcharge are shown for convenience in paragraph (e) of this section. The FY 2002 annual fees for materials licensees and holders of certificates, registrations or approvals subject to fees under this section are shown in the following table:

#### SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC

[See footnotes at end of table]

| Category of materials licenses                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Annual fees <sup>1 2 3</sup> |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|
| 1. Special nuclear material:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                              |
| A. (1) Licenses for possession and use of U-235 or plutonium for fuel fabrication activities.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                              |
| (a) Strategic Special Nuclear Material:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                              |
| Babcock & Wilcox SNM-42 .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | \$3,834,000                  |
| Nuclear Fuel Services SNM-124 .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | 3,834,000                    |
| (b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                              |
| General Electric Company SNM-1097 .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 1,286,000                    |
| Siemens Nuclear Power SNM-1227 .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | 1,286,000                    |
| Westinghouse Electric Company SNM-1107 .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | 1,286,000                    |
| (2) All other special nuclear materials licenses not included in Category 1.A.(1) which are licensed for fuel cycle activities.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                              |
| (a) Facilities with limited operations: Framatome ANP SNM-1168 .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | 505,000                      |
| (b) All Others: General Electric SNM-960 .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | 367,000                      |
| B. Licenses for receipt and storage of spent fuel and reactor-related Greater than Class C (GTCC) waste at an independent spent fuel storage installation (ISFSI) .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | <sup>11</sup> N/A            |
| C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers .....                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 1,500                        |
| D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in §150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1.A.(2) .....                                                                                                                                                                                                                                                                                                                                   | 3,600                        |
| E. Licenses or certificates for the operation of a uranium enrichment facility .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | 2,387,000                    |
| 2. Source material:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                              |
| A. (1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride ....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | 551,000                      |
| (2) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.                                                                                                                    |                              |
| Class I facilities <sup>4</sup> .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | 77,900                       |
| Class II facilities <sup>4</sup> .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 65,200                       |
| Other facilities <sup>4</sup> .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | 68,600                       |
| (3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in Category 2A(2) or Category 2A(4) .....                                                                                                                                                                                                                                                                                                                                                                                  | 48,000                       |
| (4) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2A(2) .....                                                                                                                                                                                                                                                                                            | 7,600                        |
| B. Licenses that authorize only the possession, use and/or installation of source material for shielding .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | 750                          |
| C. All other source material licenses .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | 12,200                       |
| 3. Byproduct material:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                              |
| A. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution .....                                                                                                                                                                                                                                                                                                                                                                                                               | 22,400                       |
| B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution .....                                                                                                                                                                                                                                                                                                                                                                                                                                | 5,700                        |
| C. Licenses issued under §§32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when included on the same license. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under §171.11(a)(1). These licenses are covered by fee Category 3D ..... | 14,000                       |
| D. Licenses and approvals issued under §§32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material. This category includes licenses issued under §§32.72, 32.73 and 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under §171.11(a)(1). This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when included on the same license .....                | 4,500                        |
| E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units) .....                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 3,600                        |

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued  
[See footnotes at end of table]

| Category of materials licenses                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Annual<br>fees <sup>1 2 3</sup> |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------|
| F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes .....                                                                                                                                                                                                                                               | 6,500                           |
| G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes .....                                                                                                                                                                                                                                                 | 23,100                          |
| H. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter .....                                                                                                                                                                         | 3,700                           |
| I. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter .....                                                                                                                      | 5,200                           |
| J. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter .....                                                                                                                                                                                      | 2,400                           |
| K. Licenses issued under Subpart B of part 31 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter .....                                                                                                                                           | 1,600                           |
| L. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution .....                                                                                                                                                                                                                                                                                                                                                                                       | 11,200                          |
| M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution .....                                                                                                                                                                                                                                                                                                                                                                                                        | 4,800                           |
| N. Licenses that authorize services for other licensees, except:<br>(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and<br>(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C .....                                                                                                                                                                                                                                                     | 5,300                           |
| O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when authorized on the same license .....                                                                                                                                                                                                                                                                                 | 13,700                          |
| P. All other specific byproduct material licenses, except those in Categories 4A through 9D .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | 2,700                           |
| Q. Registration of devices generally licensed pursuant to part 31 of this chapter .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | <sup>13</sup> N/A               |
| 4. Waste disposal and processing:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                 |
| A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material ..... | <sup>5</sup> N/A                |
| B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material .....                                                                                                                                                                                                                                                      | 10,300                          |
| C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons.<br>The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material .....                                                                                                                                                                                                                                                                                                | 8,000                           |
| 5. Well logging:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                 |
| A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies .....                                                                                                                                                                                                                                                                                                                                                                                | 10,000                          |
| B. Licenses for possession and use of byproduct material for field flooding tracer studies .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | <sup>5</sup> N/A                |
| 6. Nuclear laundries:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                 |
| A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material .....                                                                                                                                                                                                                                                                                                                                                                                                                                         | 19,100                          |
| 7. Medical licenses:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                 |
| A. Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license .....                                                                                                                                                                                                                                                       | 15,400                          |
| B. Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license <sup>9</sup> ....                                                                                   | 26,100                          |
| C. Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license <sup>9</sup> .....                                                                                                                                           | 5,100                           |
| 8. Civil defense:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                 |
| A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities .....                                                                                                                                                                                                                                                                                                                                                                                                                                                   | 1,200                           |

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued  
[See footnotes at end of table]

| Category of materials licenses                                                                                                                                                                                                                                                           | Annual fees <sup>1 2 3</sup> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|
| 9. Device, product, or sealed source safety evaluation:                                                                                                                                                                                                                                  |                              |
| A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution .....                                                                     | 6,700                        |
| B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices ..... | 6,700                        |
| C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution .....                                                                                  | 2,000                        |
| D. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel .....             | 690                          |
| 10. Transportation of radioactive material:                                                                                                                                                                                                                                              |                              |
| A. Certificates of Compliance or other package approvals issued for design of casks, packages, and shipping containers.                                                                                                                                                                  |                              |
| Spent Fuel, High-Level Waste, and plutonium air packages. ....                                                                                                                                                                                                                           | <sup>6</sup> N/A             |
| Other Casks .....                                                                                                                                                                                                                                                                        | <sup>6</sup> N/A             |
| B. Quality assurance program approvals issued under part 71 of this chapter.                                                                                                                                                                                                             |                              |
| Users and Fabricators .....                                                                                                                                                                                                                                                              | 72,900                       |
| Users .....                                                                                                                                                                                                                                                                              | 7,300                        |
| 11. Standardized spent fuel facilities .....                                                                                                                                                                                                                                             | <sup>6</sup> N/A             |
| 12. Special Projects .....                                                                                                                                                                                                                                                               | <sup>6</sup> N/A             |
| 13. A. Spent fuel storage cask Certificate of Compliance .....                                                                                                                                                                                                                           | <sup>6</sup> N/A             |
| B. General licenses for storage of spent fuel under 10 CFR 72.210 .....                                                                                                                                                                                                                  | <sup>12</sup> N/A            |
| 14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under parts 30, 40, 70, 72, and 76 of this chapter .....                                                       | <sup>7</sup> N/A             |
| 15. Import and Export licenses .....                                                                                                                                                                                                                                                     | <sup>8</sup> N/A             |
| 16. Reciprocity .....                                                                                                                                                                                                                                                                    | <sup>8</sup> N/A             |
| 17. Master materials licenses of broad scope issued to Government agencies .....                                                                                                                                                                                                         | 283,000                      |
| 18. Department of Energy:                                                                                                                                                                                                                                                                |                              |
| A. Certificates of Compliance .....                                                                                                                                                                                                                                                      | <sup>10</sup> 1,370,000      |
| B. Uranium Mill Tailing Radiation Control Act (UMTRCA) activities .....                                                                                                                                                                                                                  | 1,058,000                    |

<sup>1</sup> Annual fees will be assessed based on whether a licensee held a valid license with the NRC authorizing possession and use of radioactive material during the current fiscal year. However, the annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses prior to October 1, 2001, and permanently ceased licensed activities entirely by September 30, 2001. Annual fees for licensees who filed for termination of a license, downgrade of a license, or for a possession only license during the fiscal year and for new licenses issued during the fiscal year will be prorated in accordance with the provisions of § 171.17. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1A(1) are not subject to the annual fees for Category 1C and 1D for sealed sources authorized in the license.

<sup>2</sup> Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of parts 30, 40, 70, 71, 72, or 76 of this chapter.

<sup>3</sup> Each fiscal year, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 and will be published in the **Federal Register** for notice and comment.

<sup>4</sup> A Class I license includes mill licenses issued for the extraction of uranium from uranium ore. A Class II license includes solution mining licenses (in-situ and heap leach) issued for the extraction of uranium from uranium ores including research and development licenses. An "other" license includes licenses for extraction of metals, heavy metals, and rare earths.

<sup>5</sup> There are no existing NRC licenses in these fee categories. If NRC issues a license for these categories, the Commission will consider establishing an annual fee for this type of license.

<sup>6</sup> Standardized spent fuel facilities, 10 CFR parts 71 and 72 Certificates of Compliance, and special reviews, such as topical reports, are not assessed an annual fee because the generic costs of regulating these activities are primarily attributable to users of the designs, certificates, and topical reports.

<sup>7</sup> Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while they are licensed to operate.

<sup>8</sup> No annual fee is charged because it is not practical to administer due to the relatively short life or temporary nature of the license.

<sup>9</sup> Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions who also hold nuclear medicine licenses under Categories 7B or 7C.

<sup>10</sup> This includes Certificates of Compliance issued to DOE that are not under the Nuclear Waste Fund.

<sup>11</sup> See § 171.15(c).

<sup>12</sup> See § 171.15(c).

<sup>13</sup> No annual fee is charged for this category because the cost of the general license registration program will be recovered through 10 CFR part 170 fees.

(e) The activities comprising the surcharge are as follows:

(1) LLW disposal generic activities;  
(2) Activities not directly attributable to an existing NRC licensee or class(es) of licenses; e.g., international cooperative safety program and international safeguards activities;

support for the Agreement State program; Site Decommissioning Management Plan (SDMP) activities; and

(3) Activities not currently assessed licensing and inspection fees under 10 CFR part 170 based on existing law or Commission policy (e.g., reviews and

inspections of nonprofit educational institutions and reviews for Federal agencies; activities related to decommissioning and reclamation; and costs that would not be collected from small entities based on Commission policy in accordance with the

Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*).

Dated at Rockville, Maryland, this 13th day of June, 2002.

For the Nuclear Regulatory Commission.

**Jesse L. Funches,**  
*Chief Financial Officer.*

**Note:** This Appendix will not appear in the Code of Federal Regulations.

## **Appendix A to This Final Rule—Draft Regulatory Flexibility Analysis for the Amendments to 10 CFR Part 170 (License Fees) and 10 CFR Part 171 (Annual Fees)**

### **I. Background**

The Regulatory Flexibility Act (RFA), as amended, (5 U.S.C. 601 *et seq.*) requires that agencies consider the impact of their rulemakings on small entities and, consistent with applicable statutes, consider alternatives to minimize these impacts on the businesses, organizations, and government jurisdictions to which they apply.

The NRC has established standards for determining which NRC licensees qualify as small entities (10 CFR 2.810). These size standards reflect the Small Business Administration's most common receipts-based size standards and include a size standard for business concerns that are manufacturing entities. The NRC uses the size standards to reduce the impact of annual fees on small entities by establishing a licensee's eligibility to qualify for a maximum small entity fee. The small entity fee categories in § 171.16(c) of this final rule are based on the NRC's size standards.

From FY 1991 through FY 2000, the Omnibus Budget Reconciliation Act (OBRA-90), as amended, required that the NRC recover approximately 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund, by assessing license and annual fees. The FY 2001 Energy and Water Development Appropriations Act amended OBRA-90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005. In addition, for FY 2002, \$36 million has been appropriated from the General Fund, and therefore not subject to fee recovery, for activities related to homeland security. The amount to be recovered for FY 2002 is approximately \$479.5 million.

OBRA-90 requires that the schedule of charges established by rule should fairly and equitably allocate the total amount to be recovered from the NRC's licensees and be assessed under the principle that licensees who require the greatest expenditure of agency resources pay the greatest annual charges. Since FY 1991, the NRC has complied with OBRA-90 by issuing a final rule that amends its fee regulations. These final rules have established the methodology used by NRC in identifying and determining the fees to be assessed and collected in any given fiscal year.

In FY 1995, the NRC announced that, in order to stabilize fees, annual fees would be adjusted only by the percentage change (plus

or minus) in NRC's total budget authority, adjusted for changes in estimated collections for 10 CFR part 170 fees, the number of licensees paying annual fees, and as otherwise needed to assure the billed amounts resulted in the required collections. The NRC indicated that if there were a substantial change in the total NRC budget authority or the magnitude of the budget allocated to a specific class of licenses, the annual fee base would be recalculated.

In FY 2001, the NRC concluded that there had been significant changes in the allocation of agency resources among the various classes of licenses and established rebaselined annual fees for FY 2001.

Based on the change in the magnitude of the budget to be recovered through fees, the Commission has determined that it is appropriate to rebaseline its part 171 annual fees again in FY 2002. Rebaselining fees results in increased annual fees for a majority of the categories of licenses, and decreased annual fees for other categories.

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) is intended to reduce regulatory burdens imposed by Federal agencies on small businesses, nonprofit organizations, and governmental jurisdictions. SBREFA also provides Congress with the opportunity to review agency rules before they go into effect. Under this legislation, the NRC annual fee rule is considered a "major" rule and must be reviewed by Congress and the Comptroller General before the rule becomes effective. SBREFA also requires that an agency prepare a guide to assist small entities in complying with each rule for which a final regulatory flexibility analysis is prepared. This Regulatory Flexibility Analysis (RFA) and the small entity compliance guide (Attachment 1) have been prepared for the FY 2002 fee rule as required by law.

### **II. Impact on Small Entities**

The fee rule results in substantial fees being charged to those individuals, organizations, and companies that are licensed by the NRC, including those licensed under the NRC materials program. The comments received on previous proposed fee rules and the small entity certifications received in response to previous final fee rules indicate that NRC licensees qualifying as small entities under the NRC's size standards are primarily materials licensees. Therefore, this analysis will focus on the economic impact of the annual fees on materials licensees. About 20 percent of these licensees (approximately 1,300 licensees for FY 2001) have requested small entity certification in the past. A 1993 NRC survey of its materials licensees indicated that about 25 percent of these licensees could qualify as small entities under the NRC's size standards.

The commenters on previous fee rulemakings consistently indicated that the following results would occur if the proposed annual fees were not modified:

1. Large firms would gain an unfair competitive advantage over small entities. Commenters noted that small and very small companies ("Mom and Pop" operations) would find it more difficult to absorb the

annual fee than a large corporation or a high-volume type of operation. In competitive markets, such as soils testing, annual fees would put small licensees at an extreme competitive disadvantage with their much larger competitors because the proposed fees would be the same for a two-person licensee as for a large firm with thousands of employees.

2. Some firms would be forced to cancel their licenses. A licensee with receipts of less than \$500,000 per year stated that the proposed rule would, in effect, force it to relinquish its soil density gauge and license, thereby reducing its ability to do its work effectively. Other licensees, especially well-loggers, noted that the increased fees would force small businesses to get rid of the materials license altogether. Commenters stated that the proposed rule would result in about 10 percent of the well-logging licensees terminating their licenses immediately and approximately 25 percent terminating their licenses before the next annual assessment.

3. Some companies would go out of business.

4. Some companies would have budget problems. Many medical licensees noted that, along with reduced reimbursements, the proposed increase of the existing fees and the introduction of additional fees would significantly affect their budgets. Others noted that, in view of the cuts by Medicare and other third party carriers, the fees would produce a hardship and some facilities would experience a great deal of difficulty in meeting this additional burden.

Approximately 3,000 license, approval, and registration terminations have been requested since the NRC first established annual fees for materials licensees. Although some of these terminations were requested because the license was no longer needed or licenses or registrations could be combined, indications are that other termination requests were due to the economic impact of the fees.

To alleviate the significant impact of the annual fees on a substantial number of small entities, the NRC considered the following alternatives in accordance with the RFA, in developing each of its fee rules since FY 1991.

1. Base fees on some measure of the amount of radioactivity possessed by the licensee (*e.g.*, number of sources).

2. Base fees on the frequency of use of the licensed radioactive material (*e.g.*, volume of patients).

3. Base fees on the NRC size standards for small entities.

The NRC has reexamined its previous evaluations of these alternatives and continues to believe that establishment of a maximum fee for small entities is the most appropriate and effective option for reducing the impact of its fees on small entities.

### **III. Maximum Fee**

The RFA and its implementing guidance do not provide specific guidelines on what constitutes a significant economic impact on a small entity; therefore, the NRC has no benchmark to assist it in determining the amount or the percent of gross receipts that should be charged to a small entity. In

developing the maximum small entity annual fee in FY 1991, the NRC examined its 10 CFR part 170 licensing and inspection fees and Agreement State fees for those fee categories which were expected to have a substantial number of small entities. Six Agreement States, Washington, Texas, Illinois, Nebraska, New York, and Utah, were used as benchmarks in the establishment of the maximum small entity annual fee in FY 1991. Because small entities in those Agreement States were paying the fees, the NRC concluded that these fees did not have a significant impact on a substantial number of small entities. Therefore, those fees were considered a useful benchmark in establishing the NRC maximum small entity annual fee.

The NRC maximum small entity fee was established as an annual fee only. In addition to the annual fee, NRC small entity licensees were required to pay amendment, renewal and inspection fees. In setting the small entity annual fee, NRC ensured that the total amount small entities paid annually would not exceed the maximum paid in the six benchmark Agreement States.

Of the six benchmark states, the maximum Agreement State fee of \$3,800 in Washington was used as the ceiling for the total fees. Thus the NRC's small entity fee was developed to ensure that the total fees paid by NRC small entities would not exceed \$3,800. Given the NRC's FY 1991 fee structure for inspections, amendments, and renewals, a small entity annual fee established at \$1,800 allowed the total fee (small entity annual fee plus yearly average for inspections, amendments and renewal fees) for all categories to fall under the \$3,800 ceiling.

In FY 1992, the NRC introduced a second, lower tier to the small entity fee in response to concerns that the \$1,800 fee, when added to the license and inspection fees, still imposed a significant impact on small entities with relatively low gross annual receipts. For purposes of the annual fee, each small entity size standard was divided into an upper and lower tier. Small entity licensees in the upper tier continued to pay an annual fee of \$1,800 while those in the lower tier paid an annual fee of \$400.

Based on the changes that had occurred since FY 1991, the NRC re-analyzed its maximum small entity annual fees in FY 2000, and determined that the small entity fees should be increased by 25 percent to reflect the increase in the average fees paid by other materials licensees since FY 1991 as well as changes in the fee structure for materials licensees. The structure of the fees that NRC charged to its materials licensees changed during the period between 1991 and 1999. Costs for materials license inspections, renewals, and amendments, which were previously recovered through part 170 fees for services, are now included in the part 171 annual fees assessed to materials licensees. As a result, the maximum small entity annual fee increased from \$1,800 to \$2,300 in FY 2000. By increasing the maximum annual fee for small entities from \$1,800 to \$2,300, the annual fee for many small entities was reduced while at the same time materials licensees, including small entities, would

pay for most of the costs attributable to them. The costs not recovered from small entities are allocated to other materials licensees and to power reactors.

While reducing the impact on many small entities, the NRC determined that the maximum annual fee of \$2,300 for small entities may continue to have a significant impact on materials licensees with annual gross receipts in the thousands of dollars range. Therefore, the NRC continued to provide a lower-tier small entity annual fee for small entities with relatively low gross annual receipts, and for manufacturing concerns and educational institutions not State or publicly supported, with less than 35 employees. The NRC also increased the lower tier small entity fee by the same percentage increase to the maximum small entity annual fee. This 25 percent increase resulted in the lower tier small entity fee increasing from \$400 to \$500 in FY 2000.

Unlike the annual fees assessed to other licensees, the small entity fees are not designed to recover the agency costs associated with particular licensees; rather, they are designed to provide some fee relief for qualifying small entity licensees while at the same time recovering from those licensees some of the agency's costs for activities that benefit them. The costs not recovered from small entities must be recovered from other licensees. The current small entity fees of \$500 and \$2,300 provide considerable relief to many small entities.

As stated in the FY 2001 Regulatory Flexibility Analysis, (66 FR 32452; June 14, 2001), the NRC will re-examine the small entity fees every two years, in the same years in which it conducts the biennial review of fees as required by the CFO Act, instead of each year that annual fees are rebaselined as indicated in the FY 2000 fee rule (65 FR 36946; June 12, 2000). Therefore, the FY 2002 small entity annual fee will remain at \$2,300, and the lower tier small entity annual fee will remain at \$500. The NRC plans to re-examine the small entity fees in FY 2003.

#### IV. Summary

The NRC has determined that the 10 CFR part 171 annual fees significantly impact a substantial number of small entities. A maximum fee for small entities strikes a balance between the requirement to recover 96 percent of the NRC budget and the requirement to consider means of reducing the impact of the fee on small entities. On the basis of its regulatory flexibility analysis, the NRC concludes that a maximum annual fee of \$2,300 for small entities and a lower-tier small entity annual fee of \$500 for small businesses and not-for-profit organizations with gross annual receipts of less than \$350,000, small governmental jurisdictions with a population of less than 20,000, small manufacturing entities that have less than 35 employees, and educational institutions that are not State or publicly supported and have less than 35 employees reduces the impact on small entities. At the same time, these reduced annual fees are consistent with the objectives of OBRA-90. Thus, the fees for small entities maintain a balance between the objectives of OBRA-90 and the RFA. Therefore, the analysis and conclusions

established in the FY 2001 fee rule remain valid for FY 2002.

#### Attachment 1 to Appendix A

#### U.S. Nuclear Regulatory Commission, Small Entity Compliance Guide, Fiscal Year 2002

##### Contents

Introduction

NRC Definition of Small Entity

NRC Small Entity Fees

Instructions for Completing NRC Form 526

##### Introduction

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires all Federal agencies to prepare a written guide for each "major" final rule as defined by the Act. The NRC's fee rule, published annually to comply with the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), as amended, is considered a "major" rule under SBREFA. Therefore, in compliance with the law, this guide has been prepared to assist NRC material licensees in complying with the FY 2002 fee rule.

Licensees may use this guide to determine whether they qualify as a small entity under NRC regulations and are eligible to pay reduced FY 2002 annual fees assessed under 10 CFR part 171. The NRC has established two tiers of separate annual fees for those materials licensees who qualify as small entities under NRC's size standards.

Licensees who meet NRC's size standards for a small entity must submit a completed NRC Form 526 "Certification of Small Entity Status for the Purposes of Annual Fees Imposed Under 10 CFR part 171" to qualify for the reduced annual fee. This form can be accessed on the NRC's Web site at <http://www.nrc.gov>. The form can then be accessed by selecting "License Fees" and under "Forms" selecting NRC Form 526. For licensees who cannot access the NRC's Web site, NRC Form 526 may be obtained through the local point of contact listed in the NRC's "Materials Annual Fee Billing Handbook," NUREG/BR-0238, which is enclosed with each annual fee billing. Alternatively, the form may be obtained by calling the fee staff at 301-415-7554, or by e-mailing the fee staff at [fees@nrc.gov](mailto:fees@nrc.gov). The completed form, the appropriate small entity fee, and the payment copy of the invoice should be mailed to the U.S. Nuclear Regulatory Commission, License Fee and Accounts Receivable Branch, to the address indicated on the invoice. Failure to file the NRC small entity certification Form 526 in a timely manner may result in the denial of any refund that might otherwise be due.

##### NRC Definition of Small Entity

The NRC has defined a small entity for purposes of compliance with its regulations (10 CFR 2.810) as follows:

1. *Small business*—a for-profit concern that provides a service or a concern not engaged in manufacturing with average gross receipts of \$5 million or less over its last 3 completed fiscal years;

2. *Manufacturing industry*—a manufacturing concern with an average number of 500 or fewer employees based upon employment during each pay period for the preceding 12 calendar months;

3. *Small organizations*—a not-for-profit organization which is independently owned and operated and has annual gross receipts of \$5 million or less;

4. *Small governmental jurisdiction*—a government of a city, county, town, township, village, school district or special district with a population of less than 50,000;

5. *Small educational institution*—an educational institution supported by a qualifying small governmental jurisdiction, or one that is not state or publicly supported and has 500 or fewer employees.<sup>1</sup>

To further assist licensees in determining if they qualify as a small entity, we are providing the following guidelines, which are based on the Small Business Administration's regulations (13 CFR part 121).

1. A small business concern is an independently owned and operated entity which is not considered dominant in its field of operations.

2. The number of employees means the total number of employees in the parent company, any subsidiaries and/or affiliates, including both foreign and domestic locations (i.e., not solely the number of employees working for the licensee or conducting NRC licensed activities for the company).

3. Gross annual receipts includes all revenue received or accrued from any source, including receipts of the parent company and any subsidiaries and/or affiliates, and account for both foreign and domestic locations. Receipts include all revenues from sales of products and services, interest, rent, fees, and commissions, from whatever sources derived (i.e., not solely receipts from NRC licensed activities).

4. A licensee who is a subsidiary of a large entity does not qualify as a small entity.

#### NRC Small Entity Fees

In 10 CFR 171.16 (c), the NRC has established two tiers of small entity fees for licensees that qualify under the NRC's size standards. The fees are as follows:

|                                                                                                             | Maximum annual fee per licensed category |
|-------------------------------------------------------------------------------------------------------------|------------------------------------------|
| Small business not engaged in manufacturing and small not-for-profit organizations (gross annual receipts): |                                          |
| \$350,000 to \$5 million .....                                                                              | \$2,300                                  |
| Less than \$350,000 .....                                                                                   | 500                                      |
| Manufacturing entities that have an average of 500 employees or less:                                       |                                          |
| 35 to 500 employees .....                                                                                   | 2,300                                    |
| Less than 35 employees ...                                                                                  | 500                                      |

<sup>1</sup> An educational institution referred to in the size standards is an entity whose primary function is education, whose programs are accredited by a nationally recognized accrediting agency or association, who is legally authorized to provide a program of organized instruction or study, who provides an educational program for which it awards academic degrees, and whose educational programs are available to the public.

|                                                                                                        | Maximum annual fee per licensed category |
|--------------------------------------------------------------------------------------------------------|------------------------------------------|
| Small governmental jurisdictions (including publicly supported educational institutions) (population): |                                          |
| 20,000 to 50,000 .....                                                                                 | 2,300                                    |
| Less than 20,000 .....                                                                                 | 500                                      |
| Educational institutions that are not State or publicly supported, and have 500 employees or less:     |                                          |
| 35 to 500 employees .....                                                                              | 2,300                                    |
| Less than 35 employees ...                                                                             | 500                                      |

To pay a reduced annual fee, a licensee must use NRC Form 526. Licensees can access this form on the NRC's Web site at <http://www.nrc.gov>. The form can then be accessed by selecting "License Fees" and under "Forms" selecting NRC Form 526. Those licensees that qualify as a "small entity" under the NRC size standards at 10 CFR Part 2.810 can complete the form in accordance with the instructions provided, and submit the completed form and the appropriate payment to the address provided on the invoice. For licensees who cannot access the NRC's Web site, NRC Form 526 may be obtained through the local point of contact listed in the NRC's "Materials Annual Fee Billing Handbook," NUREG/BR-0238, which is enclosed with each annual fee invoice. Alternatively, licensees may obtain the form by calling the fee staff at 301-415-7544, or by e-mailing us at [fees@nrc.gov](mailto:fees@nrc.gov).

#### Instructions for Completing NRC Small Entity Form 526

1. File a separate NRC Form 526 for each annual fee invoice received.

2. Complete all items on NRC Form 526 as follows:

a. The license number and invoice number must be entered exactly as they appear on the annual fee invoice.

b. The Standard Industrial Classification (SIC) Code must be entered if known.

c. The licensee's name and address must be entered as they appear on the invoice. Name and/or address changes for billing purposes must be annotated on the invoice. Correcting the name and/or address on NRC Form 526, or on the invoice does not constitute a request to amend the license. Any request to amend a license is to be submitted to the respective licensing staffs in the NRC Regional or Headquarters Offices.

d. Check the appropriate size standard for which the licensee qualifies as a small entity. Check only one box. Note the following:

(1) A licensee who is a subsidiary of a large entity does not qualify as a small entity.

(2) The size standards apply to the licensee, including all parent companies and affiliates—not the individual authorized users listed in the license or the particular segment of the organization that uses licensed material.

(3) Gross annual receipts means all revenue in whatever form received or accrued from whatever sources—not solely receipts from

licensed activities. There are limited exceptions as set forth at 13 CFR 121.104. These are: the term receipts excludes net capital gains or losses; taxes collected for and remitted to a taxing authority if included in gross or total income; proceeds from the transactions between a concern and its domestic or foreign affiliates (if also excluded from gross or total income on a consolidated return filed with the IRS); and amounts collected for another entity by a travel agent, real estate agent, advertising agent, or conference management service provider.

(4) The owner of the entity, or an official empowered to act on behalf of the entity, must sign and date the small entity certification.

The NRC sends invoices to its licensees for the full annual fee, even though some entities qualify for reduced fees as a small entity. Licensees who qualify as a small entity and file NRC Form 526, which certifies eligibility for small entity fees, may pay the reduced fee, which for a full year is either \$2,300 or \$500 depending on the size of the entity, for each fee category shown on the invoice. Licensees granted a license during the first six months of the fiscal year, and licensees who file for termination or for a possession only license and permanently cease licensed activities during the first six months of the fiscal year, pay only 50 percent of the annual fee for that year. Such an invoice states the "Amount Billed Represents 50% Proration." This means the amount due from a small entity is not the prorated amount shown on the invoice, but rather one-half of the maximum annual fee shown on NRC Form 526 for the size standard under which the licensee qualifies, resulting in a fee of either \$1150 or \$250 for each fee category billed, instead of the full small entity annual fee of \$2,300 or \$500.

A new small entity form (NRC Form 526) must be filed with the NRC each fiscal year to qualify for reduced fees in that year. Because a licensee's "size," or the size standards, may change from year to year, the invoice reflects the full fee and a new Form 526 must be completed and returned in order for the fee to be reduced to the small entity fee amount. Licensees will not be issued a new invoice for the reduced amount. The completed NRC Form 526, the payment of the appropriate small entity fee, and the "Payment Copy" of the invoice should be mailed to the U. S. Nuclear Regulatory Commission, License Fee and Accounts Receivable Branch at the address indicated on the invoice.

If you have questions regarding the NRC's annual fees, please call the license fee staff at 301-415-7554, e-mail the fee staff at [fees@nrc.gov](mailto:fees@nrc.gov), or write to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Office of the Chief Financial Officer.

False certification of small entity status could result in civil sanctions being imposed by the NRC under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801 *et seq.* NRC's implementing regulations are found at 10 CFR part 13.

[FR Doc. 02-15591 Filed 6-21-02; 8:45 am]

BILLING CODE 7590-01-P



# Federal Register

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**Monday,  
June 24, 2002**

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## **Part III**

## **Environmental Protection Agency**

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**40 CFR Parts 122 and 450**

**Effluent Limitation Guidelines and New  
Source Performance Standards for the  
Construction and Development Category;  
Proposed Rule**

# ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Parts 122 and 450

[FRL-7217-1]

RIN 2040-AD42

### Effluent Limitation Guidelines and New Source Performance Standards for the Construction and Development Category; Proposed Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing a range of options to address storm water discharges from construction sites. As one option, EPA is proposing technology-based effluent limitation guidelines and standards (ELGs) for storm water discharges from construction sites required to obtain National Pollutant Discharge Elimination System (NPDES) permits. As another option, EPA is proposing not to establish ELGs for storm water discharges from those sites, but to allow technology-based permit requirements to continue to be established based upon the best professional judgment of the permit authority. A third option would establish inspection and certification requirements that would be incorporated into the storm water permits issued by EPA and States, with other permit requirements based on the best professional judgment of the permit authority. This proposal, if implemented, is expected to significantly reduce the amount of sediment discharged from construction sites. The deposition of sediment from construction site runoff has contributed to the loss of capacity in small streams, lakes, and reservoirs, leading to the necessity for mitigation efforts such as dredging or replacement. Today's document also requests comment and information on several variations on these options and several other significant aspects of the proposal, such as technologies, costs, and economics.

**DATES:** EPA must receive comments on the proposal by October 22, 2002. EPA will conduct public meetings for this proposed rule on July 9, 2002; July 23, 2002; July 30, 2002 and additional dates to be announced later.

**ADDRESSES:** Submit written comments to: Comment Clerk, Water Docket (4101), US EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460. (See next paragraph regarding addresses for hand deliveries.) Please refer to Docket No. W-02-06. EPA requests an original and three copies of your comments and

enclosures (including references). Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted. Comments may also be sent via e-mail to [ow-docket@epa.gov](mailto:ow-docket@epa.gov). For additional information on how to submit electronic comments see "SUPPLEMENTARY INFORMATION, How to Submit Comments."

EPA will be holding public meetings on today's proposal on five separate dates. The first three meetings are listed below; EPA will announce the remaining meetings in a subsequent **Federal Register** document and on its website at <http://www.epa.gov/waterscience/guide/construction/>. No registration is required for these meetings. Seating will be provided on a first-come, first-served basis.

- Tuesday, July 9, 2002, 9 a.m.–noon, Hyatt Regency Hotel—San Francisco Airport, 1333 Bayshore Highway, Burlingame, CA, Phone 650-347-1234.
- Tuesday, July 23, 2002, 9 a.m.–noon, Wyndham Garden Hotel—Dallas Park Central, 8051 LBJ Freeway (I-635), Dallas, TX, Phone 972-680-3000.
- Tuesday, July 30, 2002, 9 a.m.–noon, Holiday Inn Chicago—Elmhurst, 624 N. York Rd., Elmhurst, IL, Phone 630-279-1100.

**Meeting Access:** If you need special accommodations at this meeting, including wheelchair access, you should contact the Eastern Research Group Conference Registration Line at 781-674-7374, at least five business days before the meeting so that appropriate arrangements can be made. See "Public Meeting Information" below for additional meeting details.

EPA established the public record for this proposed rulemaking under docket number W-02-06. The record is currently located in the Water Docket, Room EB 57, Waterside Mall, 401 M Street, SW., Washington, DC. The record is available for inspection from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. For access to the docket materials, call 202-260-3027 to schedule an appointment. You may have to pay a reasonable fee for copying. Please note that several of the support documents are available at no charge on EPA's website; see "Supporting Documentation" below. The Water Docket will be moving to a new office location in August 2002. For hand deliveries of comments through August, submit to the above address. Please call the above number for details on the new location.

**FOR FURTHER INFORMATION CONTACT:** For technical information concerning today's proposed rule, contact Mr. Jesse Pritts at 202-566-1038 or Mr. Eric Strassler at 202-566-1026. For economic information contact Mr. George Denning at 202-566-1067.

#### SUPPLEMENTARY INFORMATION:

##### Regulated Entities

Entities potentially regulated by this action include:

| Category    | Examples of regulated entities                                                                          | North American Industry Classification System (NAICS) code |
|-------------|---------------------------------------------------------------------------------------------------------|------------------------------------------------------------|
| Industry .. | Construction site operators disturbing 1 or more acres of land and performing the following activities: |                                                            |
|             | Building, Developing and General Contracting                                                            | 233                                                        |
|             | Heavy Construction                                                                                      | 234                                                        |

EPA does not intend the preceding table to be exhaustive, but provides it as a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 450.10 of today's proposed rule and the definition of "construction activity" and "small construction activity" in existing EPA regulations at 40 CFR 122.26(b)(14)(x) and 122.26(b)(15), respectively. If you have questions regarding the applicability of this action to a particular entity, consult one of the persons listed for technical information in the preceding **FOR FURTHER INFORMATION CONTACT** section.

##### How To Submit Comments

The public may submit comments in written or electronic form. (See the **ADDRESSES** section above.) Electronic comments must be identified by the docket number W-02-06 and must be submitted as a WordPerfect, MS Word or ASCII text file, avoiding the use of special characters and any form of encryption. EPA requests that any graphics included in electronic comments also be provided in hard-copy form. EPA also will accept comments and data on disks in the aforementioned file formats. Electronic comments received on this notice may be filed online at many Federal

Depository Libraries. No confidential business information (CBI) should be sent by e-mail.

### Public Meeting Information

See the **ADDRESSES** section of this document for dates and locations of public meetings. During the meetings, EPA will present information on the applicability of the proposed regulation, the technology options selected as the basis for the proposed limitations and standards, and the compliance costs and pollutant reductions. EPA will also allow time for questions and answers during these sessions. These meetings are not public hearings for the purpose of obtaining comment on the proposal. EPA will not generate a transcript of the meetings. The public may submit comments in writing or electronically as described above.

### Supporting Documentation

Several key documents support the proposed regulations:

1. "Development Document for Proposed Effluent Guidelines and Standards for the Construction and Development Category," EPA-821-R-02-007. ("Development Document") This document presents EPA's methodology and technical conclusions concerning the C&D category.
2. "Economic Analysis of Proposed Effluent Guidelines and Standards for the Construction and Development Category," EPA-EPA-821-R-02-008. ("Economic Analysis") This document presents the methodology employed to assess economic and environmental impacts of the proposed rule and the results of the analysis.
3. "Environmental Assessment for Proposed Effluent Guidelines and Standards for the Construction and Development Category," EPA-EPA-821-R-02-009. ("Environmental Assessment")

Major supporting documents are available in hard copy from the National Service Center for Environmental Publications (NSCEP), U.S. EPA/NSCEP, P.O. Box 42419, Cincinnati, Ohio, USA 45242-2419, telephone 800-490-9198, <http://www.epa.gov/ncepihom/>. You can obtain electronic copies of this preamble and proposed rule as well as the technical and economic support documents for today's proposal at EPA's website for the C&D rule, <http://www.epa.gov/waterscience/guide/construction>.

### Overview

The preamble describes the terms, acronyms, and abbreviations used in this notice; the background documents that support these proposed regulations;

the legal authority of these rules; a summary of the proposal; background information; and the technical and economic methodologies used by the Agency to develop these regulations. This preamble also solicits comment and data on specific areas of interest.

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## I. Legal Authority

EPA is proposing this regulation under the authorities of sections 301, 304, 306, 308, 402 and 501 of the Clean Water Act (CWA), 33 U.S.C. 1311, 1314, 1316, 1318, 1342 and 1361 and pursuant to the Pollution Prevention Act of 1990, 42 U.S.C. 13101 *et seq.*

## II. Purpose and Summary of Proposed Rule

Construction and development (C&D) activity affecting water quality typically involves site selection and planning, and land-disturbing tasks during construction such as clearing, excavating and grading. Disturbed soil, if not managed properly, can be easily washed off-site during storm events. Storm water discharges generated during construction activities can cause an array of physical, chemical and biological impacts. Water quality impairment may result, in part, because a number of pollutants are preferentially absorbed onto mineral or organic particles found in fine sediment. The interconnected process of erosion (detachment of the soil particles), sediment transport, and delivery is the

primary pathway for introducing pollutants from construction sites into aquatic systems.

A primary concern at most construction sites is the erosion and transport process related to fine sediment because rain splash, rills (small channels typically less than one foot deep) and sheetwash (thin sheets of water flowing across a surface) encourage the detachment and transport of this material to water bodies. Although streams and rivers naturally carry sediment loads, erosion from construction sites and runoff from developed areas can elevate these loads to levels above those in undisturbed watersheds.

Existing national storm water regulations require construction site operators to implement controls to manage construction site runoff, but do not require any specific level of control. One of today's proposed approaches (Option 2) would establish effluent limitation guidelines in the form of minimum standards for design and implementation of erosion and sediment controls used during the active phase of construction. This approach would cover sites with five or more acres of disturbed land, and would establish minimum requirements for conducting site inspections and providing certification as to the design and completion of various aspects of those controls.

EPA acknowledges that many State and local governments have existing standards for temporary controls. Today's proposed effluent guidelines are intended to work in concert with existing requirements where equivalent, and would not supercede more stringent requirements.

In addition, EPA is proposing two alternatives that would not set national standards for control of storm water discharges from construction sites subject to permit requirements under section 402 of the CWA. Both of these approaches would rely instead on a combination of existing State and local requirements and additional requirements based on the best professional judgement (BPJ) of the permitting authority. Under one of these alternatives (Option 1), the proposal would establish minimum requirements for conducting site inspections and providing certification as to design and completion of controls required by the permit authority in its NPDES permit. These requirements are similar to the inspection and certification requirements in Option 2. Existing compliance determination practices for construction site storm water controls rely principally on site inspections by

local governments, however, enforcement efforts are reported to be uneven nationwide, largely due to limited enforcement resources at the Federal, State and local levels. The inspection and certification requirements in today's proposed rule could strengthen the current permit program.

Under another alternative (Option 3), no new requirements would be established under this option. Both the control requirements and the certification requirements would be left to the best professional judgement of the permitting authority in order to allow them to be better tailored to local conditions. These proposed options are discussed in more detail in sections IX and X of today's notice. At this time, EPA is co-proposing all three options because it sees advantages to each.

## III. Background

### A. Clean Water Act

Congress adopted the Clean Water Act (CWA) to "restore and maintain the chemical, physical, and biological integrity of the nation's waters" (Section 101(a), 33 U.S.C. 1251(a)). To achieve this goal, the CWA prohibits the discharge of pollutants into navigable waters except in compliance with the statute. CWA section 402 requires "point source" discharges to obtain a permit under the National Pollutant Discharge Elimination System (NPDES). These permits are issued by EPA regional offices or authorized State agencies.

Following enactment of the Federal Water Pollution Control Amendments of 1972 (Public Law 92-500, October 18, 1972), EPA and the States issued NPDES permits to thousands of dischargers, both industrial (e.g. manufacturing, energy and mining facilities) and municipal (sewage treatment plants). As required under Title III of the Act, EPA promulgated effluent limitation guidelines and standards for many industrial categories, and these requirements are incorporated into the permits.

The Water Quality Act of 1987 (Public Law 100-4, February 4, 1987) amended the CWA. The NPDES program was expanded by defining municipal and industrial storm water discharges as point sources. Industrial storm water dischargers, municipal separate storm sewer systems and other storm water dischargers designated by EPA must obtain NPDES permits pursuant to section 402(p) (33 U.S.C. 1342(p)).

### B. NPDES Storm Water Permit Program

EPA's initial storm water regulations, promulgated in 1990, identified construction as one of several types of industrial activity requiring an NPDES permit. These "Phase I" storm water regulations require operators of large construction sites to apply for permits (40 CFR 122.26(b)(14)(x)). A large-site construction activity is one that:

- Will disturb five acres or greater; or
- Will disturb less than five acres but

is part of a larger common plan of development or sale whose total land disturbing activities total five acres or greater (or is designated by the NPDES permitting authority); and

- Will discharge storm water runoff from the construction site through a municipal separate storm sewer system (MS4) or otherwise to waters of the United States.

The Phase II storm water rule, promulgated in 1999, generally extends permit coverage to sites one acre or greater (40 CFR 122.26(b)(15)).

In addition to requiring permits for construction site discharges, the NPDES regulations require permits for certain MS4s. The local governments responsible for the MS4s must operate a storm water management program. The local programs regulate a variety of business activities that affect storm water runoff, including construction, and the components of these programs are described in section III.B.2 of today's document.

#### 1. Storm Water Permits for Construction: General and Individual

Pursuant to the NPDES Phase I storm water regulations at 40 CFR 122.26, EPA and the States began issuing permits for storm water discharges from large construction sites in 1992. The Phase II rule requires that permits for smaller sites be obtained starting in 2003. A general description of the basic requirements for the Phase I and Phase II regulations follows.

a. General Permits. The vast majority of construction sites are covered by general permits. EPA and States use general permits to cover a group of similar dischargers under one permit. See 40 CFR 122.28. General permits simplify the application process for the industry, provide uniform requirements across covered sites, and reduce administrative workload for the permit authorities. EPA and the States have published documents containing the construction general permits, along with forms and related procedures. To obtain coverage under a general permit, the permittee—either the developer, builder or contractor for a construction

project—submits a Notice of Intent (NOI) to the permit authority. The NOI takes the place of a lengthier application package that generally would be used for an individual NPDES permit. By submitting the NOI, the permittee agrees to the conditions in the published permit. The permittee may begin land disturbance after a specified interval (typically 48 hours) following NOI submission unless otherwise notified or specified by the permit authority.

b. EPA Construction General Permit. EPA's Construction General Permit (CGP) covers construction activities in six states, the District of Columbia, Puerto Rico, U.S. territories, and specifically designated portions of other states such as Indian Country and Federal facilities. The "national" CGP, covering all the EPA Regions except Regions 4, 5 and 6, was published on February 17, 1998 (63 FR 7898). EPA has placed a copy of the "national" CGP in the docket for today's proposal. Slightly different versions of the permit for Regions 4 and 6 were published on April 28, 2000 (65 FR 25122) and July 6, 1998 (63 FR 36490) respectively. (EPA does not issue NPDES permits for states within Region 5.) EPA intends to issue a revised CGP later in 2002 to incorporate requirements promulgated in the Phase II rule.

The principal requirement in the CGP is the preparation of a storm water pollution prevention plan (SWPPP) before submission of the NOI. EPA's guidance manual, "Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices," (EPA 832/R-92-005, October 1, 1992; available on EPA's website at <http://www.epa.gov/npdes/stormwater>) describes the SWPPP process in detail. The plan must include a description of the site, with maps showing drainage, discharge points, and location of runoff controls; a description of the "best management practices" (BMPs)<sup>1</sup> used;

<sup>1</sup> The term "best management practices" (BMP) is mentioned in a few sections of the Clean Water Act, and is used extensively in EPA regulations, guidance documents, state and local government documents, and many other technical publications. The term has a variety of meanings within the water quality literature, and is used in situations involving both point sources and nonpoint sources. BMPs can be procedures for operation and maintenance of municipal or industrial treatment plants, training courses for plant employees, public notification procedures, or agricultural waste handling practices, as well as both structural and non-structural techniques for controlling storm water discharges from any source. Within the storm water field, some publications use the term "BMPs" when referring to erosion and sediment controls. To avoid confusion, in today's document EPA is using the terms "erosion and sediment controls" (ESC) and "temporary BMPs" to describe the temporary controls used by construction site operators during

inspection procedures and reports. A copy of the plan must be kept on the construction site from the date of project initiation to the date of final stabilization. Permittees do not routinely submit plans to the permit authority, but a copy must be readily available to authorized inspectors during normal business hours. EPA's construction general permit does not require that specific BMPs be contained in the SWPPP, except that temporary sediment basins shall be used on sites with 10 or more acres disturbed at one time. Rather, the permit describes the general areas the plan must address (e.g., minimization of erosion, containment of sediment on the site, proper handling of chemicals and debris, etc.) and leaves it to the operator to develop appropriate site-specific measures to accomplish these purposes.

EPA encourages multiple operators at a construction site to develop a comprehensive SWPPP. Other requirements in the CGP include conducting regular inspections and reporting releases of reportable quantities of hazardous substances.

To discontinue permit coverage, an operator must complete final stabilization of the site, transfer responsibility to another party (e.g., a developer transferring land to a home builder), or for a residential property, complete temporary stabilization and transfer to the homeowner. The permittee submits a Notice of Termination (NOT) Form to the permit authority upon satisfying the appropriate permit conditions described in the CGP.

c. State Construction General Permits. For the most part, the state general permits have followed EPA's format. Some states have modified requirements in their permits. For example, California has added discharge monitoring requirements for sites where the receiving water body is listed as impaired (water quality-limited) for sedimentation. (California State Water Resources Control Board, Resolution No. 2001-046, April 26, 2001; <http://www.swrcb.ca.gov/resdec/resltn/2001/01res.html>) and Georgia has added monitoring requirements for all sites (Georgia Department of Natural Resources, Environmental Protection Division, General NPDES Permit For Storm Water Discharges From Construction Activities, No. GAR100000, June 12, 2000; <http://>

the period of land disturbance, and "storm water management BMPs" to refer to the techniques and technologies designed and installed by operators for long-term control of storm water discharges.

[www.DNR.State.Ga.US/dnr/envIRON/techguide\\_files/techguide.htm](http://www.DNR.State.Ga.US/dnr/envIRON/techguide_files/techguide.htm).

d. Individual Permits. A permit authority may require any site to apply for an individual permit rather than using the general permit. The individual permit is most often used for complex projects and/or projects located in sensitive watersheds. State storm water permit coordinators have informed EPA that this provision has been rarely used for construction activities.

## 2. Municipal Storm Water Permits and Local Government Regulation of Construction Activity

Many local governments, as MS4 permittees, have a role in the co-regulation of construction industries along with States and EPA, and are responsible for overseeing long-term maintenance of storm water management facilities. This section describes regulatory programs operated by MS4s.

a. NPDES Requirements. The NPDES storm water regulations require that MS4s apply for permits. In general, the Phase I rule covers MS4s serving populations of 100,000 or more. The Phase II rule extends coverage to most other MS4s in urbanized areas, and NPDES agencies may designate additional MS4s outside of urbanized areas for permit coverage based on State-specific criteria.

The regulations contemplate that each MS4 generally will operate a local storm water management program in order to properly control discharges into, and hence out of, its MS4. The Phase II MS4 regulations specifically anticipate a local program for regulating storm water discharges from construction activity and managing "post-construction" (long-term) runoff. Permits for Phase I MS4s, while not specifically required by the regulations to do so, typically administer such programs as well. See 40 CFR 122.26(d) for Phase I MS4s and 40 CFR 122.34(a) for Phase II MS4s. EPA has provided guidance to the NPDES agencies and MS4s that recommends components and activities for a well-operated local storm water management program.

b. EPA Guidance to Municipalities. EPA has issued several guidance documents to municipalities to implement the NPDES Phase II rule.

- National Menu of BMPs (<http://www.epa.gov/npdes/menuofbmps/menu.htm>). This document provides guidance to regulated small MS4s as to the types of practices they could use to develop and implement their storm water management programs. The menu includes descriptions of BMPs that local programs can implement to reduce

impacts of storm water discharges from construction activities and long-term runoff.

- Measurable Goals Guidance (<http://www.epa.gov/npdes/stormwater/measurablegoals>). This document assists small MS4s in defining performance targets for each of the six minimum measures described above. Included in the guidance are examples of goals for BMPs to control storm water discharges from construction activities and urban runoff.

- Storm Water Phase II Compliance Assistance Guide (EPA 833-R-00-002, March 2000, [http://cfpub.epa.gov/npdes/stormwater/smms4.cfm?program\\_id=6](http://cfpub.epa.gov/npdes/stormwater/smms4.cfm?program_id=6)). The guide provides an overview of compliance responsibilities for MS4s, small construction sites, and certain other industrial storm water discharges affected by the Phase II rule.

- Fact Sheets on various storm water control technologies, including hydrodynamic separators (EPA 832-F-99-017), infiltrative practices (EPA 832-F-99-018 and EPA 832-F-99-019), modular treatment systems (EPA 832-F-99-044), porous pavement (EPA 832-F-99-023), sand filters (EPA 832-F-99-007), turf reinforcement mats (EPA 832-F-99-002), vegetative covers (EPA 832-F-99-027) and swales (EPA 832-F-99-006), wet detention ponds (EPA 832-F-99-048). (All fact sheets published 1999. Available at <http://www.epa.gov/npdes/stormwater/>; click on "Publications.")

## C. Other State and Local Storm Water Requirements

States and municipalities may have other requirements for flood control, erosion and sediment (E&S) control, and in many cases, storm water quality. Many of these provisions were enacted before the promulgation of the EPA Phase I storm water rule. All states have laws for E&S control, and these are often implemented by MS4's. A summary of existing state and local requirements is provided in the Development Document.

## D. Effluent Guidelines and Standards Program

Effluent limitation guidelines and standards (hereinafter referred to as "effluent guidelines" or "ELGs") are technology-based requirements for categories of point source dischargers. These limitations are subsequently incorporated into NPDES permits. The effluent guidelines are based on the degree of control that can be achieved using various levels of pollution control technology, as defined in Title III of the CWA and outlined below.

## 1. Best Practicable Control Technology Currently Available (BPT)

In guidelines for a point source category, EPA may define BPT effluent limits for conventional, toxic,<sup>2</sup> and non-conventional pollutants. In specifying BPT, EPA looks at a number of factors. EPA first considers the cost of achieving effluent reductions in relation to the effluent reduction benefits. The Agency also considers the age of the equipment and facilities, the processes employed and any required process changes, engineering aspects of the control technologies, non-water quality environmental impacts (including energy requirements), and such other factors as the Agency deems appropriate (CWA section 304(b)(1)(B)). Traditionally, EPA establishes BPT effluent limitations based on the average of the best performance of facilities within the category of various ages, sizes, processes or other common characteristics. Where existing performance is uniformly inadequate, EPA may require higher levels of control than currently in place in a category if the Agency determines that the technology can be practically applied. See "A Legislative History of the Federal Water Pollution Control Act Amendments of 1972," U.S. Senate Committee of Public Works, Serial No. 93-1, January 1973, p. 1468.

In addition, the Act requires a cost-reasonableness assessment for BPT limitations. In determining the BPT limits, EPA considers the total cost of treatment technologies in relation to the effluent reduction benefits achieved. This inquiry does not limit EPA's broad discretion to adopt BPT limitations that are achievable with available technology unless the required additional reductions are "wholly out of proportion to the costs of achieving such marginal level of reduction." See Legislative History, op. cit., p. 170. Moreover, the inquiry does not require the Agency to quantify benefits in monetary terms. See, for example, *American Iron and Steel Institute v. EPA*, 526 F. 2d 1027 (3rd Cir., 1975).

In balancing costs against the benefits of effluent reduction, EPA considers the volume and nature of expected discharges after application of BPT, the

<sup>2</sup> In the initial stages of EPA CWA regulation, EPA efforts emphasized the achievement of BPT limitations for control of the "classical" pollutants (e.g., TSS, pH, BOD<sub>5</sub>). However, nothing on the face of the statute explicitly restricted BPT limitation to such pollutants. Following passage of the Clean Water Act of 1977 (Public Law 95-217, December 27, 1977) with its requirement for point sources to achieve best available technology limitations to control discharges of toxic pollutants, EPA shifted its focus to developing BAT limitations for the listed priority toxic pollutants.

general environmental effects of pollutants, and the cost and economic impacts of the required level of pollution control. In past effluent limitation guidelines and standards, BPT cost-reasonableness removal figures have ranged from \$0.21 to \$33.71 per pound removed in year 2000 dollars. In developing guidelines, the Act does not require consideration of water quality problems attributable to particular point sources, or water quality improvements in particular bodies of water. Accordingly, EPA has not considered these factors in developing the limitations being proposed today. See *Weyerhaeuser Company v. Costle*, 590 F. 2d 1011 (D.C. Cir. 1978).

## 2. Best Available Technology Economically Achievable (BAT)

In general, BAT effluent guidelines (CWA section 304(b)(2)) represent the best existing economically achievable performance of direct discharging plants in the subcategory or category. The factors considered in assessing BAT include the cost of achieving BAT effluent reductions, the age of equipment and facilities involved, the processes employed, engineering aspects of the control technology, potential process changes, non-water quality environmental impacts (including energy requirements), and such factors as the Administrator deems appropriate. The Agency retains considerable discretion in assigning the weight to be accorded to these factors. An additional statutory factor considered in setting BAT is "economic achievability." Generally, EPA determines the economic achievability on the basis of the total cost to the subcategory and the overall effect of the rule on the industry's financial health. The Agency may base BAT limitations upon effluent reductions attainable through changes in a facility's processes and operations. As with BPT, where existing performance is uniformly inadequate, EPA may base BAT upon technology transferred from a different subcategory or from another category. In addition, the Agency may base BAT upon manufacturing process changes or internal controls, even when these technologies are not common industry practice.

## 3. Best Conventional Pollutant Control Technology (BCT)

The 1977 amendments to the CWA required EPA to identify effluent reduction levels for conventional pollutants associated with BCT technology for discharges from existing point sources. BCT is not an additional limitation, but replaces Best Available

Technology (BAT) for control of conventional pollutants. In addition to other factors specified in section 304(b)(4)(B), the CWA requires that EPA establish BCT limitations after consideration of a two-part "cost-reasonableness" test. EPA explained its methodology for the development of BCT limitations in July 1986 (51 FR 24974).

Section 304(a)(4) designates the following as conventional pollutants: Biochemical oxygen demand (BOD<sub>5</sub>), total suspended solids (TSS), fecal coliform, pH, and any additional pollutants defined by the Administrator as conventional. The Administrator designated oil and grease as an additional conventional pollutant on July 30, 1979 (44 FR 44501). A primary pollutant of concern at construction sites, sediment, is measured as TSS.

## 4. New Source Performance Standards (NSPS)

NSPS reflect effluent reductions that are achievable based on the best available demonstrated control technology. New facilities have the opportunity to install the best and most efficient production processes and wastewater treatment technologies. As a result, NSPS should represent the greatest degree of effluent reduction attainable through the application of the best available demonstrated control technology for all pollutants (i.e., conventional, non-conventional, and priority pollutants). In establishing NSPS, CWA section 306 directs EPA to take into consideration the cost of achieving the effluent reduction and any non-water quality environmental impacts and energy requirements.

## 5. Pretreatment Standards

The CWA also defines standards for indirect discharges, i.e. discharges into publicly owned treatment works (POTWs). These are Pretreatment Standards for Existing Sources (PSES) and Pretreatment Standards for New Sources (PSNS) under section 307(b). Because EPA has identified no deliberate discharges directly to POTWs, EPA is not proposing PSES or PSNS for the Construction and Development Category. The information reviewed by the Agency indicates that the vast majority of construction sites discharge either directly to waters of the U.S. or through MS4s. In some urban areas, construction sites discharge to combined sewer systems (i.e., sewers carrying both storm water and domestic sewage through a single pipe) which lead to POTWs. Sediment is susceptible to treatment in POTWs, using technologies commonly employed such

as primary clarification, and EPA has no evidence of interference, pollutant pass-through or sludge contamination.

## 6. Effluent Guidelines Plan and Consent Decree

Clean Water Act section 304(m) requires EPA to publish a plan every two years that consists of three elements. First, under section 304(m)(1)(A), EPA is required to establish a schedule for the annual review and revision of existing effluent guidelines in accordance with section 304(b). Section 304(b) applies to ELGs for direct dischargers and requires EPA to revise such regulations as appropriate. Second, under section 304(m)(1)(B), EPA must identify categories of sources discharging toxic or nonconventional pollutants for which EPA has not published BAT ELGs under section 304(b)(2) or new source performance standards under section 306. Finally, under section 304(m)(1)(C), EPA must establish a schedule for the promulgation of BAT and NSPS for the categories identified under subparagraph (B) not later than three years after being identified in the 304(m) plan. Section 304(m) does not apply to pretreatment standards for indirect dischargers, which EPA promulgates pursuant to section 307(b) and 307(c) of the Act.

On October 30, 1989, Natural Resources Defense Council, Inc. (NRDC), and Public Citizen, Inc., filed an action against EPA in which they alleged, among other things, that EPA had failed to comply with section 304(m). Plaintiffs and EPA agreed to a settlement of that action in a consent decree entered on January 31, 1992. (*Natural Resources Defense Council et al v. Whitman*, D.D.C. Civil Action No. 89-2980). The consent decree, which has been modified several times, established a schedule by which EPA is to propose and take final action for eleven point source categories identified by name in the decree and for eight other point source categories identified only as new or revised rules, numbered 5 through 12. EPA selected the Construction and Development category as the subject for New or Revised Rule #10. The decree, as modified, calls for the Administrator to sign a proposed ELG for the C&D category no later than May 15, 2002, and to take final action on that proposal no later than March 31, 2004. A settlement agreement between the parties, signed on June 28, 2000, requires that EPA develop regulatory options applicable to discharges from construction, development and redevelopment, covering site sizes included in the Phase I and Phase II

NPDES storm water rules (i.e. one acre or greater). EPA is required to develop options including numeric effluent limitations for sedimentation and turbidity; control of construction site pollutants other than sedimentation and turbidity (e.g. discarded building materials, concrete truck washout, trash); BMPs for controlling post-construction runoff; BMPs for construction sites; and requirements to design storm water controls to maintain pre-development runoff conditions where practicable. The settlement also requires EPA to issue guidance to MS4s and other permittees on maintenance of post-construction BMPs identified in the proposed ELGs. Further discussion of approaches not pursued by EPA at this time may be found in the docket for today's proposal.

#### *E. Pollution Prevention Act*

The Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101 *et seq.*, Public Law 101-508, November 5, 1990) makes pollution prevention the national policy of the United States. The PPA identifies an environmental management hierarchy in which pollution "should be prevented or reduced whenever feasible; pollution that cannot be prevented should be recycled in an environmentally safe manner, whenever feasible; pollution that cannot be prevented or recycled should be treated in an environmentally safe manner whenever feasible; and disposal or release into the environment should be employed only as a last resort \* \* \*" (42 U.S.C. 13103). In short, preventing pollution before it is created is preferable to trying to manage, treat or dispose of it after it is created. According to the PPA, source reduction reduces the generation and release of hazardous substances, pollutants, wastes, contaminants or residuals at the source, usually within a process. The term source reduction " \* \* \* includes equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control. The term 'source reduction' does not include any practice which alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity which itself is not integral to or necessary for the production of a product or the providing of a service." In effect, source reduction means reducing the amount of a pollutant that enters a waste stream or that is otherwise released into the environment

prior to out-of-process recycling, treatment, or disposal.

Although the PPA does not explicitly address storm water discharges or discharges from construction sites, the principles of the PPA are implicit in many of the practices used to reduce pollutant discharges from construction sites. These include controls that minimize the potential for erosion such as proper phasing of construction, retention of on-site vegetation and stabilization of disturbed areas as soon as practicable. These controls and practices are described in section IX.A of today's document.

#### **IV. Scope of Proposal**

EPA is proposing three options, and soliciting comment on variations on these options, for further control of the discharge of pollutants in storm water associated with construction and development activities.

One proposed option (Option 2) would establish C&D effluent guidelines that would apply to construction site operators at sites with 5 acres or more of disturbed area. Under this option, an operator would be required to:

- Design, install and maintain erosion and sediment controls;
- Prepare a storm water pollution prevention plan;
- Inspect the site throughout the land-disturbance period; and
- Certify that the controls meet the regulatory design criteria or permit conditions, as applicable.

These provisions are explained in section X.D. of today's document. Today's proposal does not include requirements regarding the selection or implementation of long-term storm water controls at the sites using permanent BMPs. Under the NPDES storm water permit program, State and local governments are responsible for establishing requirements for permanent storm water controls, and for the maintenance of those permanent storm water controls. Today's proposed rule would not alter that responsibility. EPA has collected a significant body of technical information on the design and effectiveness of various permanent storm water controls that may assist State and local governments as they establish their requirements for construction and development activity. EPA anticipates releasing this document sometime after this proposal. EPA is also preparing a guidance manual on storm water BMP maintenance procedures to assist State and local governments and property owners. EPA anticipates releasing a final version of this document at the time of final action on this proposal in March of 2004. A

draft of the document is included in the rulemaking record of this proposal.

EPA is also considering a variation on this option that would establish C&D effluent guidelines that would apply to construction site operators at sites with five acres or more of disturbed area. Under this variation an operator would be required to:

- Design, install and maintain erosion and sediment controls; and
- Prepare a storm water pollution prevention plan.

Under this variation Federal inspection and certification requirements would not be established; those provisions could be addressed at the local level.

Another proposed option (Option 1) would not establish C&D effluent guidelines, but rather would amend the NPDES storm water requirements for construction site operators subject to NPDES storm water requirements, i.e., operators of construction sites with one acre or more of disturbed area. (See section III.B of today's document for a summary of current permit requirements.) Under this option, an operator would be required to:

- Inspect the site throughout the land-disturbance period; and
- Certify that the controls meet the regulatory design criteria established by the Federal, Tribal, State or local government.

These provisions are explained in section X.D of today's document.

The final proposed option (Option 3) would not establish C&D effluent guidelines or amend the NPDES storm water requirements for construction site operators. Rather, this option would continue to rely on control practices and any certification and inspection requirements tailored to local conditions that established by the permitting authority on a BPJ basis.

#### **V. Summary of Data Collection Activities**

##### *A. Existing Data Sources*

In developing today's proposal, EPA collected and reviewed existing data from a variety of sources, including technical and professional literature; the National Storm Water Best Management Practices Database developed by the American Society of Civil Engineers (ASCE); the Agency's economic analysis for the Phase II NPDES storm water rule; State storm water and erosion and sediment control manuals and handbooks; EPA and State databases on construction general permits; the United States Department of Agriculture (USDA) National Resources Inventory; the Census of Construction; and the U.S. Army Corps of Engineers evaluation of

BMPs for small construction sites. Other information sources included Federal agencies such as the Securities and Exchange Commission and Small Business Administration (SBA); industry and trade association publications; university and nonprofit organization research centers; interviews with State and local officials; and interviews with industry representatives and consultants. EPA did not conduct any questionnaire surveys of the construction and development industry in preparing today's proposal.

EPA drew heavily on the mass of data related to erosion and sediment control, and storm water technology and BMP applicability and efficiency contained in the technical and scientific literature in order to develop today's proposal. Data sources collected and evaluated include published papers and journal articles, ASCE and International Erosion Control Association (IECA) conference proceedings, research reports from state and federal agencies such as USDA, U.S. Department of Transportation, State Departments of Transportation, and the Transportation Research Board. EPA conducted a detailed assessment of these data sources, the results of which are summarized in the Development Document for the Construction and Development Effluent Guidelines (see "Supporting Documentation"). The document summarizes efficiency data for most of the erosion and sediment controls in common usage. This literature and data summary was the main source of data used to evaluate BMP efficiency and applicability for today's proposal.

EPA also augmented these data sources with data contained in the National Storm Water BMP Database. This database is a comprehensive data storage and evaluation system developed by ASCE in cooperation with EPA. The database contains monitoring studies on storm water BMPs in a consistent and transferrable format in order to allow for a comprehensive evaluation and comparison of various BMP designs. Representative information provided for each BMP includes test site location, researcher contact data, watershed characteristics, regional climate statistics, BMP design parameters, monitoring equipment types, and monitoring data such as precipitation, flow and water quality. The database can be accessed at <http://www.bmpdatabase.org>.

The U.S. Census Bureau conducted the most recent Census of Construction in 1997. The Census provides data on the number, size, and geographic distribution of establishments;

employment and payroll; financial information (such as revenues and expenses); specialization by type of construction; and amount and type of work subcontracted out. EPA relied on additional Census Bureau programs for data on market conditions in the industry. The Building Permits Program provided monthly data on the number of building permits issued for new residential construction. The annual Survey of Construction provided data on number of housing starts, completions, and units sold; characteristics of new homes (including size of home and building lot size); and value of construction put in place.

While the Census Bureau programs provide substantial data on business establishment characteristics and industry output, there is a noticeable lack of information linking establishment data to output measures. For example, the Census of Construction provides average and median revenues and value of construction for all establishments and for establishments by employment size class, but does not provide a distribution of establishments by number of housing units started or completed, number of construction permits issued, or number of acres developed. For EPA's economic analysis this was a significant data gap, since the proposed regulations would be implemented at the project level and the Agency developed its compliance cost estimates on a per-acre basis. This led EPA to develop a method for estimating the number of acres disturbed per establishment.

EPA was able to partially fill these data gaps using information contained in a special Census Bureau report ("1997 Economic Census; Construction Sector Special Study Housing Starts Statistics; A Profile of the Homebuilding Industry," July 2000). This report contains estimates of the number of homebuilding establishments by number of housing units built each year. EPA combined this information with data on the average lot size for new homes to estimate a distribution of establishments by number of acres disturbed. EPA also used data from this report to determine the number of small builders who are likely to disturb less than one acre of land per year and who therefore are not covered by the storm water permit program.

Another data source was important for further clarifying the size of the industry that is covered by the storm water permit program. The single-family and multi-family housing construction industries (NAICS 23321 and 23322) include establishments that are engaged in new construction as well as

renovation of existing construction. Since renovation and remodeling activities generally do not disturb one acre or more of land per site, renovation and remodeling contractors would not be subject to the requirements being proposed today. To estimate the number of such contractors, EPA used data from a recent study completed by the Joint Center for Housing Studies at Harvard University. This report classified establishments that derive at least half of their revenues from remodeling activities as remodelers. Based on this definition, the Agency concluded that a substantial portion of the single-family and multifamily housing construction sector may not be affected by today's proposal. EPA requests comment on its assumption that firms which derive at least half their revenues from remodeling will not be affected by today's proposal.

EPA obtained information on home ownership rates, mortgage affordability, and interest rates from sources such as Fannie Mae and the Federal Housing Finance Board. Data on average costs of construction for various types of projects were obtained from R.S. Means Co. publications and the National Association of Home Builders (NAHB).

EPA obtained data on the amount of land converted from undeveloped to developed status from the National Resources Inventory (NRI). This is a statistical sampling program conducted by USDA every five years that defines geographic sampling points in terms of their land use status. The most recent NRI indicates that during the period 1992 to 1997, each year over 2.2 million acres of land previously classified as undeveloped were converted to developed status. For developed land, the NRI does not specify the type of use (i.e., single family homes, roadways, commercial or industrial sites). In order to estimate the number of acres converted by type of development, EPA used actual data or estimates of the number of projects permitted and the average size of projects, by type. For example, to determine the number of acres converted to residential housing development EPA multiplied the number of new homes permitted for construction each year by the average lot size for new construction. For non-residential construction, EPA had to fill a data gap created when the Census Bureau ceased, in 1995, collecting information on the number of nonresidential building permits issued. The Agency used historical (pre-1995) data on nonresidential starts to establish a relationship between residential and nonresidential starts from which current nonresidential activity could be

estimated. To stratify the aggregate amount of land converted to developed status by size of development project, EPA used data on construction project size collected from 14 municipalities in support of the NPDES Phase II storm water regulations (Economic Analysis of the Phase II Storm Water Rule, Final Report, October 1999.)

#### *B. Storm Water Discharge Sampling and Site Visits*

At the time of this proposal, EPA is planning to conduct sampling and analysis of discharges at a number of construction sites in order to better characterize the pollutants commonly found in construction site runoff. EPA has also funded several cooperative agreements evaluating construction site pollutant loadings, erosion and sediment control effectiveness, and receiving water impacts of land development activities.

#### *C. Industry-Supplied Data*

EPA has reviewed reference publications and data prepared by industry organizations including NAHB, the Construction Financial Management Association and the Urban Land Institute. The Agency received cost data and comments from several construction and development businesses during the Small Business Advocacy Review conducted in 2001. (This review is described in section XIX.C of today's document.)

NAHB submitted a report that presents an independent evaluation of the data contained in the initial release of the National Stormwater BMP Database. (National Association of Home Builders, "Erosion and Sediment Control Best Management Practices Research Project." Washington, DC, 2000). The report is included in the rulemaking record.

#### *D. Summary of Public Participation*

EPA conducted an introductory public meeting in April 1999 describing the effluent guidelines development process and the regulatory issues being considered for the C&D rule. In the Summer of 2001 EPA conducted two additional meetings to provide an update of progress on the rule development.

Since the beginning of the rule project in 1998, EPA has held meetings with industry associations, State and local government officials, professional organizations and citizen groups on the C&D rule. In 2000–01, EPA conducted interviews and group discussions with builders and developers to learn about the land development process, builder-developer organizational structures,

operational and business practices, and business trends in greater detail.

In 2001 EPA conducted a Small Business Advocacy Review panel pursuant to the Small Business Regulatory Enforcement Fairness Act (SBREFA). A discussion of this process and findings are discussed in section XIX.C of today's document.

### **VI. Industry Profile**

#### *A. Affected Industry Sectors*

The construction and development category covers establishments classified by the Census Bureau into two subsectors.

- The Building, Developing and General Contracting subsector (NAICS 233) includes land subdivision and development, and building construction (residential and nonresidential). Land developers select construction sites, conduct site planning and design activities, and carry out other tasks such as financing and marketing. General contractors build residential, industrial, commercial and other buildings.

- Heavy Construction contractors (NAICS 234) build sewers and other utilities, roads, highways, bridges and tunnels.

A single construction project may involve many firms from both subsectors. The number of firms involved and their financial and operational relationships may vary greatly from project to project.

The residential building industries have their own variety of operational relationships. Many home building projects are initiated and managed by a developer, using one or more general contractors to supervise and/or carry out the physical construction activities. Other projects are operated by "merchant" builders. A merchant builder is a firm that develops property, constructs homes, and markets the final product within the same company. Although these functions may be conducted by different entities, the merchant builder conducts all of these activities within the same firm. In the past, industry members used the term "operative builder" to refer to a firm that conducts these activities within the same firm. The merchant builder is organized into divisions or departments within the firm and each division or department is responsible for different functions, e.g. land development, construction, marketing.

Most builders and developers are separate entities. Typically, the developer acquires property and moves the project from raw land to finished lots. The lots are usually sold to builders who construct houses,

commercial/shopping centers, office and industrial parks, and other products for the final consumer. In some situations home builders will construct speculatively without a contract. In other cases the home buyer will contract with a builder for a specific house. The builder hires subcontractors for carpentry, plumbing, electrical, and other services.

Some of the operating characteristics of the heavy construction subsector include: (1) Usually government agency clients rather than private customers, (2) public sector clients typically issue specifications to cover many projects (e.g., a highway agency publishes road construction standards for all projects in its jurisdiction), and (3) frequent use of unit price contracts (e.g., a local public works agency contracts for installation of a quantity of sewer pipeline). The relationship between the heavy construction firm and the public customer is typically established through a competitive bid process. Private sector customers may initiate projects through negotiated contracts.

EPA understands that in typical construction projects the firms identifying themselves as "operators" under a construction general permit are general building contractors and/or developers.<sup>3</sup> While such projects may use the services of specialty contractors such as excavation companies, these firms are typically subcontractors to the general building contractor and are not identified as operators in the storm water permit. Other classes of subcontractors such as carpentry, painting, plumbing and electrical services typically do not apply for, nor receive, NPDES permits and EPA is not including these businesses in its population estimates for the purpose of today's proposed rule. EPA is also excluding businesses classified by the Census Bureau as "non-employer" establishments. These establishments tend to be proprietorships with the owner providing individual construction services to the industry, and they are primarily engaged in activities, such as remodeling, that disturb little if any land.

#### *B. Construction and Development Activities Affecting Water Quality*

##### **1. Planning and Site Design**

Land development tasks that can affect pollutant discharges typically include the following activities:

<sup>3</sup> Under the CGP, a property owner who is not a developer or contractor, e.g., a corporation erecting an office building for its own use, may be designated as a co-permittee if it retains control over site plans.

- Site selection and analysis;
- Design of subdivision and lot sizes in residential and mixed-use projects;
- Design of infrastructure (roads, sewers, utility lines, etc.).

In many cases, particularly on smaller projects, a land owner may manage these tasks directly without the involvement of a real estate developer. In larger projects, real estate developers usually manage the project, especially when local government requirements and approval processes are complex. This is often the case for residential developments, mixed-use projects (involving housing, commercial and/or other land uses), shopping centers and large office buildings and complexes.

A real estate developer initiating a project will typically have a particular kind of project in mind (such as residential or commercial), but may not have identified a particular site. The developer may formulate a conceptual plan for the project and then search for sites that could accommodate such a plan. During the site selection process many factors are taken into consideration by the developer, and included among these may be the presence of water bodies on or near the site. For example, the developer may consider on-site water features to be an amenity that can add value to the site. On-site water body characteristics may dictate how structures can be located on the site to avoid flooding. Some properties may have limitations if on-site or adjacent water bodies have regulatory designations such as riparian buffers, flood plains and wetlands.

Once a site has been selected and control of the property is obtained (through purchase, lease, option to purchase, etc.), the developer can proceed with site analysis, design and initial proposals for local government approval. Site analysis includes examination of topography, soils, and hydrology. Site design tasks depend on the planned uses for the land (residential, commercial, institutional, etc.) and may involve subdivision of the site into individual home lots; locating commercial, institutional or industrial buildings; locating streets, sidewalks and/or parking areas; and placement of utilities, including storm drainage systems. Planning for storm water management during the early stages of project formulation allows for consideration of site designs that can reduce the overall water quality impacts of the site. One such planning strategy, "Conservation Design," includes avoiding natural wetland areas, preserving existing trees and vegetation, maintaining stream buffers, limiting the extent of clearing and grading activities,

and identifying highly infiltrative soil areas for preservation. (See "Growing Green," Natural Lands Trust, Inc., Media, PA. Available at <http://www.natlands.org/planning/planning.html>.) The site design is subject to local government approval, and multiple agencies may be involved, depending on the size and complexity of the site and the requirements of master planning or zoning agencies. Once the appropriate government approvals have been obtained, the permittee may proceed with ground breaking activities. (D. Linda Kone, "Land Development," Washington, DC: Home Builders Press, 2000).

## 2. Clearing, Excavating and Grading

Construction on any size parcel of land almost always calls for a remodeling of the earth. Therefore, actual site construction typically begins with site clearing and grading. Earthwork activities are important in site preparation because they ensure that a sufficient layer of organic material—ground cover and other vegetation, especially roots—is removed. The size of the site, extent of water present, the types of soils, topography and weather determine the types of equipment that will be needed during site clearing and grading. Material that will not be used on the site must be hauled away by tractor-pulled wagons, dump trucks or articulated trucks.

Clearing activities involve the movement of materials from one area of the site to another or complete removal from the site. Equipment used for lifting excavated and cleared materials include aerial-work platforms, forwarders cranes, rough-terrain forklifts, and truck-mounted cranes. Truck loaders are used for digging and dumping earth.

Excavation and grading may be performed by several different types of machines. They can also be done by hand, but this is generally more labor-intensive and more expensive. When grading a site, builders typically take measures to ensure that new grades are as close to the original grade as possible, so as not to create a dis-equilibrium, especially to avoid erosion and storm water runoff. Proper grade also ensures a flat surface for development and is designed to attain proper drainage away from the constructed buildings.

Equipment used during excavation and grading include backhoes, bulldozers, loaders, directional drilling rigs, hydraulic excavators, motor graders, scrapers, skid-steer loaders, soil stabilizers, tool carriers, trenchers, wheel loaders and pipeliners. The type of equipment used generally depends on

the functions to be performed and on specific site conditions.

Shaping and compacting the earth is an important part of site preparation. Earthwork activities might require that fill material be used on the site. In such cases, the fill must be spread in uniform, thick layers and compacted to a specific density. An optimum moisture content must also be reached. Graders and bulldozers are the most common earth-spreading machines. Compaction is most often accomplished with various types of rollers.

For removal of rock from the site, the contractor must first loosen and break the rock into small pieces. This can be accomplished by drilling or blasting. Drilling equipment includes jackhammers, wagon drills, drifters, churn drills, and rotary drills. Dynamite and other explosives can be used to loosen rock.

Once materials have been excavated and removed and the ground has been cleared and graded, the site is ready for construction of buildings, roads, and/or other structures.

## 3. Erosion and Sediment Control

During the land disturbance period, affected land is generally exposed after removal of grass, rocks, pavement and other protective ground covers. Where the soil surface is unprotected, soil and sand particles may be easily picked up by wind and/or washed away by rain or snow melt. This process is called erosion. The water carrying these particles eventually reaches a water body. The particles are deposited in the water body, a process called sedimentation. Descriptions of the environmental impacts of construction site runoff are provided in section XV of today's document.

Contractors use erosion and sediment controls (ESCs) to mitigate these impacts. Erosion controls include mulching, vegetative filter strips, diversion berms and conveyance channels, slope drains, bonded fiber matrices, and rolled products such as turf reinforcement mats. These materials and methods are intended to reduce erosion where soil particles can be initially dislodged on a construction site, either from rainfall, snow melt or up-slope runoff. Erosion controls may not be completely effective, and sediment controls are typically employed in addition. Sediment controls include sediment basins, ponds, and traps; and barrier methods such as silt fences, straw bales and rock barriers. ESCs are further described in section VIII of today's document.

#### 4. Control of Other Pollutants

Construction activity generates a variety of waste materials. These materials may include concrete truck rinsate, trash, and other pollutants. Construction site operators utilize various practices to manage these wastes and minimize discharges to surface waters, including:

- Neat and orderly storage of chemicals, pesticides, fertilizers, and fuels that are being stored on the site;
- Regular collection and disposal of trash and sanitary waste;
- Prompt cleanup of spills of liquid or dry materials.

These procedures are described in EPA's 1992 guidance, "Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices" (op. cit.), State and local government documents pertaining to construction sites, and in section VIII of today's document.

#### 5. Final Stabilization and Long-Term Storm Water Management

Construction activities on previously undeveloped land areas can significantly alter the hydrology of a site. In order to avoid flooding on the site and protect the newly constructed structures, the builder must design drainage facilities. The builder's site plans, as approved by the local government, specify the location of buildings and other structures, and typically indicate the site's drainage patterns and facilities for long-term storm water management. The plans may specify permanent storm water management facilities (or BMPs) to be constructed on the site, to control flooding, and in some cases, to protect receiving water quality. No single BMP type can address all storm water problems. Each type has certain limitations based on the drainage area served, available land space, cost, pollutant removal efficiency, as well as a variety of site-specific factors such as soil types, slope and depth of groundwater table. Storm water management BMPs are further described in section VIII of today's document.

#### VII. Storm Water Discharge Characteristics

Since 1972, EPA and the States have made good progress in issuing discharge permits for a wide range of point sources dischargers. These permits have made dramatic improvements in water quality conditions and are largely responsible for much of the success in reducing water pollution. Most of these permits are for continuous discharges

with predictable effluent quality and quantity that occur in both wet and dry weather conditions.

Construction disturbance activities can generate a broad range of environmental impacts by altering the physical characteristics of the affected land area. Construction activities typically involve the clearing, surface stripping, grading, and excavation of existing vegetation followed by the active construction period when the affected land is usually left denuded and the soil compacted, often leading to an increase in storm water runoff and higher rates of erosion. The most significant pollutant associated with construction activity at most sites is sediment. Total suspended solids (TSS) concentrations from uncontrolled construction sites have been found to be up to 150 times greater than concentrations from undeveloped land.<sup>4</sup> If the denuded and exposed areas contain contaminants, such as nutrients, pathogens, metals or organic compounds, they are likely to be carried at increased rates to surrounding water bodies via storm water runoff. The denuded construction site is only a temporary state, often less than six months. When the land is restored with the replanting of vegetation after construction is completed, the hydrology of the site may be altered. For example, the completed construction site may have a greater proportion of impervious surface than prior to site development, leading to changes in the volume and velocity, and in some cases temperature, of storm water runoff.

#### VIII. Description of Available Technologies

##### A. Introduction

Construction and development activities have the potential to discharge pollutants to surface waters due to poor or inadequate site design, planning and BMP implementation. These impacts can be mitigated by the application of design techniques to preserve or avoid areas prone to erosion and through the use of erosion and sediment controls. The use of good site design and planning techniques also can reduce pollution control costs and improve the effectiveness of pollution control strategies and practices. Good site design can also integrate, to the extent appropriate, practices to control erosion and sedimentation at active construction sites with practices to

control post-construction runoff. For example, site plans may provide for the conversion of short-term sediment control practices such as sediment basins into extended detention wet ponds or other long-term structural BMPs.

A discussion of technologies and BMPs is contained in the following sections of today's document. Some states and local governments have also published detailed manuals for ESC and or storm water management controls. Links to on-line publications are available on EPA's website at <http://www.epa.gov/OST/guide/construction>.

##### B. Erosion and Sediment Controls and Other Site Management Practices

##### 1. Goals

Construction site activities should be managed to reduce erosion, and to the extent practical, retain sediment on the site. Erosion and sedimentation are two separate processes and the practices to control them differ. "Erosion is the process of wearing away of the land surface by water, wind, ice, gravity, or other geologic agents. Sedimentation is the deposition of soil particles, both mineral and organic, that have been transported by water, wind, air, gravity or ice" (adapted from North Carolina Erosion and Sediment Control Planning and Design Manual, September 1, 1988).

Erosion can be prevented or minimized by various methods and practices. The main strategies used to reduce erosion include minimizing the time bare soil is exposed, preventing the detachment of soil and reducing the mobilization and transportation of soil particles off-site.

Decreasing the amount of land disturbed can significantly reduce sediment detachment and mobilization and overall erosion and sediment control costs. After land has been disturbed, exposed soils should be covered as soon as possible and runoff should be actively managed to prevent run-on flows from off-site areas and uncontrolled runoff from the disturbed area(s). In addition, runoff should be managed to prevent high runoff velocities and concentrated flows that are erosive. The continued effectiveness of erosion controls also is dependent on frequent inspections of erosion control practices to identify maintenance needs.

The control of sediment detached and mobilized through erosional processes requires a separate set of management practices. Several mechanisms can be used to remove suspended sediments in runoff. They include: filtration, settling and chemical precipitation. These mechanisms are used to trap, filter or

<sup>4</sup> TSS is an "indicator" parameter used to measure sediment discharges. The analytical test procedure for TSS is called "Residue-Nonfilterable." EPA-approved analytical methods for TSS are listed in 40 CFR part 136, Table I.B.

settle soil particles so they do not enter surface waters.

More detailed descriptions of sediment and erosion controls can be found in the Development Document.

## 2. Major Categories of Best Management Practices

Planning is the most critical element in designing an effective strategy to control erosion and sedimentation on construction sites. The protection of areas prone to erosion, the selection and siting of erosion and sediment control practices and the continued effectiveness of these systems will depend on a well defined plan.

Erosion and sediment control (ESC) plans and site plans provide the blueprints for the protective activities that will occur on the construction site. The ESC and site plans may also contain descriptions of temporary practices such as sediment basins that will be converted into long-term storm water management practices.

Several general objectives should be addressed in an effective ESC plan:

- Minimize clearing and grading activities;
- Protect waterways and stabilize drainage ways;
- Phase construction to limit soil exposure;
- Stabilize soils as soon as practicable;
- Protect steep slopes and cuts;
- Install perimeter controls to filter sediment;
- Employ sediment settling controls.

To ensure that builders and contractors implement effective ESC plans, MS4s may employ several other program elements. These elements include an ESC plan review process; contractor education; training, licensing and certification programs, and an inspection and enforcement process. See EPA's MS4 "Menu of BMPs" website at <http://www.epa.gov/npdes/menuofbmps/menu.htm> for descriptions of these activities.

The use of erosion controls is widely recognized as being the most cost-effective way of managing sediment on construction sites. Typical practices used to prevent and reduce soil movement include: reducing the overall area of disturbed land, minimizing the time soils are exposed to precipitation, scheduling clearing and grading events to reduce the probability that bare soils will be exposed to rainfall, preventing off-site and on-site runoff from eroding soils through the use of berms, conveyances or energy dissipation devices, covering soils or stockpiles, stabilizing exposed soils as soon as possible, and inspecting and

maintaining erosion controls on a periodic basis, e.g., after each storm event. Vegetative stabilization using annual grasses is the most common practice used to control erosion. Polymers, physical barriers such as geotextiles, straw, and mulch are other common methods of controlling erosion.

Despite the proper use of erosion controls, some sediment detachment and movement is inevitable. Sediment controls are used to control (direct) and trap sediment that is entrained in runoff. Typical sediment controls include perimeter controls such as silt fences constructed with filter fabric, straw bale dikes, berms or swales. Trapping devices such as sediment traps and basins and inlet protectors are examples of in-line sediment controls. Sediment traps and basins are the primary method used to treat and settle out sediment for small and large disturbed areas.

Construction site operators manage building materials and waste to reduce and eliminate potential water quality impacts. Construction materials and chemicals should be handled, stored and disposed of properly to avoid contamination of runoff. Site management plans typically include elements such as spill prevention and remediation plans, nutrient management plans for vegetative stabilization efforts, and provisions for human waste disposal, e.g., portable toilets.

## C. Long-Term Storm Water Management Control

### 1. Goals

After completion of construction, a variety of measures have been adopted to prevent flooding and achieve local resource protection goals, such as groundwater recharge or maintaining stream stability. For example, BMPs are often integrated into the overall site design, and generally approved by the local government. A number of States have developed storm water BMP selection and design criteria for use in their state. In addition, the Water Environment Federation (WEF) and the American Society of Civil Engineers (ASCE) have developed a methodology for storm water BMP design. (Water Environment Federation and the American Society of Civil Engineers, "Urban Runoff Quality Management," 1998. WEF Manual of Practice No. 23 and ASCE Manual and Report on Engineering Practice No. 87. Available for purchase at <http://www.wef.org> and <http://www.asce.org>).

## 2. Major Categories of Best Management Practices

Planning and site design are important to ensure the selection of site designs that will meet the needs of the owner and be compatible with local infrastructure. State and local governments have a primary role in ensuring proper planning and the design of structural storm water runoff conveyance and treatment systems.

Under any design approach, runoff flow paths are designed to route the runoff through functional landscaped areas or structural BMPs that store, infiltrate, evaporate, and slow the velocity of the runoff. Storage basins, swales, bioretention cells (highly permeable engineered soils planted with vegetation), grading to alter topography, increase infiltration and decrease erosion, and depression storage are the most typical practices used to manage runoff and reduce pollutant loadings. More innovative practices include rooftop storage, "green" roofs (landscaped roof systems designed to store and treat storm water), re-vegetation, rainwater capture and reuse, street filters (systems for treatment of street and highway runoff), and soil amendments.<sup>5</sup>

Pollution prevention practices are often called source reduction practices or "non-structural" BMPs. Education, training as well as proper inspections and maintenance are the primary methods to achieving pollution prevention objectives. Information dissemination via outreach efforts, professional training, licensing and certification combined with effective voluntary incentives, enforcement and compliance efforts are essential to good practice. Product substitution or the use of alternative methods and practices are also considered facets of pollution prevention.

<sup>5</sup> Low Impact Development (LID) is a site design approach that incorporates conservation techniques along with an integrated set of small site-level landscape runoff treatment and control features that are uniformly distributed throughout the site in order to prevent runoff pollution and reduce the impacts of development and redevelopment activities on water resources. ("Low Impact Development Design Strategies: An Integrated Design Approach," EPA 841-B-00-003, January 2000. Available on EPA's website at <http://www.epa.gov/owow/nps/urban.html>). Approaches similar to LID, although sometimes using different terminology, include "Better Site Design" ("Introduction to Better Site Design." Article no. 45 in *The Practice of Watershed Protection*. Center for Watershed Protection, Ellicott City, MD, 2000. <http://www.stormwatercenter.net>) and "Infiltration Approach" ("Start at the Source: Design Guidance Manual for Stormwater Quality Protection," Bay Area Stormwater Management Agencies Association, Oakland, CA, 1999).

## IX. Development of Effluent Limitation Guidelines and Standards

### A. Industry Subcategorization

EPA may divide a point source category into groupings called "subcategories" to provide a method for addressing variations between products, processes, and other factors which result in distinctly different effluent characteristics. Regulation of a category by using formal subcategories provides that each subcategory has a uniform set of effluent limitations that take into account technological achievability and economic impacts unique to that subcategory. In some cases, effluent limitations within a subcategory may be different based on consideration of these same factors which are identified in section 304(b)(2)(B) of the CWA, 33 U.S.C. 1314(b)(2)(B). The CWA requires EPA, in developing effluent limitation guidelines and pretreatment standards, to consider a number of different factors, which are also relevant for subcategorization. The statute also authorizes EPA to take into account other factors that the Agency deems appropriate. One potential benefit of grouping similar facilities into subcategories is the increased likelihood that the regulations will be practicable, and it diminishes the need to address variations between facilities through a variance process (*Weyerhaeuser Co. v. Costle*, 590 F.2d 1011, 1053 (D.C. Cir. 1978)).

In preparing today's proposal, EPA considered several ways of subcategorizing the construction and development industry. Methods considered by the Agency include subcategorization by site size (such as disturbed acreage), development type (such as residential, commercial, industrial and transportation), re-development vs. "greenfield" development (development on rural or agricultural land), geography and hydrology (such as average annual rainfall and soil erosivity), as well as builder or developer size (in terms of annual revenue, annual units constructed, annual land disturbance, etc.).

#### 1. Subcategorization by Site Size

EPA is not proposing to subcategorize site sizes of 10 acres or more. EPA is concerned, however, that as site sizes decrease below 10 acres the choice of controls within site design parameters may become more limited. For this reason, EPA is proposing in Option 2 to establish slightly modified requirements that provide greater flexibility for sites disturbing less than 10 acres. Specifically, EPA is proposing to require

sediment basins where attainable for sites disturbing 10 acres or more, while leaving greater flexibility in the choice of sediment controls for sites disturbing less than 10 acres. EPA requests comment on this proposed subcategorization.

Under today's proposal, Option 2, which includes both control requirements and certification and inspection requirements, would apply to sites disturbing 5 or more acres, while Option 1, which includes certification and inspection requirements only, would apply to sites disturbing 1 acre or more. EPA is not proposing control requirements for sites less than 5 acres at this time in order to allow the maximum flexibility to the States in balancing the costs, availability, and effectiveness of erosion and sediment controls and to provide time for the States to demonstrate the effectiveness of permits to control discharge of pollutants associated with construction activity disturbing one to 5 acres under Phase II. EPA recognizes that this same logic may apply to the certification and inspection requirements and requests comment on adopting Option 1, but with a cutoff of 5 acres rather than 1 acre. More generally, EPA requests comment on the appropriate acreage cutoff for both Options 1 and 2.

#### 2. Subcategorization by Industry

EPA is not, at this time, proposing subcategorization by industry or industry group (i.e. residential building, non-residential building, heavy construction). EPA recognizes that there are profit differentials between industry groups that could affect their economic and financial status. Based upon EPA's current cost estimates for the options being proposed today, EPA has found these options to be economically achievable for all industry groups. EPA is concerned about the practical difficulty in defining an appropriate industry portion to be subject to alternative standards, or an appropriate industry portion for whom the controls being employed today would be technically or economically infeasible. Since a large number of development projects (especially larger projects) can consist of mixed land uses (such as a large residential subdivision built along with a commercial/retail center), a subcategorization by industry may also present implementation challenges. EPA requests comment on possible industry subcategorization and how to address the implementation issues associated with such subcategorization.

#### 3. Subcategorization by Builder/Developer Size

EPA is not, at this time, proposing subcategorization by builder, developer or contractor firm size (in terms of annual construction output, revenue, or acreage disturbed). Since the dollar value of a project or revenue of a builder or developer is not necessarily related to site size or disturbed area (due, in part, to differences in various markets), EPA has not found a direct correlation between any of these factors and the amount of pollutants in storm water discharges to receiving waters.

#### 4. Subcategorization Based on Hydrology, Soil Loss Potential or Other Geographic Factors

EPA also considered subcategorizing the industry based on hydrology and potential for soil loss, but determined that the existing soil loss waiver included in the NPDES Phase II regulations (40 CFR 122.26(b)(15)(i)(A)) is sufficient for exempting sites with low expected soil loss.

Geographic factors that may be appropriate for subcategorizing the industry are based on low expected rainfall, defined periods of dry and wet weather, and/or construction during cold weather where the ground is frozen. On sites with these characteristics, the Agency expects soil erosion to be minimal. Option 2 in today's proposal would continue the provision in EPA's current CGP for delaying implementation of site stabilization due to these geographic factors. See § 450.21(h).

#### 5. Subcategorization Based on Past Land Use

EPA considered subcategorization of the industry based on past land use, such as classifying redevelopment sites differently from "greenfield" projects. Redevelopment projects present some significant challenges in terms of erosion and sediment control due to the potential for site constraints and conflicts such as size, location, proximity to existing development, pre-development site contamination issues, land costs, as well as the nature of surrounding development. In addition, redevelopment projects are commonly perceived to be preferable to greenfield development, due to the proximity of redevelopment sites to existing infrastructure, the need to revitalize older neighborhoods, and the potential for providing significant economic stimulus to existing neighborhoods. As a result, many communities offer incentives in order to encourage redevelopment projects and to make the

economics of the project viable. Imposition of expensive storm water and erosion control requirements in such cases, in light of the constraints present, may inflict costs that render some projects to be economically unattractive to a developer. EPA does not believe that the level of controls being proposed in Option 2 today will be a significant disincentive to redevelopment. Much of the redevelopment occurring in urban areas involves sites of less than 5 acres in disturbed land. For the redevelopment that exceeds that site size, EPA believes that it is appropriate to require a comparable level of erosion and sediment control as is provided at greenfield sites. The design and implementation of those controls, while comparable, may be very different for a site that has the advantage of existing stormwater management infrastructure than for other sites. In either case, EPA believes that the requirements being proposed provide sufficient flexibility to allow affordable choices for both greenfield development and redevelopment activities.

#### *B. Regulatory Options Considered*

In developing today's proposal, EPA initially evaluated several regulatory options for both erosion and sediment control and other temporary BMPs, storm water management, and options that would not establish effluent limitation guidelines regulations. The erosion and sediment control (ESC) options represent the controls that are typically temporary and are used during the land-disturbing activities. The storm water management options represent the long-term (permanent) storm water controls that are designed and installed by the C&D industry at the time of construction but are intended to reduce long-term storm water impacts.

The following sections of today's document discuss the regulatory options that EPA considered for today's proposal. Section X describes the specific options contained in today's proposal.

##### **1. Overview of Regulatory Options: Erosion and Sediment Controls and Other Temporary BMPs**

For erosion and sediment control and other temporary BMPs, EPA considered a series of regulatory options. These options are designed to control the discharge of sediment, storm water and other pollutants from sites when construction is taking place. Construction and development activity involves land disturbed from previous uses such as agriculture or forest lands, or occurs as redevelopment of existing

rural or urban areas. During the construction process, vegetation or surface cover is typically removed and soils become more available for transport and discharge from construction sites. Today's proposal provides regulatory tools to improve management and control on construction sites to reduce and minimize soil, storm water, and pollutant transport and discharge from construction sites.

EPA initially considered a range of options that incorporate varying levels of management and various control strategies for sites of 1 acre or more. During the Agency's outreach activities in advance of proposal, small entity representatives expressed concern over the complexity of overlapping and potentially inconsistent Federal, State, and local storm water regulations. These individuals questioned whether it was appropriate to be considering additional Federal storm water regulations at such an early stage in implementation of the existing storm water program. They further questioned EPA's assumptions regarding the level of control that would be achieved by sites less than 5 acres under the NPDES Phase II requirements, pointing out that the compliance deadline for those sites has not yet passed.

As EPA evaluated the options for erosion and sediment controls and other temporary BMPs, the Agency examined the merit of excluding sites less than 5 acres at this time. EPA estimates that while only 30 percent of sites developed each year are 5 acres or more, these sites represent over 80 percent of the disturbed acreage. The Agency believes that the phased approach to issuing permits for construction and development has allowed, and will continue to allow, EPA and States to improve coordination, communication, and implementation of requirements in a more strategic way. By focusing first on the larger sites, EPA and the States are focusing resources on the universe of sites that have the greatest potential for reducing discharge of pollutants to surface waters. These sites generally have more control alternatives than smaller sites, and greater flexibility in designing erosion and sediment controls that work within overall site parameters. Implementation of erosion and sediment controls under the NPDES Phase I storm water rule has demonstrated that even though controls may be more limited for sites as small as 5 acres, sufficient alternatives are available to provide significant control. Indeed, while many of the erosion and sediment control practices are not dependent on site size, others (such as sediment basins) are not

always appropriate for smaller sites. Other factors also affect the availability of certain control practices. As the site size decreases, the proportion of sites that are "in-fill" projects constructed between currently-developed properties, or redevelopment of existing properties, likely increases. These projects present some significant challenges in terms of erosion and sediment control due to the potential for site constraints, land availability and costs, proximity to existing development, as well as the nature of surrounding development. EPA is proposing not to establish effluent limitation guidelines for sites smaller than 5 acres at this time in order to allow the maximum flexibility to the States in balancing the costs, availability, and effectiveness of erosion and sediment controls and to provide time for the States to demonstrate the effectiveness of permits to control discharge of pollutants associated with construction activity disturbing one to 5 acres under Phase II. The following discussion presents the options that EPA considered for erosion and sediment controls and other temporary BMPs.

##### **• Codify the EPA Construction General Permit**

EPA considered an option (a variation on Option 2 being proposed today) that would essentially codify the provisions contained in EPA's construction general permit (CGP) as minimum national standards for erosion and sediment control (i.e., for all states, not only those with EPA as permitting authority). The CGP requirements that would be codified include preparing a Storm Water Pollution Prevention Plan (SWPPP) or equivalent, provisions for installing and sizing sediment basins on sites with more than 10 acres of disturbed land, requirements for providing cover on exposed soil areas within 14 days after construction activity has ceased, and installation and maintenance of other erosion and sediment control practices and other temporary BMPs on all construction sites.

##### **• Codify the EPA Construction General Permit, Require Self-Inspection and Certification**

EPA considered an option (being proposed today as Option 2) that would essentially codify the provisions contained in EPA's construction general permit (CGP) as minimum national standards for erosion and sediment control and add inspection and certification requirements to improve operator accountability. The CGP requirements that would be codified are

the same as in the previous option. In addition, EPA incorporated mandatory site inspection, maintenance and reporting provisions by site owners and operators in order to improve confidence in the implementation and performance of construction site erosion and sediment controls in this option. These certification provisions may be accomplished either through self-inspection by a qualified employee of the owner and operator (such as a professional engineer or person trained in erosion and sediment control techniques) or inspection by a third-party (such as a consulting firm). The certification provisions would consist of a checklist-type certification form that the permittee would be required to complete at various stages of the project to certify that the provisions contained in the permittee's SWPPP are being implemented. Permittees would be required to conduct periodic inspections in order to confirm that the permittee is conducting the maintenance necessary to maintain the functionality of BMPs. The specific activities requiring certification include: SWPPP preparation; installation of perimeter controls and sediment controls; site inspections every 14 days; final stabilization of exposed soils and removal of temporary erosion & sediment controls. The certification and inspection forms would be retained on the site, and made available to the permitting authority and the public upon request. This option is being proposed as Option 2 in today's document (see section X).

- *Numerical Design Requirements*

EPA considered an option that would establish numerical requirements for the design of sediment basins and traps that would vary based on local or regional rainfall patterns and site-specific soil types. However, EPA determined that there were insufficient data available to establish national criteria of this type, and therefore did not include this requirement in today's proposed rule. In addition, this approach would be a significant departure from the current CGP sizing requirements, which establishes a requirement a calculated volume of runoff from a 2-year, 2-hour storm, or for 3,600 cubic feet of storage per acre, for all sites of 10 or more acres.

- *Numerical Pollutant Removal Requirements*

EPA considered options that would contain numerical requirements for the removal of specific pollutants from construction site runoff. EPA initially considered targeting a variety of pollutants including sediment, TSS,

turbidity, nutrients, metals and other priority pollutants. EPA considered a regulatory option that would establish numerical removal criteria for sediment, or an associated indicator parameter such as total suspended solids (TSS), suspended sediment concentration, settleable solids, or turbidity. This option could be expressed as either a percent removal through sediment controls (such as sediment basins or traps), or as a total site reduction (incorporating consideration of sheet flow and diffuse runoff in addition to discrete conveyances). However, EPA did not consider this approach to be a viable regulatory option due to several factors. The stochastic nature of rainfall and runoff makes verification of the design standards difficult. In some cases, the nature of local rainfall and runoff characteristics make it difficult to even design BMPs to a specified performance level. In addition, site-specific soil conditions greatly influence the amount of sediment mobilized during runoff events, and the soil settling characteristics greatly influence the performance of sediment controls. Designing an entire suite of erosion and sediment controls for a site to perform to a specified level would likely require the use of a computer model, which could add significant costs with little assurance of increased effectiveness. Similarly, monitoring to verify attainment of numerical requirements can also be very difficult (see "Discharge Monitoring," below) with little demonstrated benefits. As a result, EPA did not consider numeric pollutant control requirements a viable option.

In addition to establishing numerical requirements for the control of sediment, EPA preliminarily considered establishing requirements for removing fine-grained and slowly-or non-settleable particles contained in construction-site runoff (such as turbidity). This option would likely have relied primarily on chemical treatment of soils or construction site runoff using polymers or coagulants such as alum in order to prevent the non-settleable fractions of solids from being transported off-site. EPA did not pursue this option due to the concern over possible adverse environmental effects of widespread usage of chemical or polymer treatment of soils and, therefore, does not present costs, pollutant removals, or economic impacts associated with such an option. However, EPA recognizes that at some sites use of chemical treatment may be appropriate based on a site-specific determination. The Agency solicits comment and data on the possible long-

term environmental effects associated with this option.

EPA also evaluated the inclusion of separate requirements for controlling priority toxic pollutants, pesticides and pathogens in construction site runoff. If these pollutants are present as a result of construction activities themselves, the most appropriate means of control is typically through the use of source control and pollution prevention BMPs, which are already addressed in the existing NPDES regulations through the MS4 permit requirements. The Agency has been unable to identify any additional BMPs that are technically and economically feasible for use at construction sites that would remove these pollutants once they are in the water column. Therefore EPA does not present costs, pollutant removals, or economic impacts associated with such a separate option. Hence, EPA proposes to control the discharge of any such pollutants that may be associated with construction activity only to the extent that control of TSS will also control these pollutants. EPA is, however, planning to conduct additional sampling activities to evaluate the frequency of occurrence and levels of these pollutants and their sources in construction site runoff for the final rule. EPA solicits data and comments on the frequency of occurrence and levels of pollutants found in construction site runoff, as well as BMPs that can cost-effectively remove these pollutants from runoff when present.

- *Discharge Monitoring*

EPA considered the inclusion of monitoring requirements for evaluating the effectiveness of erosion and sediment controls. Monitoring of storm water discharges from construction sites could be used to evaluate the effectiveness of individual sediment controls (such as sediment basins), or monitoring the receiving water above and below construction sites could be used to monitor the effects of an entire site on ambient water quality. Monitoring requirements could be incorporated with any of the previously discussed regulatory options considered. Since EPA's preferred approach for addressing construction site storm water does not rely on the performance of individual sediment controls but rather on the combined performance of a suite of erosion and sediment controls, monitoring the effectiveness of individual controls is not appropriate. Monitoring the effectiveness of the overall erosion and sediment control requirements specified in today's proposal would be very difficult at the majority of construction

sites. In order to demonstrate that the erosion and sediment control provisions at the site are achieving a stated overall percent reduction in sediment discharge would likely require monitoring of every discharge point on the site, or monitoring the receiving water above and below the construction site. The high degree of variability in site parameters, regional and site-specific rainfall, and erosion and sediment control effectiveness would, in all likelihood, make specification of standard storm water monitoring requirements impractical for a national regulation. The constantly-changing state of construction sites due to the action of construction equipment would present significant challenges in terms of monitoring equipment set-up and maintenance. The stochastic nature of storm events would likely require a dedicated staffing effort on the part of the construction site operator in order to ensure preparedness of the sampling equipment for capturing runoff events. In addition, many sites discharge to an existing storm drain system, making monitoring of the receiving water infeasible. All of these factors would add significant expense to the construction process, with little or no added assurance in the effectiveness of control measures or expected environmental benefits. As a result, EPA is not including discharge monitoring with today's proposal. Permitting authorities may include discharge monitoring requirements in permits, where it may be practical to specify sampling and monitoring procedures that are appropriate for local conditions.

## 2. Overview of Regulatory Options: Certification and Inspection

During the Agency's outreach activities, EPA received many comments that an effluent guideline was unnecessary for sites covered by the NPDES Phase I storm water regulations, and untimely for sites that would be covered by the Phase II requirements. These commenters believed that the erosion and sediment control requirements currently being established through best professional judgement by the permitting authorities are appropriate in that they can be more effectively tailored to regional and local conditions and respect traditional State and local authority over land use management. Some of the commenters stated, however, that implementation of these State and local requirements is not uniform. These commenters expressed concern that State and local government resources are insufficient to provide compliance monitoring on a timely basis, particularly where inspections by

government officials are the primary mechanism for ensuring that controls are installed and maintained. As a result, according to this view, the effectiveness of the program hinges on the amount of attention and oversight provided by the operator, and the knowledge and training that the operator has received.

As a result of these comments, EPA considered an option that would not establish ELGs at this time, but would rather require site inspection, maintenance and reporting by site owners and operators in order to improve confidence in the implementation and performance of construction site erosion and sediment controls. This option would include a maintenance record of site activities, including certification that plans required by the permit meet all erosion and sediment control requirements, certification that inspection, stabilization and maintenance requirements have been satisfied, and certification by a qualified professional that BMPs have been adequately designed, sized and installed. This option would also include a requirement that the operator or designated agent conduct regular inspections to ensure that erosion and sediment control BMPs are maintained in working order. The certification and inspection forms would be retained on the site, and made available to the permitting authority upon request. (See section XVIII of today's document for more information on compliance paperwork and implementation.)

EPA developed this option as a mechanism that might improve implementation of existing requirements. During Agency outreach conducted in advance of today's proposal, some small entity representatives commented that the problem with existing erosion and sediment control requirements is not the lack of standards, but rather the lack of adequate implementation and enforcement, including education, bid solicitation and evaluation, proper design, installation, and maintenance of BMPs, and inspection. One small entity representative cited a recent article,<sup>6</sup> which found that contractors are not following good installation and maintenance practices, and recommended more inspection and education be instituted to remedy the problems, instead of additional substantive regulatory requirements.

<sup>6</sup> Robert G. Paterson, "Construction Practices: The Good, The Bad and the Ugly," Article no. 60 in *The Practice of Watershed Protection*. Center for Watershed Protection, Ellicott City, MD, 2000. Available at <http://www.stormwatercenter.net>.

EPA believes that one way to implement this recommendation is by increasing site accountability for implementation to ensure that corrective steps are taken as appropriate to ensure that practices perform as designed. For example, inspection of perimeter silt fences can identify sections in need of repair or replacement to ensure sediment containment. Because this option is not linked to specific levels of performance, but applicable to any requirements that are established by the permit writer, EPA believes that it may be appropriate for sites between one and five acres as well as for sites of five acres or more. This option is proposed today for all sites of one acre or more as Option 1, and would amend the NPDES permit regulations at 40 CFR 122.44. See section X for a description of the options proposed. EPA also recognizes that this option may impose disproportionate costs on small operators who may have to rely on outside consultants to perform certifications and inspections. One way to reduce overall burden, including burden on small operators, while covering the majority of disturbed acreage would be to limit the scope of this option to sites of 5 acres or more. This would establish certification and inspection requirements for 80 percent of the disturbed acres. EPA thus solicits comment on limiting the scope of this option to sites of five acres and above. Under this approach, sites below 5 acres would continue to be governed by certification and/or inspection requirements based on the BPJ of the permitting authority.

## 3. Overview of Regulatory Options: Continued Reliance on State and Local ESC Programs

EPA is also proposing an option under which no additional national regulations would be established at this time. Rather, EPA would continue to rely on existing State and local programs to establish appropriate sediment and erosion control requirements for permitted construction sites, either on a BPJ basis or in accordance with applicable regulations, ordinances, land use plans, etc. Under this option, EPA could provide additional support for training and education of construction and development operators, municipalities and State regulators, in order to improve the effectiveness of existing programs. This would build on the existing regulatory framework by preserving State and local flexibility to tailor specific requirements to regional and local conditions while at the same time benefitting from enhanced technical

assistance and the latest information about emerging ESC technologies and their effectiveness. This option is being proposed as Option 3.

#### 4. Overview of Regulatory Options Considered: Long-Term Storm Water Management

EPA evaluated several regulatory options for control of long-term storm water discharges from development projects. These options are designed to control the discharge of sediment, storm water and other pollutants from sites after construction is completed. EPA specifically considered numerical design standards for the removal of specific pollutants (e.g., 80 percent TSS removal), limitations on post-development flows (e.g., maintain peak flows at pre-development levels), and BMPs to address thermal loadings to sensitive cold water streams. EPA is not proposing any of these options today. The choice of such controls, whether at a specific site or through regional storm water management infrastructure, has historically been left to State and local governments. These governments use a variety of regulatory and non-regulatory programs (such as land use planning) to address post-construction storm water flows in order to protect infrastructure and achieve local resource goals. A summary of existing State programs is included in the rulemaking record. Some States and municipalities rely on traditional approaches, such as retention ponds and infiltration basins. Other States and municipalities are pursuing approaches that will encourage regional planning, lower impact development, and other progressive programs to reduce not only the pollutant run-off from the site, but to protect receiving streams from the intensity of runoff that has accompanied urbanization. Many of these approaches do not lend themselves to uniform standards, but require integration with land use decisions and site design. EPA supports these approaches, and does not want to limit the flexibility that can be afforded at the local level while advances are being made. Moreover, the options EPA explored for a national ELG would have been very expensive if calculated on a total industry cost basis. Given the variety of approaches being attempted across the country and the expense of imposing uniform post-construction controls, EPA considers it inappropriate to propose an ELG for long-term storm water management at this time. Instead, EPA has decided to confine the proposed ELG to controls on discharge of pollutants associated with construction activity during the active construction phase, and to maintain the

traditional reliance on State and local programs to control long-term storm water management. At the same time, EPA is concerned that States and municipalities be provided the tools to assess the variety of practices that are available today for long-term storm water management. Much of the technical data that EPA collected in evaluating these options will be made available in the rulemaking record.

#### **X. Determination of Best Practicable Control Technology Currently Available (BPT), Best Conventional Pollutant Control Technology (BCT), Best Available Technology Economically Achievable (BAT), and New Source Performance Standards (NSPS)**

As discussed in section III.D of today's document, in the guidelines for an industry category, EPA defines BPT effluent limits for conventional, toxic (priority), and non-conventional pollutants for direct discharging facilities. For the BPT cost-reasonableness assessment in today's proposal, EPA used the total pounds of TSS removed.

##### *A. Rationale for Selected BPT Option*

EPA estimates that construction sites annually discharge 80 million tons of TSS into the surface waters of the United States. As a result of the quantity of pollutants currently discharged directly to the nation's waters and the adverse environmental effects of these discharges (see section VIII.B of today's document), EPA determined that there may be a need for BPT regulation for the construction and development category.

At the same time, EPA recognizes that many States are examining the permit requirements they are establishing in light of their experience with the storm water program to date. EPA's estimates of pollutant discharges today are significantly lower than estimates at the time EPA issued the CGP. EPA is therefore co-proposing not to establish BPT requirements for the C&D category, but to allow and encourage fuller implementation of the current storm water program. This co-proposal takes two forms, one in which EPA essentially codifies the inspection and certification provisions discussed in section IX (hereinafter called Option 1), and one in which EPA does not amend the national storm water regulations at this time, but instead continues to rely on BPJ requirements tailored to regional and local conditions as determined by the permitting authority (hereinafter called Option 3).

As one option, the Agency is proposing codification of the CGP with

inspection and certification as the basis for BPT (Option 2). EPA's decision to co-propose BPT limitations based on this option reflects the following primary factors: (1) The degree of effluent reductions attainable, (2) the total cost of the proposed option in relation to the effluent reductions achieved, and (3) the maturity of the NPDES program as it pertains to construction activity at sites of 5 acres or greater. EPA estimates that this option will reduce pollutant discharges to waters of the United States by 22 billion pounds per year at a cost of \$505 million. EPA believes this option does not create unacceptable deleterious non-water quality environmental impacts.

EPA has not identified a basis for formulating different BPT limitations based on facility age, process or other engineering factors. The most pertinent factors for establishing the limitations are costs of the controls, the level of effluent reduction benefits obtainable, and the current state of the NPDES program.

As described in section IX of today's document, EPA is proposing this option for sites of five acres or more. EPA is not proposing to establish effluent limitation guidelines for sites of less than five acres at this time for the reasons described in section IX.

EPA is also considering the option (discussed in section IX) that would codify the CGP without adding the inspection and certification requirements. Although EPA believes that inspection and certification requirements will help ensure the proper design, installation, and maintenance of erosion and sediment controls, EPA recognizes that including specific certification and inspection requirements in national regulations is not the only way to accomplish this objective. EPA could instead leave the establishment of such requirements to the BPJ of the permitting authority, consistent with State and local program requirements. Including specific certification and inspection requirements in co-proposed Option 2 accounts for \$65 million per year of the \$505 million per year cost of this option. EPA is interested in minimizing recordkeeping and reporting burdens to the extent that substantive performance is not jeopardized. EPA solicits comments on less costly means of ensuring the performance of erosion and sediment controls and the merits of leaving the establishment of specific certification and inspection requirements to the BPJ of the permitting authority. EPA solicits comment on the option of codifying the CGP without adding specific national

certification and inspection requirements. Under this option, §§ 450.21(f) and (g) would be removed from the proposed rule language, except the first sentence of § 450.21(g)(1) which would be retained.

### B. BCT Determination

#### 1. July 9, 1986 BCT Methodology

The BCT methodology, promulgated in 1986 (51 FR 24974), discusses the Agency's consideration of costs in establishing BCT effluent limitation guidelines. EPA evaluates the reasonableness of BCT candidate technologies (those that are technologically feasible) by applying a two-part cost test:

(1) The publicly-owned treatment works (POTW) test; and

(2) The industry cost-effectiveness test.

In the POTW test, EPA calculates the cost per pound of conventional pollutant removed by industrial dischargers in upgrading from BPT to a BCT candidate technology and then compares this cost to the cost per pound of conventional pollutant removed in upgrading POTWs from secondary treatment. The upgrade cost to industry must be less than the POTW benchmark of \$0.25 per pound (in 1976 dollars).

In the industry cost-effectiveness test, the ratio of the incremental BPT to BCT cost divided by the BPT cost for the industry must be less than 1.29 (i.e., the cost increase must be less than 29 percent).

#### 2. Consideration of BCT Option

For today's proposed rule, EPA considered whether or not to establish BCT effluent limitation guidelines for C&D sites that would attain incremental levels of effluent reduction beyond BPT for TSS. EPA was not able to identify a technically feasible, discrete addition to the BPT technology that would achieve additional TSS reductions and would be applicable nationally. For construction site erosion control, additional conventional pollutant removals would require the use of chemical treatments such as polyacrylamide (PAM) or alum. As described in section IX.C of today's document, the Agency recognizes that these treatments are used in some parts of the country, but has insufficient information about the environmental effects of the treatments to recommend requiring their use nationwide. Therefore, EPA did not apply the BCT Cost Tests and is co-proposing that BCT be set equivalent to BPT limitations (i.e., Option 2).

### C. BAT and NSPS

EPA generally considers the following factors in establishing the best available technology economically achievable (BAT) level of control: The age of process equipment and facilities, the processes employed, process changes, the engineering aspects of applying various types of control techniques, the costs of applying the control technology, economic impacts imposed by the regulation, non-water quality environmental impacts such as energy requirements, air pollution and solid waste generation, and other such factors as the Administrator deems appropriate (section 304(b)(2)(B) of the Act). In general, the BAT technology level represents the best existing economically achievable performance among dischargers with shared characteristics. In making the determination about economic achievability, the Agency takes into consideration factors such as plant closures and product line closures. Where existing wastewater treatment performance is uniformly inadequate, BAT technology may be transferred from a different subcategory or industrial category. BAT may also include process changes or internal plant controls which are not common industry practice.

EPA considered the same option for BAT as discussed under BCT. The Agency is unaware of any additional technically feasible and economically achievable technologies for the removal of toxics (i.e., priority metals and organic chemicals) and non-conventional pollutants under BAT beyond those considered for BPT. As discussed in section IX.C of today's document, EPA initially considered the use of chemical treatment of soils or the addition of polymers (such as PAM) or coagulants for the removal of toxics and non-conventional pollutants. However, due to the concern over the unknown environmental effects of widespread usage of such treatment, EPA did not give this option further consideration. EPA is co-proposing BAT limitations equivalent to BPT (Option 2).

When developing NSPS, EPA generally considers that new facilities have the opportunity to incorporate the best available demonstrated technologies including process changes, in-plant controls, pollution prevention, and end-of-pipe treatment technologies.

The NSPS co-proposed in today's rule would apply to new sources as defined in § 450.11. EPA proposes to define "new source" for purposes of part 450 as any source of storm water discharge associated with construction activity

that results in the disturbance of at least five acres total land area that itself will produce an industrial source from which there may be a discharge of pollutants regulated by some other new source performance standard elsewhere under subchapter N. (All new source performance standards promulgated by EPA for categories of point sources are codified in subchapter N.)

The definition of new source proposed today for purposes of part 450 would mean that the land-disturbing activity associated with constructing a particular facility would not itself constitute a "new source" unless the results of that construction would yield a "new source" regulated by other new source performance standards. For example, construction activity that is intended to build a new pharmaceutical plant covered by 40 CFR 439.15 would be subject to new source performance standards under § 450.24.

EPA also seeks comment on whether no sources associated with C&D activity should be deemed "new sources." EPA may decline to establish NSPS on the grounds that construction activity itself is outside the scope of those activities intended to be covered by CWA section 306. ("The term 'new source' means any source, *the construction of which is commenced* \* \* \*" 33 U.S.C. 1316(a)(2)(emphasis added)). Because EPA has co-proposed to set NSPS equivalent to BPT, the Agency expects that this would not result in any substantive increase or decrease in the limitations imposed on any C&D activity.

EPA's proposed approach to defining "new sources" is based largely on the structure of the CWA. Under the CWA, a source may not be a "new source" under section 306(a)(3) unless there is or may be a discharge of pollutants from the constructed facility. A discharge of pollutants means an addition of any pollutant to navigable waters from any point source, i.e., any discernible, confined and discrete conveyance such as a pipe, ditch or channel. See CWA section 502(12) & (14). Section 306(b) of the CWA itself includes a list of industries for which EPA was directed to address with NSPS. EPA proposes to treat all sources from which there may be a discharge associated with construction activity disturbing five acres or greater that will result in a "new source" as "new sources" themselves.

There may be situations when a newly-constructed direct discharging point source would fall within an industrial category or subcategory for which EPA has not promulgated NSPS; In that case, the discharge associated

with the construction activity would be subject to BPT limitations outlined in § 450.21. Substantively, these limitations are identical to those imposed on “new sources” under this proposed rule.

EPA is interested in any comments on these, or other possible definitions of new source in this rule and is especially interested in comments regarding EPA’s legal authority to take either of these approaches, the environmental benefits of these approaches and the potential implications these approaches may have on administration of the NPDES permit program.

#### *D. Summary of Provisions in Today’s Proposed Rule*

The provisions in today’s proposed rule are discussed programmatically rather than in the order of the numbered options.

#### **1. General Provisions and SWPPP Preparation**

Option 2 in today’s proposal includes a number of specific provisions for preparation of Storm Water Pollution Prevention Plans (SWPPPs) based principally on EPA’s current Construction General Permit (CGP). EPA is also proposing some additional provisions for inclusion in SWPPPs.

Options 1 and 3 do not include specific provisions for preparation of a SWPPP. However, under these options sites would continue to be governed by existing permit requirements. All individual permits, EPA-issued general permits, and most State-issued general permits for discharges associated with construction activity five acres or greater require the preparation of a SWPPP or similar pollution prevention documentation.

The CGP requires owners and operators of construction sites subject to regulation to prepare a SWPPP that, among other things, describes the BMPs to be selected to control runoff during the land-disturbing phase (erosion and sediment controls). While the SWPPP terminology is used in EPA-issued CGPs, States need not use the SWPPP terminology. Instead, States may require alternate documents that are equivalent to SWPPPs. Examples include erosion and sediment control plans, storm water management plans, or other documents. EPA has conducted an evaluation of State-level erosion and sediment control regulations, and found that the majority of States include provisions equivalent to those contained in the EPA CGPs. As a result, the requirements co-proposed under Option 2 today can be incorporated into SWPPPs, or alternate documents that are equivalent to a

SWPPP, as long as these documents address all of the provisions contained in today’s proposal.

The requirements co-proposed today do not preclude permitting authorities and State, County and Municipal erosion and sediment control regulations or ordinances from including additional or more stringent requirements, nor do they replace existing requirements that are more stringent.

Section 450.21(d) contains the requirements for preparing a SWPPP under Option 2. Explanations are provided below for selected provisions.

- Section 450.21(d)(1). *Narrative description of the construction activity.* Although not an explicit requirement, EPA presumes that any individual activity on the site that will result in a disturbance of more than 1,000 square feet of land will be treated as a “significant” disturbance of soils and will be described in the SWPPP.
- Section 450.21(d)(2). *General location map and site map.* In most cases, a site drawing prepared along with the erosion and sediment control plan is appropriate. The site map shall be of sufficient scale and detail to allow easy identification of individual erosion and sediment controls and storm water BMPs, as well as delineation of drainage pathways. In many jurisdictions, local agencies specify a map scale for preparation of site drawings.
- Section 450.21(d)(3). *Description of available data on soils present at the site.* This type of information may be obtained from soil surveys conducted during the initial stages of project formulation, which may be needed for evaluating the engineering properties of soils. Information of this type might also be collected during initial investigations of a site, commonly referred to by the industry as “due diligence” procedures or a “Phase I” or “Phase II” environmental site assessment.<sup>7</sup>
- Section 450.21(d)(4). *Description of BMPs to be used to control pollutants in storm water discharges during construction.* The operator may reference a State erosion and sediment control design manual used to design BMPs as an abbreviated method for a fuller description of the BMPs in the SWPPP. Such references should cite specific BMP references and/or specifications in the manual.

<sup>7</sup> The phases referred to in this instance describes a step in an environmental site assessment (ESA) process, not the NPDES “Phase I” or “Phase II” storm water regulations. ASTM International (formerly known as the American Society for Testing and Materials) has published recommended ESA procedures as standard no. E1527–96. <http://www.astm.org>

- Section 450.21(d)(5). *Description of the general timing (or sequence) in relation to the construction schedule when each BMP is to be implemented.* Although approximate dates are useful, they are not necessary. General descriptions are acceptable. For example, one might describe an installation of a BMP as follows: “sediment basins will be installed prior to initial clearing and grubbing of the site.”

- Section 450.21(d)(6). *Estimate of the pre-development and post-construction runoff coefficients of the site.* Estimates of runoff coefficients may be determined by using a number of readily available resources, including models such as “Urban Hydrology for Small Watersheds, Technical Release 55 (TR-55)” and documents such as “Hydrology, Section 4, National Engineering Handbook (NEH-4),” both published by USDA/Natural Resources Conservation Service (NRCS). In addition, there are a number of commercial software packages that may also be used to estimate these parameters.

- Section 450.21(d)(8). *Delineation of SWPPP implementation responsibilities.* The SWPPP must describe who is responsible for implementation of the controls described in the SWPPP.

- Section 450.21(d)(9). *Any existing data that describe the storm water runoff characteristics of the site.* Include any existing data that describe the quality of any discharges of storm water from the site. This does not require the permittee to collect additional data.

It is important to note that the above requirements for SWPPP preparation are in addition to any requirements contained in other Federal, State or local regulations. Permittees should always consult permit authorities to obtain all requirements related to SWPPP preparation. In addition, § 450.21(e) would require periodic updating of the SWPPP to address changes in activities that may require updating of the erosion and sediment control provisions for the site. Examples where updates may be needed include significant changes in the construction schedule or changes in the nature of construction activities. If periodic inspections indicate that the selected erosion and sediment controls are not effective in controlling pollutant discharges from the site, the revision of the SWPPP may be necessary. It is the responsibility of the permittee to keep the SWPPP current.

## 2. Design and Installation of Erosion and Sediment Controls

Under all three options, permits would require, at a minimum, compliance with any applicable State and local erosion and sediment control requirements. Under Option 2, the selection, design and implementation of these controls would need to also comply with the national effluent guidelines in 40 CFR 450.21. Under Options 1 and 3, the selection, design and implementation of these controls would be governed by BPJ-based permit conditions established by the permit authority and tailored to regional or local conditions. In practice, many of the same control technologies may be used under all three options, though the design and performance could vary significantly in some locations.

The erosion and sediment control provisions of Option 2 rely on implementation of a range of BMPs, as well as a design-based standard for sediment basins. This standard is different from many traditional effluent guidelines in that it does not establish end-of-pipe discharge limitations or performance standards for storm water runoff from construction sites, but instead establishes minimum criteria for erosion and sediment control selection, design, installation and maintenance. The design standard is based primarily on minimizing sediment generation and transport through the use of effective erosion controls, and secondly on controlling sediment discharge through the use of effective sediment controls. Due to the high degree of variability in site parameters, regional and site-specific rainfall, and erosion and sediment control effectiveness, Option 2 does not contain numerical discharge standards or discharge monitoring requirements. Instead, this option relies on adherence to established erosion and sediment control principles and demonstration of effective design, installation and maintenance through regular inspection and certification.

Although Option 2 does not contain monitoring provisions, permitting authorities may require monitoring of construction site runoff or receiving waters to gauge performance. Examples of indicator parameters that may be evaluated in order to evaluate the quality of storm water discharged from construction sites include TSS, turbidity, settleable solids, and suspended sediment concentration. (EPA-approved analytical test methods for some of these parameters are listed in 40 CFR part 136.) In addition, permitting authorities may also utilize numerical models to evaluate erosion

and sediment control efficiency and to evaluate sediment generation and delivery from construction sites. Examples include empirical models such as the Revised Universal Soil Loss Equation (RUSLE) or process-based models such as SEDCAD and SEDIMOT II.<sup>8</sup>

Under Option 2, construction site owners and operators would be required to consider the use of a range of erosion and sediment control BMPs when preparing SWPPPs for construction sites. EPA's preferred approach is to first limit sediment generation and transport through the use of effective site planning and erosion controls, and secondly control sediment discharges through the use of effective sediment controls. In addition, § 450.21(c) would require implementation of pollution prevention practices to prevent contamination of storm water runoff with construction materials and litter and debris.

Section 450.21(a) would require that construction site owners and operators include descriptions of general erosion and sediment controls and BMPs in SWPPPs to retain sediment on site (to the extent practicable), and to provide interim and permanent stabilization. Stabilization measures may include establishment of temporary or permanent vegetation, mulching, geotextiles, sod stabilization, vegetative buffer strips, and protection of trees and mature vegetation. This section also requires the SWPPP to contain a schedule indicating when practices will be implemented. EPA recommends that all controls be properly selected and installed in accordance with sound engineering practices and, when feasible, manufacturer's specifications.

In Option 2, EPA is requiring that owners and operators implement sediment controls for all drainage areas of 5 or more acres. For drainage areas of between 5 and 10 acres, smaller sediment basins or sediment traps shall be used where attainable. For drainage areas of 10 or more acres, sediment basins or equivalent control measures shall be installed where attainable. Where neither a sediment basin or

equivalent control is attainable, silt fences, vegetative buffer strips or equivalent sediment controls are required. Runoff from undisturbed site areas that is diverted around disturbed areas can be ignored when designing sediment controls. Where attainable, sediment basins shall be designed to provide storage for a 2 year, 24-hour storm, or alternatively, 3,600 cubic feet of storage volume per acre drained. The basin sizing is based on the area of the drainage that will have vegetation removed and soils disturbed (i.e., if the drainage area is 15 acres, but only 13 acres of this area will have vegetation removed and soils disturbed during the course of the project and the remaining 2 acres will remain vegetated and is directed around both the disturbed area and the sediment basin, then the permanent storage volume can be sized based on 13 acres). EPA recommends that sediment control outlets be designed to provide a detention time at the design capacity of at least 6 hours. In addition, permit authorities may require that the basins be designed to pass larger runoff events safely, and may require the use of an emergency spillway, pursuant to state and/or local authority.

EPA encourages permittees to utilize improved sediment basin designs that incorporate features such as baffles and outlet structures such as rock or fabric filters surrounding risers, siphoning outlets, and using surface skimmers and floating weirs. The use of these practices may significantly improve the performance of sediment basins in certain cases. In addition, all basins should be designed by a qualified engineer and local regulations regarding impoundment design should be consulted.

Proposed § 450.21(h) would require site owners and operators to provide temporary and/or permanent stabilization of exposed soil areas on construction sites. Exposed soil areas and slopes must be stabilized as soon as practicable, and in no case more than 14 days after construction activity has temporarily or permanently ceased on any portion of the site. Where construction activity has temporarily ceased on a portion of the site and earth-disturbing activities will be resumed within 21 days, stabilization is not required on that portion of the site. Time limits for stabilization may be extended where compliance is impractical due to snow cover, frozen soil, or other factors. Temporary or permanent erosion control measures include planting of vegetation, sodding, mulches, bonded fiber matrices, binders and tackifiers, polymers, and rolled

<sup>8</sup> "Predicting Soil Erosion by Water: A Guide to Conservation Planning with the Revised Universal Soil Loss Equation (RUSLE)." K.G. Renard, G.R. Foster, G.A. Weesies, D.K. McCool, and D.C. Yoder. United States Department of Agriculture, 1997.

Warner, R.C. and P.J. Schwab, 1998. "SEDCAD 4 for Windows 95 & NT: Design Manual and User's Guide." Civil Software Design, Ames, IA.

Wilson, B.N., B.J. Barfield, A.D. Ward, and I.D. Moore. 1984. "A Hydrology and Sedimentology Watershed Model, Part I: Operational Format and Hydrologic Component." Transactions of the American Society of Agricultural Engineers 27(5):1370-1377.

erosion control products. Exceptions are provided for low rainfall areas and where stabilization is temporarily impracticable.

### 3. Inspection and Certification Provisions

Under all three options, permits would generally specify inspection and/or other requirements to ensure compliance. Under Option 3, these requirements would continue to be based on State and local ESC programs and the BPJ of the permitting authority. Both Options 1 and 2 would require a variety of site erosion and sediment control inspection and certification requirements, including inspections every 14 days and a final site inspection and certification. The provisions in each option are roughly equivalent, although each would be codified differently in the regulations. Under Option 3, any inspection and certification requirements would be based on any applicable State and local ESC programs and the BPJ of the permitting authority.

In Option 1, part 122 would be amended to add conditions applicable to storm water permits for construction activity. Section 122.44(t)(1) would require a permittee (or designated agent) to maintain a site log book to track the implementation of erosion and sediment controls and other actions required by the permit. The analogous provision in Option 2 is at § 450.21(f). Any format for the site log book could be used, as long as the specific provisions listed in the regulation are addressed. EPA plans to provide guidance on a recommended format for the site log book at the time of promulgation if EPA ultimately promulgates inspection and certification requirements. EPA solicits comments on the log book format.

Option 1 would also amend § 122.44(i)(4) to exclude construction sites subject to ELGs from discharge monitoring requirements, for the reasons described in section IX of today's document. Permit authorities would retain discretion to set monitoring requirements for construction site discharges on a case-by-case basis.

Options 1 and 2 would also require periodic inspection and certification of various provisions. This is embodied in proposed § 122.44(t)(2) in Option 1, and §§ 450.21(f) and (g) under Option 2. The certification, either by the permittee or designated agent (as described below) would be an assurance by the certifying official that the various provisions concerning BMP design, installation and maintenance are occurring on a regular basis in order to assure effectiveness of the selected erosion and sediment

controls. The permittee or designated agent would not be required to certify as to the performance of selected controls, but rather that the controls were designed and installed according to the provisions required in the permit and that regular maintenance activities are occurring. In some States and municipalities, similar inspection systems are already being employed, and EPA believes that these systems would generally be in conformance with Options 1 and 2. The Agency requests comment on whether the proposed inspection requirements are compatible with existing State and local ESC inspection systems.

EPA recommends that these inspections be conducted by a Certified Professional in Erosion and Sediment Control (CPESC),<sup>9</sup> licensed Professional Engineer (PE), or other qualified professional with training in erosion and sediment control principles and practices. However, since there will be a large number of inspections required to cover all construction sites nationally and there is only a limited number of certified professionals available, EPA is not requiring that these inspections be carried out by a licensed or certified professional. The individual conducting the inspections should have adequate training and a thorough understanding of the erosion and sediment control requirements for the site, as described in the SWPPP. EPA envisions that in most cases, and particularly for larger projects, the inspection and reporting requirements will be carried out by the same consulting firm(s) or prime contractor(s) that provided the initial site design, engineering drawings, SWPPP preparation, and construction supervision for that project. However, the permittee may make other arrangements to accomplish the inspection and reporting requirements, such as self-inspection and self-certification.

It is important to note that compliance with the proposed inspection and reporting requirements would be the responsibility of the permittee. Although a subcontractor, consultant or third-party certification firm may be employed by the permittee to conduct the actual inspections, any discrepancies or violations noted would be a violation of the site owner or operator's storm water permit and corrective measures would be the responsibility of the permittee. EPA would not hold subcontractors or

consultants who are providing inspection and certification services to permittees responsible for permit violations. The site log book would be the official record of inspection and maintenance activities, and a copy should be maintained by the site owner or operator in the event of a change in the entity providing the inspection mechanism (for example, if a developer changes subcontractors following the completion of initial grading).

The site log is intended to serve multiple purposes. The first, and most important, is as a planning tool for the permittee and a means of tracking erosion and sediment control activities, including maintenance. The second is a tool for permitting authorities to gauge compliance with regulations and to aid enforcement activities. As such, it is in the best interest of all parties involved for the permittee to maintain a copy of the site log book and other documents required by the permit (e.g., a SWPPP) on-site, and to allow access to this information by the permitting authority. Since members of the public may also have an interest in the compliance related information documented in the site log book, EPA recommends that a copy be maintained in a public location (such as a library or courthouse), or that a copy be made available to the public upon request within a reasonable period.

### 4. Maintenance

In Option 2, construction site owners would be required to remove accumulated sediment from sediment traps and ponds when design capacity has been reduced by 50 percent.

### XI. Methodology for Estimating Costs

In developing today's proposed rule, EPA has taken a model approach to estimating the costs of compliance.<sup>10</sup> Costs were estimated that are expected to be borne by two distinct entities: (1) Costs that are expected to be directly borne by the construction and development category for BMP installation and administrative functions and the consumers of the construction projects; (2) costs that are expected to be borne by permitting authorities for implementing the provisions of today's proposal. All costs presented are incremental over the costs already being borne by these entities due to existing Federal, State and local regulations governing erosion and sediment control.

<sup>9</sup> The CPESC training program is sponsored by the International Erosion Control Association (<http://www.ieca.org>) and the Soil and Water Conservation Society (<http://www.swcs.org>).

<sup>10</sup> A cost model identifies variables and uses equations to estimate costs. The model is used to estimate costs before and after implementation of the proposed rule.

In estimating costs of today's proposal to the C&D category, EPA has categorized costs as capital costs and administrative costs. The following components were included in EPA's costing analysis: (1) Capital costs, including design, installation (including materials and labor), maintenance, profit and overhead; and (2) administrative costs, including SWPPP preparation, inspections, installation and maintenance certification, permit submission, and records retention. In developing cost estimates for permit authorities, EPA estimated administrative costs to revise general permits to incorporate the effluent guidelines requirements.

Using NRI and Census data, EPA estimates that the C&D category converts approximately 2.2 million acres of land from rural to urban use in the nation each year. This is based on NRI data for the years 1992 and 1997. Although the use of NRI data is likely to overestimate the amount of new acreage that is actually developed (as opposed to just being included in the new urban land use base), EPA still chose to utilize NRI data for the following reasons: (1) NRI data provides a consistent and comprehensive picture of broad land use changes for the United States; (2) NRI data is presented at the watershed scale, allowing subsequent evaluation of environmental impacts and benefits in a consistent manner; and (3) NRI data allows evaluation of recent as well as historical land use changes, facilitating the estimation of trends.

For all of the environmental and economic assessments prepared for today's proposal, EPA elected to use a single year's developed acreage as the basis for its estimations, and to present all cost data on an annual basis. To help establish what trends exist in new urbanizing areas, EPA evaluated published sources to define what an urbanized area contains in terms of various land uses, and used these land uses to apportion annual construction activity into different industries based on developed land area. The Agency formulated characteristics for four industries based on Census data: single-family housing construction, multi-family housing construction, manufacturing and industrial building construction, and commercial and institutional building construction. A breakdown of estimated construction acreage by sector can be found in Chapter four of the Development Document.

EPA's analysis indicates that between 1999 and 2000 there were approximately 42,000 acres of new urban road and highway construction in

the U.S. (Highway Statistics 1999 and Highway Statistics 2000, Federal Highway Administration). This constitutes less than 2 percent of the total new developed acreage in the U.S. Because new road and highway construction is such a small percentage of annual development acreage, EPA did not conduct a separate analysis of costs of the proposed rule for highway, street, bridge and tunnel construction. EPA requests comment on this approach, as well as data on the costs of the proposed rule for highway, street, bridge, and tunnel construction and any special implementation challenges that may be found by this sector.

#### *A. Costs to the Construction and Development Category*

EPA used a model site approach to develop estimates of costs of the rule to the C&D category. Using the data on development trends within each industry as a starting point, EPA estimated a distribution of construction site sizes for each of the four industries based on census data and on data collected during the NPDES Phase II rulemaking. The Phase II rulemaking data identify distributions of site sizes within each industry based on construction permits issued in 14 urbanizing municipalities. From this data, EPA was able to develop the national distribution of construction activity by sector and size. Detailed results of this analysis can be found in Chapter four of the Development Document.

EPA developed a series of model construction sites for each of the size strata and identified erosion and sediment control practices required under current State CGP baseline conditions (i.e. compliance with current NPDES regulations). The Agency identified costs of these controls using unit cost references commonly used by the industry to estimate their construction costs for bids (R.S. Means Co., Construction Cost Manual, 2000) as well as data from the literature. EPA also added costs for design, O&M, as well as regional cost adjustments. EPA then applied O&M costs, design costs, and profit and overhead, using costs and frequencies based on standard industry practice. Administrative costs for activities such as permit application and records retention were also estimated. Following development of regulatory options, EPA estimated the increase in costs for erosion and sediment controls due to factors such as increased sizing (for BMPs such as sediment basins), increased frequency of application (such as temporary seeding and mulching), as well as increased administrative costs

for factors such as inspection and SWPPP certification. By comparing these costs to the baseline costs, EPA was able to estimate the incremental costs of various regulatory options. (See Chapter 7 of the Development Document for a more detailed discussion of the construction control model.)

#### *B. Costs to Permit Authorities*

EPA identified additional administrative costs to permit authorities for incorporating the proposed requirements into appropriate general permits. EPA views the permit authorities (EPA regional offices and States) as the main implementors of effluent guidelines and NPDES regulations. The Agency expects that States will integrate the proposed requirements into their respective erosion and sediment control general permits. However, many States rely on local governments and quasi-governmental agencies (e.g., conservation districts) as partners in implementing their ESC programs. EPA acknowledges that the administrative costs it has estimated will likely be shared among a broader range of entities than just States. (See chapter 7 of the Development Document for a more detailed discussion of the administrative costs to permit authorities.)

In estimating the total costs to administer today's proposed effluent guidelines requirements, EPA has built on its earlier work related to the Phase II NPDES storm water rule ("Economic Analysis of the Final Phase II Storm Water Rule," EPA-833-R-99-002, October 1999) in order to estimate incremental costs of effluent guidelines implementation. EPA has also built on regulatory program development costs identified in earlier effluent guidelines (such as the proposed rule for Concentrated Animal Feeding Operations, 66 FR 2960, January 12, 2001) where they are similar in nature and scope. In estimating the baseline administrative costs, EPA has assumed 100 percent implementation of existing Phase I and II NPDES storm water regulations. Applications for permits for discharges of pollutants associated with construction activity disturbing at least one acre but less than five acres are not required before March 10, 2003. Hence, although these permits are not required under Federal regulations at this time, they will be when EPA takes final action on today's proposal in 2004.

## XII. Economic Impact and Social Cost Analysis

### A. Introduction

EPA's Economic Analysis (see "Supporting Documentation") describes the impacts of today's proposed rule in terms of firm closures, employment losses, and market changes, such as housing prices. In addition, the report provides information on the impacts of the proposal on sales and prices for residential construction. The initial regulatory flexibility analysis (IRFA) supports EPA's compliance with the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA). The report also presents identified, quantified, and monetized benefits of the proposal.

Today's document includes related sections such as the cost-effectiveness analysis in section XIII, benefits analysis in section XVI, and benefit-cost analysis in section XVII. In their entirety, these sections comprise the economic analysis (referred to collectively as the "C&D economic analysis") for the proposed rule. EPA's Environmental Assessment provides the framework for the monetized benefits analysis. See the complete set of supporting documents for additional information on the environmental impacts, social costs, economic impact analysis, and benefit analyses.

The C&D economic analysis, covering subsectors that disturb land (NAICS 233 and 234), uses information from, and builds upon, the NPDES Phase II rule economic analysis (op.cit.). In addition to building upon the work completed for the Phase II rule, the C&D economic analysis expands the Phase II economic analysis with, among others, an environmental assessment, economic achievability analysis, barrier-to-entry analysis, and benefit-cost analysis. In

addition to CWA requirements, EPA has followed OMB guidance on the preparation of the economic analyses for Federal regulations to comply with Executive Order 12866. See section XIX.D of today's document.

### B. Description of Economic Activity

The construction sector is a major component of the United States economy as measured by the gross domestic product (GDP), a measure of the domestic output of goods and services produced in one year by the U.S. economy. The construction sector directly contributes about five percent to the GDP. Moreover, one indicator of the economic performance in this industry, housing starts, is also a "leading economic indicator," one of the indicators of overall economic performance for the U.S. economy. Several other economic indicators that originate in the C&D industry include construction spending, new home sales, and home ownership.

During most of the 1990s, the construction sector experienced a period of relative prosperity along with the overall economy. Although cyclical, the number of housing starts increased from about 1.2 million in 1990 to almost 1.6 million in 2000, with annual cycles during this period. (U.S. Census Bureau, "Current Construction Reports, Series C20—Housing Starts," 2000. <http://www.census.gov/const/www>). At the beginning of the 21st century, the economy has begun to slow relative to previous highs in the 1990s. The United States has been affected by global factors and events, that have led to temporarily reduced consumer spending, but the adverse impacts on the construction and development industry appear modest at this time. The Federal Reserve money market policies to keep interest rates low, particularly mortgage interest rates,

have been a significant and positive force in light of the economic factors impacting the economy. The most recent data indicates consumer spending for new homes remains strong.

For the purposes of today's proposed rule, the Construction and Development Category is comprised of industries that disturb land. The category contains business establishments<sup>11</sup> that are involved in building, developing and general contracting (NAICS 233) as well as heavy construction (NAICS 234). As a starting point, Table XII-1 shows the number of business establishments in the C&D category in 1992 and 1997. Only a portion of these establishments would be covered by the proposed regulation, because some of these establishments are house remodelers and others build on sites with less than one acre of disturbed land each year. (The proposed rule would cover projects one acre or more under Option 1, and 5 acres or more under Option 2. See section IV, Scope of Proposal, in today's document.)

Table XII-1 shows a sharp decline in the number of developers between 1992 and 1997. The decrease in the number of developers may have been a response to changes in tax laws and the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) of 1989 (Public Law 101-73, August 9, 1989) and the 1993 implementing regulations. The objective of FIRREA and the implementing regulations was to correct events and policies that led to a high rate of bankruptcies in the thrift industry in the late 1980s. The regulations changed lending practices by financial institutions, requiring a higher equity position for most projects, with lower loan-to-value ratios, and more documentation from developers and builders. (Kone, "Land Development," op. cit.)

TABLE XII-1.—NUMBER OF EMPLOYER ESTABLISHMENTS IN CONSTRUCTION AND DEVELOPMENT INDUSTRIES, 1992 AND 1997

| NAICS                  | Industry                                                                                    | 1992 number | 1997 number | Change (percent) |
|------------------------|---------------------------------------------------------------------------------------------|-------------|-------------|------------------|
| 233, except 2331 ..... | Building, developing, and general contracting, except land development and sub-development. | 168,407     | 191,101     | 13.5             |
| 2331 .....             | Land development and sub-development .....                                                  | 15,338      | 8,185       | -46.6            |
| 234 .....              | Heavy construction .....                                                                    | 37,180      | 42,557      | 14.5             |
| 235 <sup>a</sup> ..... | Special trade contracting .....                                                             | 14,864      | 19,771      | 33.0             |
| Total .....            | .....                                                                                       | 235,789     | 261,617     | 11.0             |

<sup>a</sup> Includes NAICS 23593 (Excavation contractors) and 23594 (Wrecking and demolition contractors). Sources: 1992 and 1997 Census of Construction; Economic Analysis.

<sup>11</sup> The Census Bureau uses the term "establishment" to mean a place of business.

"Employer establishment" means an establishment with employees.

Building upon Table XII-1, Table XII-2 shows the number of establishments that could potentially be covered under the C&D proposed regulation. From the total of about 262,000 establishments in 1997, EPA subtracted about 62,400 establishments that are engaged in home remodeling, and would not be subject to the proposed regulations. This estimate is based upon a study by the Harvard University Joint Center for Housing Studies ("Remodeling Homes for Changing Households," 2001). The elimination of remodelers is based on the fact that remodeling and renovation activities generally disturb less than one acre of land, if any at all.

EPA also deducted 50,661 establishments that build one to four houses. Given an average lot size of about 0.3 acres per house, EPA assumes that a builder that builds between one and four houses per year is unlikely to disturb one acre or more in a given year. The estimate of the number of establishments building one to four houses was based upon a study and report by the Census Bureau ("Construction Sector Special Study

Housing Starts Statistics," op.cit.). Some of the sites built upon by these establishments would be covered by NPDES storm water permits if they are located within a "common plan of development" (i.e., a subdivision) that is at or above the regulatory threshold. (This threshold is currently 5 acres under the Phase I rule, and will become 1 acre under the Phase II rule in 2003.) However, the Agency does not have information on the amount of houses that are built within subdivisions, rather than on discrete lots, by these establishments. EPA requests comment on its methodology for removing remodelers and firms that do not disturb more than one acre of land from the analysis.

Based upon these adjustments of the total number of establishments, EPA believes that about 150,000 establishments would be covered under Option 1. Although it is likely that fewer establishments would be covered under Option 2, EPA has not made adjustments to account for establishments that do not disturb more than five acres. The population of

establishments that would be covered after the adjustments that EPA has made may also include subcontractors. Many, if not most of these establishments also would not be covered by the proposed rule, because they do not disturb land. However, the Agency has insufficient data to make any further adjustments to the population of developers and builders covered by the proposal. For example, no adjustments have been made to account for establishments in the non-residential construction or heavy construction industries that may disturb less than one acre of land. EPA solicits comment on the Agency's estimate of the number of establishments that would be covered under the proposal. For general discussion, EPA will refer to the 150,000 establishments as the covered population. As estimated from the data sources available, the actual estimate is 148,556 establishments. EPA requests comment and any other information available about the potentially covered population.

TABLE XII-2.—NUMBER OF ESTABLISHMENTS COVERED BY THE CONSTRUCTION AND DEVELOPMENT PROPOSED REGULATIONS

| NAICS       | Industry sector                                       | Establishments |                  |
|-------------|-------------------------------------------------------|----------------|------------------|
|             |                                                       | Number         | Percent of total |
| 2331 .....  | Land development and subdivision .....                | 8,185          | 5.5              |
| 23321 ..... | Single-family residential building construction ..... | 31,615         | 21.3             |
| 23322 ..... | Multi-family residential building construction .....  | 1,718          | 1.1              |
| 2333 .....  | Nonresidential construction .....                     | 44,710         | 30.1             |
| 234 .....   | Heavy construction .....                              | 42,557         | 28.7             |
| 235 .....   | Special trade contracting .....                       | 19,771         | 13.3             |
| Total ..... | .....                                                 | 148,556        | 100.0            |

Source: Economic Analysis.

### C. Method for Estimating Economic Impacts

EPA has conducted economic impact analyses to determine the economic achievability of each of the three co-proposed options. An important methodology used in the economic impact analysis is an assessment of how incremental costs would be shared by developers and home builders, home buyers, and society. This method is called "cost pass-through" analysis or CPT analysis. Details of this method may be found in Chapter 4 of the Economic Analysis.

The economic analysis for the C&D proposal also uses another method called partial equilibrium analysis that builds upon analytical models of the marketplace. These models are used to estimate the changes in market

equilibrium that could occur as result of the proposed regulations. In theory, incremental compliance costs could shift the market supply curve, lowering the supply of construction projects in the market place. This would increase the market price and lower the quantity of output, i.e., construction projects. If the demand schedule remains unchanged, the new market equilibrium would result in higher costs for housing and lower quantity of output. The market analysis is an important methodology for estimating the impacts of the provision proposed in today's document. The economic analysis also reflects comments in the October 2001 final report from the Small Business Advocacy Review (SBAR) Panel submitted to the EPA Administrator as part of the requirements under SBREFA.

EPA is making this report available along with today's C&D effluent guidelines proposal.

For the technology-based construction and development effluent guidelines, EPA is required under Title III of the Clean Water Act to make a determination about the available technologies for BPT, BCT, BAT, and NSPS. EPA is required by the Act to ensure that technologies selected as the basis for BAT are economically achievable. EPA uses a different economic test for NSPS, a "barrier to entry" test. This test is typically applied to new sources or projects to determine if the proposed regulation could pose a barrier to entry in terms of starting a new project or business. The Agency typically uses a methodology that analyzes the incremental compliance

costs of the rule in comparison to the total assets required to start a new project or business. If these costs are excessive, then a barrier to entry could be a problem for entrepreneurs considering new business opportunities in the C&D category.

EPA used several broad cost components to estimate the compliance costs in an engineering cost model (see the Technical Development Support Document): “hard” compliance costs and “soft” compliance costs. Hard costs are the incremental construction costs for controls such as sediment basins. Soft compliance costs are the incremental costs for planning, design, permits, and engineering and legal services. Detailed information on the compliance costs is provided in the Development Document.

EPA estimated the incremental compliance costs for the BMPs using an engineering cost model that takes account cost factors such as labor rates and material costs. In most of the economic analyses described below, however, EPA has used weighted average national costs obtained by multiplying the regionalized costs by the share of total projects estimated to take place within each region of the country.

EPA estimated both the incremental compliance costs and the economic impacts of each proposed regulatory option at the project, establishment, firm, and industry (national) level. The economic impact analysis considered impacts on both the firms in the C&D industry, and on consumers who purchase the homes, and buy or rent industrial buildings and commercial and office space. In the case of public works projects, such as roads, schools, and libraries, the economic impacts would accrue to the final consumers, who, in most circumstances, are the taxpaying residents of the community. The sections below describe each modeling effort in turn. Detailed information on the data, models, methods, and results of the economic impact analyses are available in the Economic Analysis.

#### 1. Model Project Analysis

EPA estimated project-level costs and impacts for a series of model projects. The models establish the baseline economic and financial conditions for model projects and assess the significance of the change in cash flow that results from the incremental compliance costs. EPA used the model project analysis to indicate whether typical projects affected by the proposed regulations would be vulnerable to abandonment or closure. The Agency

developed model projects for four industries: single family residential; multi-family residential; commercial & institutional building; and manufacturing & industrial building. The models also included various construction project site sizes: 1, 3, 7.5, 25, 70, and 200 acres. In total, EPA developed 24 different model projects (4 types of development or land uses, multiplied by 6 project sizes) and used these models to assess the impacts of the proposed regulations at the project level.

Each model project is assumed to be undertaken in its entirety by a single entity acting as both developer and builder. EPA recognizes that in practice there may be several parties with a financial investment and role in a particular land development and construction project. For example, on some projects a developer may acquire the land, conduct the initial engineering and site assessments, and obtain the necessary approvals. The land may then be sold to another developer or builder who will undertake the actual construction work. Projects are also frequently undertaken by a consortium of firms or individuals, through various types of limited liability partnerships (LLP). While it is important to acknowledge this variation, for modeling purposes EPA has simplified this aspect and assumed only a single entity is involved from beginning to end, referred to below as a “developer-builder.” EPA requests comment about this economic modeling approach.

The model projects reflect the range of development type and project scale seen in actual industry practice. The model project characteristics were developed from the statistical data described in section V of today’s document, information distilled from academic literature and industry publications, and information provided to EPA in meetings with industry representatives. The model projects account for all of the steps in a typical land development project.

Although EPA has developed regional compliance costs, there were insufficient data available to develop model projects reflective of specific geographic zones or real estate markets. For this reason, EPA applied weighted average national costs to these models. The Agency obtained some of the model project parameters from home builders and developers in the mid-west region, so to some extent the model projects may be more reflective of conditions in this general market area.

Land development and construction typically occurs in a series of stages or phases. The model projects developed

by EPA incorporate assumptions concerning the costs and revenues incurred at each stage. EPA has modeled all of the projects to reflect three principal development stages:

(1) *Land acquisition.* The starting point is usually acquisition of a parcel of land deemed suitable for the nature and scale of development envisioned. The developer-builder puts together the necessary financing to purchase the parcel. When lenders are involved, they may require certain documentation, such as financial statements, tax returns, appraisals, proof of the developer’s ability to obtain necessary zoning, evaluations of project location, assessments of the capacity of existing infrastructure, letters of intent from city/town to install infrastructure, environmental approvals, etc. To satisfy these needs, the developer may incur costs associated with compiling these data.

(2) *Land development.* The developer-builder obtains all necessary site approvals and prepares the site for the construction phase of the project. Costs incurred during this stage are divided among “soft” costs for architectural and engineering services, legal work, permits, fees, and testing, and “hard” costs such as land clearing, installing utilities and roads, and preparing foundations or pads. The result of this phase is a legally subdivided parcel with finished lots ready for construction.

(3) *Construction.* The developer-builder undertakes the actual construction of the housing units. A substantial portion of this work may be subcontracted out to specialty subcontractors (foundation, framing, roofing, plumbing, electrical, painting, etc.). Marketing a development generally begins prior to the start of this phase, hence the developer-builder may also incur some marketing costs at this time. Housing units may come under agreement at any time prior to, during, or after completion of construction. Marketing costs are part of the baseline costs. EPA determined that no incremental marketing costs would be imposed by today’s proposed rule.

EPA developed estimates of the project-specific costs and revenues at each stage of project development in the baseline scenario. The result is a cash flow analysis of the costs and revenues associated with the project. The general approach used in establishing the baseline scenario is to assume normal returns on invested capital and normal operating profit margins to arrive at the sales price for the final product (for example, completed new single-family homes in a residential development).

EPA analyzed the impact of today's proposed rule by adding in the regulatory costs at the appropriate stage of the project life cycle. The regulatory cost impacts on the model projects were analyzed under two alternative assumptions concerning cost pass-through. In the first scenario, EPA assumed that the developer-builder can pass through all of the incremental compliance costs associated with meeting the proposed regulations to the final customer (e.g., the new home buyer, consumers of public transportation services). Under this scenario, all costs are assumed to be borne by the customer in the form of higher prices for completed construction. In the second approach, EPA assumed that the builder-developer can not pass through cost increases to the buyer and therefore realizes a reduced profit on the project. In general, EPA believes that builders do pass through regulatory costs to customers, and this is supported by the academic literature and industry publications. The analysis simulates the results under two extremes in which consumers or industry absorb all of the cost impacts.

EPA notes that under certain conditions developers might also attempt to pass regulatory costs back to land sellers. For example, in a depressed market builders may argue successfully that a regulatory cost increase would make a particular project unprofitable unless the land costs can be reduced. If the land seller is convinced that a residential subdivision project would not proceed, they may be willing to accept a lower price for raw land. The ability of developers to pass such costs back would likely depend on the sophistication of the land owner, their experience in land development projects, knowledge of the local real estate market, and, in particular, their understanding of the regulations and their likely cost. While evidence of cost pass-back to land owners exists for fixed and readily identifiable regulatory costs such as development impact fees, it is unclear whether a builder's claim that costs would be higher due to construction site control regulations would induce land owners to make concessions. EPA requests comment on the likely success of developers attempting to pass regulatory costs for incremental storm water controls back to land owners.

## 2. Model Firm Analysis

EPA analyzed the impacts of the regulations at the level of the firm by building financial models of representative construction firms. The

models for residential construction firms are based on data from the special Census report on the homebuilding industry. This source provides the average value of construction, average employment, and average number of housing starts for firms in various housing start classes. Within each housing starts size class, EPA constructed balance sheets and income statements by scaling published Dun and Bradstreet (D&B) data presented for "median" firms ("1999–2000 Industry Norms and Key Business Ratios," Dun and Bradstreet, 2000).<sup>12</sup> The basic approach was to calculate the ratio of key components of the balance sheet and income statement to net sales, and then scale the value of these components to the size of the model firm. For the commercial and industrial building construction industries, EPA scaled the balance sheet and income statement elements according to differences between incomes for these C&D industries reported by the Census Bureau and median incomes reported among firms sampled by D&B. EPA analyzed one model firm for these industries since comparable data by starts size class were not available.

To determine the annual compliance costs incurred by model residential construction firms, EPA converted the costs per acre to costs per housing start using estimates of the average lot size for new home construction, and then multiplied these costs by the number of housing units started. EPA was then able to assess the impact of the annual compliance costs on key business ratios and other financial indicators. Specifically, EPA examined impacts on the following measures: (1) the Gross Profit, (2) Current Ratio, (3) Debt to Equity Ratio, and (4) Return on Net Worth. Industry publications cite these financial ratios as particularly relevant to the construction industry (Kone, "Land Development," op.cit.; M. Benshoof, "An Inside Look at Builders" Books, *Housing Economics*, National Association of Home Builders, Washington, DC, 2001). Two of the ratios examined are based on operating income (gross profit, return on net worth), and two are based on the balance sheet statement (current ratio, debt to equity). The impacts of the compliance costs were examined by calculating the values of each ratio with and without the compliance costs. For this analysis, EPA assumed zero cost pass-through, which is a worst-case scenario in terms of describing the

potential economic impacts on this industry.

To determine the annual compliance costs incurred by commercial and industrial construction firms, EPA first divided the total estimated number of construction starts by the number of establishments to obtain the average number of starts per establishment. To estimate the average number of acres per start, the Agency reviewed industry cost data (R.S. Means, 2000. "Building Construction Cost Data, 58th Annual Edition," Kingston, MA) for representative projects. EPA estimated an average of three acres per start, and then used this average to calculate the average number of acres developed per establishment. The number of acres developed per establishment was then multiplied by the regulatory costs per acre to obtain the annual regulatory costs incurred per establishment. As noted above, EPA examined the impact of these costs by examining changes in financial ratios for the median-sized firm. To do this, EPA scaled the financial data for the median firm drawn from the D&B data to the Census median firm, using the median income from each source as the scaling factor. EPA requests comment on the extent to which basing the analysis on the median-sized firm will appropriately capture impacts on smaller or larger firms.

## 3. Housing Market Impacts

EPA also developed models to assess the potential impacts of the regulations on the national housing market. To analyze the impacts of compliance costs on housing affordability, EPA estimated the level of income that would be necessary to purchase the average priced new home without the proposed regulation, and the change in income needed to purchase the average priced new home under each of the proposed regulatory options. The Agency then used income distribution data to estimate the change in the number of households that would qualify to purchase the average priced new home under each of the regulatory options. In this way, EPA was able to determine the number of households that may be priced out of the new housing market, assuming that all prospective buyers were targeting the averaged priced new home. The results of this analysis may be found in the Economic Analysis.

## 4. Impacts on the National Economy

The market model generates an estimate of the change in the total value of construction produced by the industry, i.e., industry output. Two effects of the regulation are acting on the

<sup>12</sup> The D&B data are based on a sample of firms with response ratios that are greater for larger firms than for small firms.

market value of construction output. First, the cost of construction increases, leading to a price rise and an increase in market value of final projects. Second, the quantity of houses sold is reduced because of the higher price due to compliance costs. The net effect on market value may be either positive or negative, depending on whether the elasticity of demand for housing is less than or greater than 1. There are also secondary impacts in other markets, caused by the shift in consumer spending, necessitated by the increased housing costs, from other goods to housing.

As these changes pass through the economy, they generate shifts in production and employment. The U.S. Department of Commerce uses input-output techniques to derive "multipliers" which indicate, for a given change in one industry's output, how output and employment in the

whole U.S. economy will respond. EPA has applied the multipliers from the Regional Input-Output Modeling System, version 2 (RIMS II) to the change in output estimated from the market model to estimate the impacts on national output and employment.

#### D. Results

##### 1. Firm-Level Impacts

EPA has estimated the economic impacts of the proposal at the firm level by estimating the number of firm closures, the number of lost jobs, and the decrease in firms' profits. The economic impact analysis at the firm level assumes that none of the incremental costs would be passed through to the final consumer, *i.e.*, zero cost pass-through. The Agency used this assumption for the economic impact analysis, because it presents the worst-case scenario (*i.e.*, the largest impacts to

the firm). However, EPA's review of the academic literature and its discussions with industry officials indicate that most, if not all costs, are passed through to the final consumer and are not absorbed by firms in the industry.

The firm is the responsible entity for the installation of ESC BMPs and is the entity responsible for managing financial and economic information. Moreover, the firm is responsible for maintaining and monitoring financial accounts. For the C&D category, most of the business establishments, as defined by the Census Bureau, are firms. A small number of establishments are entities within a larger firm. A small percentage of firms have multiple establishments and some firms are regional or national in scope.

Table XII-3 presents one economic indicator, firm closures, by regulatory options and by industry (*e.g.*, Multi-family Residential).

TABLE XII-3.—FIRM CLOSURES BY INDUSTRY FOR THE REGULATORY OPTIONS: ZERO COST PASS-THROUGH ASSUMPTION  
(Number of firms, percent of total firms)

| Option                                                                 | Single-Family Residential (#/%) | Multi-family residential (#/%) | Commercial and institutional (#/%) | Manufacturing and industrial (#/%) |
|------------------------------------------------------------------------|---------------------------------|--------------------------------|------------------------------------|------------------------------------|
| 1. Self-inspection, certification, 1 acre or more .....                | 4/0.01                          | 1/0.02                         | 11/0.03                            | 2/0.03                             |
| 2. Codification, self-inspection, certification, 5 acres or more ..... | 13/0.02                         | 3/0.07                         | 43/0.11                            | 7/0.09                             |
| 3. No regulation .....                                                 | 0/0                             | 0/0                            | 0/0                                | 0/0                                |

Source: Economic Analysis.

EPA also estimated the number of potential jobs that could be lost as a result of the proposal. Table XII-4 provides the number of potential job losses by option and by industry.

TABLE XII-4. JOB LOSSES BY INDUSTRY FOR THE REGULATORY OPTIONS: ZERO COST PASS-THROUGH ASSUMPTION  
[Number of jobs, percent of jobs]

| Option                                                                 | Single-Family Residential (#/%) | Multi-Family Residential (#/%) | Commercial and Institutional (#/%) | Manufacturing and Industrial (#/%) |
|------------------------------------------------------------------------|---------------------------------|--------------------------------|------------------------------------|------------------------------------|
| 1. Self-inspection, certification; 1 acre or more .....                | 34/0.01                         | 12/0.03                        | 162/0.03                           | 43/0.03                            |
| 2. Codification, self-inspection, certification; 5 acres or more ..... | 145/0.04                        | 61/0.17                        | 604/0.11                           | 133/0.09                           |
| 3. No regulation .....                                                 | 0/0                             | 0/0                            | 0/0                                | 0/0                                |

Source: Economic Analysis.

EPA also estimated potential decreases in firms' profits. These results are presented in Table XII-5 by regulatory options and by industry. The potential changes in profits are in the range of a decrease in profits of one percent or less.

TABLE XII-5.—CHANGES IN PROFITS BY INDUSTRY FOR THE REGULATORY OPTIONS: ZERO COST PASS-THROUGH ASSUMPTION  
[Percent of profits]

| Option                                                                 | Single family (%) | Multi-family (%) | Commercial (%) | Industrial (%) |
|------------------------------------------------------------------------|-------------------|------------------|----------------|----------------|
| 1. Self-inspection, certification; 1 acre or more .....                | -0.23             | -0.31            | -0.17          | -0.14          |
| 2. Codification, self-inspection, certification; 5 acres or more ..... | -0.52             | -0.95            | -0.40          | -0.32          |
| 3. No regulation .....                                                 | 0                 | 0                | 0              | 0              |

Source: Economic Analysis.

For additional information on EPA's analysis of the change in financial position, see Chapters 4 and 5 of the Economic Analysis for the methodology and analysis on estimating firm-level impacts.

## 2. Impacts on Governments

EPA has analyzed the impacts of today's proposed rule on government entities. This analysis includes both the cost to governments for compliance at government-owned construction project sites (construction-related) and government costs associated with implementation of storm water programs (administration costs). For construction-related costs EPA assumed that 100 percent of the incremental compliance costs that contractors incur at government-owned construction sites are passed through to the government. Under this assumption EPA estimates the following impacts:

- Under Option 1, EPA estimates that State and local governments would incur about \$12 million in annual costs and the private sector would incur about \$114 million in annual costs. Of the \$12 million in annual costs to State and local governments, about \$2 million would be incurred by small government entities, less than 50,000 population, and about \$10 million annually would be incurred by large government entities, greater than 50,000 population.

- Under Option 2, about \$50 million of annual incremental costs would accrue to State and local governments.

- Of the \$50 million in costs accruing to State and local government agencies, about \$5 million per year would be incurred by small government agencies, communities with less than 50,000 population, and about \$45 million would accrue to large communities, those with more than 50,000 population.

A subsidy or other complementary financing of these projects with Federal or State grants or revolving funds could reduce the direct impact on local taxpayers.

For administration costs, the analysis is based upon two elements for construction storm water programs: (1) Incremental costs to establish or modify programs, and (2) incremental costs to implement the proposed options. Table XII-6 provides information on the costs to establish or modify construction storm water programs. The program elements to establish the proposed options may include, among other program needs, those needed to revise State general permits. In addition, the States, and to some extent local governments, may need to provide basic program administration, education,

public hearings, and public notifications as appropriate. These incremental program elements may be in place and may not be needed by all States or local governments.

TABLE XII-6.—ANNUALIZED ONE-TIME INCREMENTAL COSTS TO STATE AND LOCAL GOVERNMENTS FOR ESTABLISHING OR MODIFYING CONSTRUCTION STORM WATER MANAGEMENT PROGRAMS

| Program element                                 | Total<br>(year 2000 \$<br>million) |
|-------------------------------------------------|------------------------------------|
| General permit development                      | 0.30                               |
| Program administration .....                    | 0.15                               |
| Education and information<br>distribution ..... | 0.01                               |
| Public hearings .....                           | 0.07                               |
| Quarterly public notification ..                | 5.80                               |
| Total .....                                     | 6.33                               |

The detailed analysis is available in its entirety in the Economic Analysis.

## 3. Community-Level Impacts

EPA has estimated community-level impacts based upon the incremental costs of the proposal at the household level. The household impacts are those that would affect local communities in terms of the costs of housing. EPA's analysis considers the impacts on the price of housing based on the increase/decrease in the average price per house. Table XII-7 shows the change by selected option in the price per house.

TABLE XII-7.—CHANGE IN HOUSING PRICES FOR SELECTED OPTIONS  
[100 Percent cost pass-through]

| Option                                                                 | Average price<br>increase per<br>house<br>(year 2000 \$) |
|------------------------------------------------------------------------|----------------------------------------------------------|
| 1. Self-inspection, certification; 1 acre or more .....                | 18                                                       |
| 2. Codification, self-inspection, certification; 5 acres or more ..... | 97                                                       |
| 3. No regulation .....                                                 | 0                                                        |

Source: Economic Analysis.

The price increase per house that may be attributable to the proposal compared to the average price of a new house in the U.S., currently about \$250,900, is very small. For these costs, the average monthly mortgage payment would increase by less than \$5.00 per month.

## 4. Foreign Trade Impacts

As part of its economic analysis, EPA has evaluated the potential for changes in U.S. trade (imports, exports) of

construction and development related goods and services. A significant component of the U.S. construction and development category operates internationally, and, in addition, numerous foreign firms that participate in this category also operate in the U.S. EPA judged that the potential for U.S. construction and development firms to be differentially affected by the proposed rule is negligible. The proposed rule will be implemented at the project level, not the firm level, and will affect projects within the U.S. only. All firms undertaking such projects, domestic or foreign, will be subject to the proposed rule. U.S. firms doing business outside the U.S. will not be differentially affected compared to foreign firms, nor will foreign firms doing business in the U.S.

The proposed rule could theoretically stimulate or depress demand for some construction-related goods. To the extent that the proposed rule acts to depress the overall construction market, demand for conventional construction-related products may decline. This decline may be offset by purchase of goods and services related to erosion and sediment control. Overall, EPA does not anticipate that any shifts in demand for such goods and services resulting from the proposal would have a significant implication for U.S. and foreign trade.

## 5. Impacts on New Facilities

EPA has conducted an analysis to assess the impacts on new firms that choose to enter the C&D category. This analysis uses a method called "barrier to entry" analysis. EPA examined the ratio of compliance costs to current and total assets to determine if new market entrants could find it more difficult to obtain construction loans to start a project than would existing firms. The Economic Analysis provides more complete information on the barrier to entry analysis. As discussed in more detail in the Economic Analysis, this methodology is conservative, because it doesn't account for the fact that a firm would typically be expected to finance 20 percent of the incremental compliance costs from their own financial resource to obtain the loan—not the full amount as assumed here. In addition, existing firms would more than likely need to meet the same requirement, and therefore would not obtain a competitive advantage over new entrants.

From the barrier to entry analysis, annual incremental compliance costs under Option 2 would comprise a maximum of 0.82 percent of the current assets for the Multi-Family Residential

Building Industry. For the Commercial and Institutional Building and Manufacturing and Industrial Building Industries, incremental compliance costs comprise less than 0.5 percent of current assets. For the Single Family Housing Industry, incremental costs comprise less than 0.2 percent of current assets. These costs are small as a percent of current assets. EPA believes that these costs pose no significant barrier to entry for potential businesses and projects.

#### 6. Social Costs

EPA's analysis of social costs for Option 2 contains four costs components: (1) installation, design,

and permitting costs; (2) O&M costs; (3) government costs; and (4) deadweight loss. When summed, these four cost categories comprise the total social costs for each option.

For Option 2 (codify CGP, self-inspection, certification, 5 acres or more), the total social costs of the proposal are about \$505 million annually (year 2000 \$). EPA has conducted a social cost analysis for each option. The Economic Analysis provides the complete social cost analysis for the proposed regulation.

#### 7. Small Business Impacts

Section XIX.C of today's document provides EPA's SBREFA analysis. For

purposes of assessing the economic impacts of today's rule on small entities, "small entity" is defined by SBA size standards for small businesses and RFA default definitions for small governmental jurisdictions. The small entities regulated by this proposed rule are small land developers, small residential construction firms, small commercial, institutional, industrial and manufacturing building firms, and small heavy construction firms.

Table XII-8 shows the impacts of the proposal using the one percent and three percent revenue tests, a method used by EPA to estimate the impacts on small businesses. The table presents the results for the proposed options.

TABLE XII-8.—SMALL BUSINESS ANALYSIS FOR REGULATORY OPTIONS, 1% AND 3% REVENUE TESTS, ASSUME ZERO COST PASS-THROUGH

| Option                                                            | 1% Revenue test       |                        | 3% Revenue test       |                        |
|-------------------------------------------------------------------|-----------------------|------------------------|-----------------------|------------------------|
|                                                                   | Number of small firms | Percent of small firms | Number of small firms | Percent of small firms |
| Self-inspection and certification; 1 acre or more .....           | 126                   | <0.01                  | 42                    | <0.01                  |
| Codify CGP, self inspection, certification; 5 acres or more ..... | 428                   | 0.07                   | 140                   | <0.01                  |
| No regulation .....                                               | 0                     | 0                      | 0                     | 0                      |

Source: Economic Analysis.

### XIII. Cost-Effectiveness Analysis

EPA has conducted a cost-reasonableness analysis that indicates that the cost of this proposal for option 2 is about \$0.01 per pound for TSS. EPA customarily performs a cost-effectiveness (C-E) analysis using toxic-pound equivalents. The pollutant removal calculations in today's proposed rule are all based on TSS, a conventional pollutant. The Agency does not have a methodology for converting TSS to toxic pound equivalents for a C-E analysis.

### XIV. Non-Water Quality Environmental Impacts

Under sections 304(b) and 306 of the CWA, EPA is to consider the "non water quality" environmental impacts when setting effluent limitation guidelines and standards. EPA used various methods to estimate the NWQI for each of the options considered for today's proposed rule. For the purposes of today's proposal, the Agency interprets the term "non water quality" impacts to mean environmental impacts other than those related to surface water quality, and therefore is including groundwater impacts in this section.

#### A. Air Pollution

EPA estimates that today's proposed rule would have no measurable effect on air pollution because none of the

proposed options (including the "no change" option), would significantly alter the use of heavy equipment at construction sites, nor the manner in which construction sites are prepared. Accordingly, the levels of exhaust emissions from diesel-powered heavy construction equipment and fugitive dust emissions generated by construction activities would not change substantially from current conditions.

#### B. Solid Waste

Generation of solid waste would not be substantially affected regardless of the option selected because the majority of solid waste generated at construction activities derives from wastage of materials brought onto and used at construction sites. Likewise, for redevelopment projects, the amount of solid waste generated, while greater than the amounts generated at new developments, would not vary regardless of the option selected (including the "no change" option).

#### C. Energy Usage

The consumption of energy as a result of today's proposed rule is not expected to be measurably affected regardless of the option selected because the operations that currently consume energy (both direct fossil fuel use and electricity) will not be changing to any

substantial degree during land disturbance.

#### D. By-Products From BMPs

EPA projects that by-products from BMPs used during the construction phase as a result of today's rule would not substantially change the pollutant types or quantities generated. Pollutant sources during the construction phase are primarily characterized by sediment from the in-place soils (trapping and ultimate removal or repositioning on the site), various constituents in excess concrete slurry and wash water (these include high pH and solids, such as sand and the fine particulate matter that comprise cement), and the possible residual effects from soil amendments such as polyacrylamide (PAM).

### XV. Environmental Assessment

#### A. Introduction

In its Environmental Assessment (see "Supporting Documentation"), EPA evaluated environmental impacts associated with the discharge of storm water from construction activities. Construction and land development activities can generate a broad range of environmental impacts by introducing new sources of contamination and by altering the physical characteristics of the affected land area. In particular, these activities can result in both short- and long-term adverse impacts to

surface water quality in streams, rivers, and lakes within the affected watershed by increasing the loads of various pollutants in receiving water bodies, including sediments, metals, polynuclear-aromatic hydrocarbons (PAHs), oil, grease, pathogens, and nutrients. Groundwater can also be adversely affected through diminished recharge capacity. Other potential impacts may include the physical alteration of existing streams and rivers due to excessive flow and velocity of storm water runoff. The 1998 National Water Quality Inventory identifies siltation as one of the leading pollutants contributing to impairments in assessed stream miles, and lists urban runoff and hydrologic modification as two of the leading sources of impairments.

Sediment is an important and ubiquitous constituent in urban storm water runoff. Surface runoff and raindrops detach soil from the land surface, and this often results in sediment transport into streams. Sediment can be divided into three distinct subgroups: turbidity, suspended solids, and dissolved solids. Total suspended solids (TSS) are a measure of the suspended material in water. The measurement of TSS in urban storm water allows for estimation of sediment transport, which can have significant effects locally and in downstream receiving waters. Turbidity is a function of the suspended solids and is a measure of the ability of light to penetrate the water. Turbidity can exhibit control over biological functions, such as the ability of submerged aquatic vegetation to receive light and the ability of fish to breathe dissolved oxygen through their gills. Total dissolved solids are a measure of the dissolved constituents in water and are a primary indication of the purity of drinking water.

Using total suspended solids (TSS) as an indicator pollutant, EPA quantified the impacts of construction site storm water discharges on water quality. As detailed in the economic assessment and described in section XII of today's document, economic benefits were estimated to the extent reductions in water quality impacts could be attributed to implementation of the proposed rule.

#### *B. Methodology for Estimating Environmental Impacts and Pollutant Reductions*

For purposes of the environmental assessment, EPA is using the term "impact" broadly to refer to negative conditions related to elevated concentrations of pollutants, physical destruction of habitat by excessive

flows, elevation of water temperature, and loss of fish spawning access due to new road crossings.

The Agency was able to assess only a subset of all of the potential environmental impacts of storm water discharges from construction sites. Construction activities generate initial environmental impacts on each acre of land as the land is converted from an undeveloped state (e.g., forest or rural land) to a developed condition. In addition, environmental impacts continue long after construction activities are completed because developed lands are permanently and hydrologically altered from their pre-developed state. Hydrologic changes result from alterations in storm water discharge patterns and characteristics that can lead to ongoing environmental damages.

In its analysis of the options contained in this proposal, EPA only considered the benefits that result from reductions in sediment discharges that occur while land is disturbed due to implementation of erosion and sediment controls and conducting site inspections and certifications. The Agency limited its analysis to this category of impacts primarily because some environmental impacts are difficult to correlate with a specific industry activity and/or assess on a national basis due to the wide variety of pollutants and sources of impairment present in a water body. The technical tools and analytical approaches available simply do not lend themselves to isolating impacts attributable to this industry from other sources.

For this analysis, EPA first analyzed loadings that would occur nationwide in the absence of any erosion and sediment control requirements. EPA built on an earlier analysis developed for the Phase II rulemaking and described in the Phase II economic analysis (op. cit.). This analysis estimated sediment discharged from a variety of "model construction sites" incorporating various site characteristics (3 soil erodibility levels with 5 slopes in 15 climatic regions). From this model site analysis, EPA was able to estimate that the total sediment discharged from construction sites nationwide in the absence of any controls would be about 90 million tons per year. EPA did not calculate the total reduction in this loading that is expected to occur following implementation of existing Federal, State and local requirements (the baseline condition), but rather estimated the expected incremental reduction that would result from the proposed options. For option 1, EPA estimated based on its experience and

engineering expertise that the additional site inspection and certification provisions would reduce this national loading estimate by approximately 5 to 15 percent (a midpoint estimate of this range was used for calculating benefits) over the reductions attributable to existing requirements. For option 2, EPA estimated based on its experience and engineering expertise that the additional site inspection and certification provisions along with the technology requirements would reduce this national loading estimate by approximately 25 percent over the reductions attributable to existing requirements. EPA then further subdivided these loading estimated into two size categories, turbidity and settleable solids, in order to estimate specific benefits estimates using appropriate indicators. EPA estimated based on its experience and engineering expertise that the sediment discharged would be comprised of 80 percent particles as settleable solids and 20 percent of particles as turbidity, by mass. The settleable solids loads are used to calculate monetized benefits for water storage capacity and navigational dredging. The turbidity producing solids loads are used to calculate monetized benefits for water treatment. The annual loads were reduced to reflect states with equivalent programs for Option 1 and Option 2. The supporting documents discusses in detail this analysis.

EPA solicits data and comments on this approach, as well as the merits of conducting a more detailed analysis that estimates actual BMP efficiencies and associated national loadings reductions. EPA also solicits data and comments on conducting an analysis that incorporates other pollutant indicators, such as nutrients, metals and any additional pollutants that would be attached to sediments or contained in runoff discharged from construction sites.

#### *C. Potential Loading Reductions of Proposed Options*

EPA used TSS as the primary indicator to evaluate loadings reductions and to determine potential water quality benefits of the proposed options. Reductions in TSS from construction sites would arise from greater oversight of construction activities and better implementation of BMPs (Options 1 and 2), as well as more efficient BMPs in certain cases (Option 2). The estimated reductions due to implementation of EPA's proposed Option 1 would be an annual reduction of 1.05 million tons of turbidity producing solids per year and a reduction of 4.2 million tons of

settleable solids per year. The estimated reductions due to Option 2 would be 2.2 million tons of turbidity producing solids per year and a reduction of 8.9 million tons of settleable solids per year. EPA expects that the potential for considerable benefits from today's proposal exists due to decreases in sediment discharges to water bodies. EPA solicits data and comments that can provide information on the extent of impairments that are caused by the construction and land development industries, and methods of quantifying the benefits of today's proposal.

## **XVI. Benefit Analysis**

EPA has identified, quantified and monetized certain benefits attributable to the construction co-proposal options in today's document. For some benefits, EPA has identified benefits categories, but is unable to quantify and/or monetize them at this time. Section XV, Environmental Assessment, established the analytical framework for the benefits analysis.

### *A. Benefits Categories Estimated*

As discussed in section XV, EPA has chosen TSS as the most appropriate environmental indicator for the analysis of environmental impacts and benefits analysis. The primary environmental indicator selected was sediment entering waterways. The Agency used a simplified approach for the environmental assessment, because monitoring representative sites for a cross-section of the 2.2 million acres developed would not be technically and economically feasible.

Section XV.C discusses the anticipated amount of TSS removals as a result of today's document. The Agency estimates that 11.1 million tons of TSS each year would be removed from construction site discharges with Option 2 and 5.3 million tons of TSS each year would be removed with Option 1 presented in today's proposal. EPA used its experience and engineering expertise to determine the amount of TSS removal that each option would achieve.

When identifying environmental impacts to assess for this industry, the Agency decided against analyzing impacts that are extremely difficult to correlate with the specific industry activity and/or assess on a national basis. Large natural variations in watershed ecology (e.g., changes in species diversity, density of aquatic species) and variable climatic conditions greatly complicate the task of determining cause and effect with regard to construction site storm water discharges. In particular, the Agency did

not analyze construction impacts in the following areas: (1) Habitat/biology, (2) stream temperatures, (3) flow and velocity, (4) conventional pollutants and pollutant loadings, (5) human health, and (6) groundwater. EPA believes that these benefit categories may have substantial benefits. However, the Agency has chosen not to analyze these benefits at this time for the proposed options because EPA is unable to quantify and/or monetize them. EPA solicits comments on appropriate methods to quantify these benefits categories.

### *B. Quantification of Benefits*

TSS discharged from construction sites have a substantial and adverse impact on downstream property owners. The TSS is suspended in the water column that may serve as a source of drinking water for a community or municipal water system. When influent for drinking water supplies is contaminated with TSS, the system would likely need to treat the water to remove the TSS and provide additional disinfection before distribution to system customers. These costs will lead to rate increases for drinking water system customers. Thus, the upstream actions of the construction activity impose both direct costs (e.g., higher treatment costs for utility operators) and indirect costs (e.g., higher water bills for system customers). These costs could be reduced by controlling construction site runoff through the use of erosion and sediment controls and other BMPs.

Another impact of the discharge of sediment from construction sites is to reduce the capacity of water storage reservoirs. Settleable solids fall out of suspension and settle into water storage reservoirs. These accumulated solids reduce the capacity of the reservoir to hold as much water as in the past. With the reduced capacity of the water reservoir, the water supply system will bear the direct cost of dredging the water supply reservoir or replacing the water reservoir as it is taken out of service for accumulation of sediment. Water system customers generally bear indirect costs through rate increases. Again, by installing erosion and sediment controls and other BMPs at construction sites, these costs can be reduced.

Yet another impact of construction and the discharge of TSS and storm water is the sediment that falls out of suspension and into navigational and shipping channels. In most cases, the public pays for the consequent dredging through taxes and/or higher cost of products. Use of erosion and sediment

controls and construction sites can also reduce these costs.

Reduced costs for water treatment, water storage, and navigational dredging are three benefit categories that EPA is using to estimate the benefits of the proposed rule. The Agency believes that there are many more benefits to this rule, but the state-of-the-art of benefit analysis does not provide the tools at this point to quantify and monetize them. For example, habitat preservation and protection is not easily quantified and estimated for benefits analysis. However, we know that people value habitat protection, because they are spending funds to repair streams for habitat preservation and protection.

EPA has formulated a numeric estimate of the benefits of the proposed options by determining the reduction in the amount of sediment discharged from construction sites and in turn quantifying certain environmental benefits. In particular, the amount of sediment reduced is the primary variable in the benefits analysis.

EPA identified three potential economic methods to monetize the benefits: (1) Avoided damages, (2) contingent evaluation, (3) hedonic assessments of property values. The Economic Analysis provides the details of these methods. The method that the Agency used initially to monetize benefits is the method of avoided damages. EPA recognizes that avoided damages is not the preferred approach and is working to improve its methods. The Agency also considered contingent evaluation and hedonic assessments to validate and confirm the avoided damages methodology.

The avoided damages approach is a method that considers the damages avoided as a result of the proposal. EPA has analyzed the magnitude of costs primarily using the avoided damages. This method may also be referred to as the avoided cost approach. This method uses the costs of repair to estimate the benefits. These are costs that could be avoided if construction sites did not discharge sediment and storm water into surface waters.

These costs are used to estimate the monetary value of the benefits of the proposal. EPA has also looked at academic literature for contingent valuation studies, such those used in the economic analysis for the NPDES Phase II storm water regulations. The Agency has used those studies to validate the benefits models and for sensitivity analyses to gain a clearer picture of the benefits of the proposed rule. Additional information on the benefits analysis may be found in the

Environmental Assessment and  
Economic Analysis.

The benefits analysis results are  
shown in Table XVI-1.

TABLE XVI-1.—ANNUAL BENEFITS FOR PROPOSED CONSTRUCTION AND DEVELOPMENT REGULATORY OPTIONS

| Benefit categories                                                     | Regulatory options                                                 |                                                                                      |                             |
|------------------------------------------------------------------------|--------------------------------------------------------------------|--------------------------------------------------------------------------------------|-----------------------------|
|                                                                        | Option 1<br>(Self-inspection,<br>certification; 1<br>acre or more) | Option 2<br>(Codification,<br>self-inspection,<br>certification; 5<br>acres or more) | Option 3<br>(No regulation) |
| <b>Turbidity Reduction</b>                                             |                                                                    |                                                                                      |                             |
| Turbidity producing solids (million tons per year) .....               | 1.05                                                               | 2.2                                                                                  | 0                           |
| Water treatment monetized benefits (year 2000 \$ millions) .....       | 0.1                                                                | 0.2                                                                                  | 0                           |
| <b>Settleable Solids Reduction</b>                                     |                                                                    |                                                                                      |                             |
| Settleable Solids (million tons per year) .....                        | 4.2                                                                | 8.9                                                                                  | 0                           |
| Water storage monetized benefits (year 2000 \$ millions) .....         | 7.6                                                                | 16.0                                                                                 | 0                           |
| Navigational dredging monetized benefits (year 2000 \$ millions) ..... | 2.7                                                                | 5.8                                                                                  | 0                           |
| Total Monetized Benefits (year 2000 \$ millions) .....                 | 10.4                                                               | 22.0                                                                                 | 0                           |

Source: Economic Analysis; Environmental Assessment.

## XVII. Benefit-Cost Comparison

EPA has conducted a benefit-cost analysis of the construction and development effluent guidelines proposed in today's document. The benefit-cost analysis may be found in the complete set of support documents. Sections XII, XV, and XVI of this preamble provide additional details of the benefit-cost analysis.

Table XVII-1 provides the results of the benefit-cost analysis.

TABLE XVII-1.—TOTAL ANNUALIZED BENEFITS AND COSTS OF THE PROPOSED REGULATORY OPTIONS  
[Tons of sediment, year 2000 \$]

| Option                                                              | Costs<br>(2000 \$<br>millions<br>per year) | Benefits<br>(2000 \$<br>millions<br>per year) |
|---------------------------------------------------------------------|--------------------------------------------|-----------------------------------------------|
| Self-inspection, certification; 1 acre or more .....                | 130                                        | 10.4                                          |
| Codification, self-inspection, certification; 5 acres or more ..... | 505                                        | 22.0                                          |
| No regulation .....                                                 | 0                                          | 0                                             |

## XVIII. Regulatory Implementation

### A. Compliance Dates

C&D sites must comply with the C&D regulation, once finalized, at the time of issuance, re-issuance, or modification of their NPDES permit.

New sources must comply with the new source performance standards (NSPS) (once it is finalized) at the time they commence discharging process wastewater (i.e., storm water runoff

from land disturbing construction activities). Because the final rule is not expected within 120 days of the proposed rule, the Agency considers the date for compliance under NSPS to be when the discharge from a new source construction site commences following promulgation of the final rule (see 40 CFR 122.2). See section X.D of today's document for the discussion on defining new sources for the C&D category.

EPA expects to issue a renewed Construction General Permit (CGP) in 2003. Following promulgation of the C&D rule, which is expected in 2004, the Agency plans to incorporate the provisions of any effective ELG at the time of the next permit renewal. Based on the standard five-year period for NPDES permits, that renewal would take place in 2008. However, States that have issued either general or individual permits may choose a different (i.e. shorter) time period to implement the final effluent guidelines requirements. EPA requests comment on this planned schedule.

### B. Relationship of Effluent Guidelines to NPDES Permits

Effluent limitation guidelines and pretreatment standards act as a primary mechanism to control the discharges of pollutants to waters of the United States. Once finalized, the proposed C&D regulations would be applied to sites through individual NPDES permits or a general permit issued by EPA or authorized States under section 402 of the Act.

The Agency has developed the limitations for this proposed rule to cover the discharge of pollutants for this

industrial category. In specific cases, the NPDES permitting authority may elect to establish technology-based permit limits for pollutants not covered by this regulation. In addition, if State water quality standards or other provisions of State or Federal law require limits on pollutants not covered by this regulation (or require more stringent limits or standards on covered pollutants to achieve compliance), the permitting authority must apply those limitations or standards.

### C. Upset and Bypass Provisions

A "bypass" is an intentional diversion of the streams from any portion of a treatment facility. An "upset" is an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. EPA's regulations concerning bypasses and upsets for direct dischargers are set forth at 40 CFR 122.41(m) and (n).

Because much of today's proposal includes design standards for design, installation, and maintenance of ESC BMPs, EPA considered the need for a bypass-type provision in regard to large storm events. However, EPA did not specifically include such a provision because today's proposed design standards only require BMPs to be designed to capture a specified volume of storm runoff for pollutant removal. Because EPA is not establishing requirements for control of larger storm events, specific bypass provisions were not necessary.

#### D. Variances and Waivers

The CWA requires application of effluent limitation guidelines established pursuant to section 301 to all direct dischargers. However, the statute provides for the modification of these national requirements in a limited number of circumstances. Moreover, the Agency has established administrative mechanisms to provide an opportunity for relief from the application of the national effluent limitation guidelines for categories of existing sources for toxic, conventional, and nonconventional pollutants. "Ability to Pay" and "water quality" waivers do not apply to conventional or toxic pollutants (e.g., TSS, PCBs) and, therefore, do not apply to today's proposal. However, the variance for Fundamentally Different Factors (FDFs) may apply in some circumstances.

##### 1. Fundamentally Different Factors Variance

EPA will develop effluent limitations or standards different from the otherwise applicable requirements if an individual discharging facility is fundamentally different with respect to factors considered in establishing the limitation of standards applicable to the individual facility. Such a modification is known as a "fundamentally different factors" (FDF) variance.

Early on, EPA, by regulation provided for the FDF modifications from the BPT and BAT limitations for toxic and nonconventional pollutants and BPT limitations for conventional pollutants for direct dischargers. For indirect dischargers, EPA provided for modifications for PSES. FDF variances for toxic pollutants were challenged judicially and ultimately sustained by the Supreme Court. (*Chemical Manufacturers Assn v. NRDC*, 479 U.S. 116 (1985)).

Subsequently, in the Water Quality Act of 1987, Congress added new section 301(n) of the Act explicitly to authorize modifications of the otherwise applicable BAT effluent limitations or categorical pretreatment standards for existing sources if a facility is fundamentally different with respect to the factors specified in section 304 (other than costs) from those considered by EPA in establishing the effluent limitations or pretreatment standard. Section 301(n) also defined the conditions under which EPA may establish alternative requirements. Under section 301(n), an application for approval of a FDF variance must be based solely on (1) information submitted during rulemaking raising the factors that are fundamentally different

or (2) information the applicant did not have an opportunity to submit. The alternate limitation or standard must be no less stringent than justified by the difference and must not result in markedly more adverse non-water quality environmental impacts than the national limitation or standard.

EPA regulations at 40 CFR part 125, subpart D, authorizing the Regional Administrators to establish alternative limitations and standards, further detail the substantive criteria used to evaluate FDF variance requests for direct dischargers. Thus, 40 CFR 125.31(d) identifies six factors (e.g., volume of process wastewater, age and size of a discharger's facility) that may be considered in determining if a facility is fundamentally different. The Agency must determine whether, on the basis of one or more of these factors, the facility in question is fundamentally different from the facilities and factors considered by EPA in developing the nationally applicable effluent guidelines. The regulation also lists four other factors (e.g., infeasibility of installation within the time allowed or a discharger's ability to pay) that may not provide a basis for an FDF variance. In addition, under 40 CFR 125.31(b) (3), a request for limitations less stringent than the national limitation may be approved only if compliance with the national limitations would result in either (a) a removal cost wholly out of proportion to the removal cost considered during development of the national limitations, or (b) a non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the national limits. EPA regulations provide for an FDF variance for indirect dischargers at 40 CFR 403.13. The conditions for approval of a request to modify applicable pretreatment standards and factors considered are the same as those for direct dischargers.

The legislative history of section 301(n) underscores the necessity for the FDF variance applicant to establish eligibility for the variance. EPA's regulations at 40 CFR 125.32(b)(1) are explicit in imposing this burden upon the applicant. The applicant must show that the factors relating to the discharge controlled by the applicant's permit which are claimed to be fundamentally different are, in fact, fundamentally different from those factors considered by the EPA in establishing the applicable guidelines. An FDF variance is not available to a new source subject to NSPS.

##### 2. Low Soil Loss Potential Waiver

Some sites may qualify for a waiver due to low potential for soil loss. The waiver is provided for small sites (1 to 5 acres) in the existing NPDES storm water regulations. See § 122.26(b)(15)(i)(A).

#### E. Other Clean Water Act Requirements

Compliance with the provisions in any of the rules proposed today would not exempt a discharger from any requirement for a permit for dredged or fill material under section 404 of the CWA.

#### XIX. Related Acts of Congress, Executive Orders, and Agency Initiatives

##### A. Paperwork Reduction Act

The information collection requirements in today's proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1842.03) and a copy may be obtained from Susan Auby by mail at Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW, Washington, DC 20460, by email at [auby.susan@epa.gov](mailto:auby.susan@epa.gov), or by calling (202) 566-1672. A copy may also be downloaded from the internet at <http://www.epa.gov/icr>. In today's proposed Option 2, 40 CFR 450.21(f) and (g) would require operators to maintain a site log. The equivalent provision in proposed Option 1 is 40 CFR 122.44(t). See section X.D. of today's document for a description of these provisions. EPA estimates that this provision would create a total annual burden of about 760,158 hours for Option 1 and 633,033 hours for Option 2. This estimate is the incremental burden above the currently-approved burden level for the EPA and State construction general permits. EPA has received OMB approval for the current permit requirements under control no. 2040-0188, "Notice of Intent for Storm Water Discharges Associated with Construction Activity under a NPDES General Permit."

In today's proposed Option 2, 40 CFR 450.21(a) would require permittees to prepare a Storm Water Pollution Prevention Plan (SWPPP). This requirement would essentially codify current CGP requirements and no additional burden would be imposed.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose to or for a

Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW, Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW, Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after June 24, 2002, a comment to OMB is best assured of having its full effect if OMB receives it by July 24, 2002. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

#### *B. Unfunded Mandates Reform Act (UMRA)*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed,

section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule contains a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year. Accordingly, EPA has prepared under section 202 of UMRA a written statement which is summarized below.

EPA is proposing the technology-based construction and development (C&D) effluent guidelines under sections 301, 304, 306, 308, 402, and 501 of the Clean Water Act (CWA), 33 U.S.C. 1311, 1314, 1316, 1318, 1342 and 1361 and under authority of the Pollution Prevention Act of 1990, 42 U.S.C. 13101 *et seq.*

Today, EPA is co-proposing three options for this C&D effluent limitation guideline: (1) Construction site permittee self-inspection and certification, (2) "codify" provisions of the current EPA construction general permit with inspection and certification, and (3) no regulation. EPA is considering each of the three options; no option is preferred over the other. Options 1 and 2 would impose a mandate on the States, local, or Tribal governments, in the aggregate, or private sector that would exceed \$100 million per year. Option 3 would not impose a mandate with costs that exceed \$100 million per year for the public or private sectors. The Agency has conducted economic analyses for each of the three

options, which are provided in the Economic Analysis for today's proposed rule (see "Supporting Documentation"). Additional summary economic information may be found in sections XII, XVI, and XVII of today's document.

Option 1 would establish permittee self-inspection and certification requirements to improve the effectiveness of ESCs at construction sites subject to NPDES storm water permits. Option 1 would apply to sites 1 acre or more. This option would require permittees to periodically inspect their ESCs during land disturbing activities and certify that they have been properly installed and maintained. Option 1 would cost about \$130 million annually; the benefits for this option are about \$10 million per year. This option would encourage permittees to adopt better ESC practices and, in the process, reduce discharges of sediment and other pollutants from those sites. Under Option 1, EPA estimates that State and local governments would incur about \$13 million in annual costs and the private sector would incur about \$117 million in annual costs. Of the \$13 million in annual costs to State and local governments, about \$3 million would be incurred by small government entities, less than 50,000 population, and about \$10 million annually would be incurred by large government entities, equal to or greater than 50,000 population. EPA has determined that this option is the least expensive of the set of two regulatory options in today's proposal. Option 1 would amend the existing NPDES regulations and improve the effectiveness of the storm water permit program. The no regulation option, discussed later in this section, is the least expensive proposed option in terms of direct costs outlays.

Option 2 would establish a new national standard for ESC at construction sites of five acres or more, basically codifying the requirements of EPA's construction general permit. In addition, this option would add permittee self-inspection and certification requirements for ESCs to improve compliance. EPA estimates that these controls would remove, on average, 80 percent of the total suspended solids (TSS) discharged from construction sites. The problem that EPA is addressing through this proposed rule is the need to reduce construction site erosion and reduce the amount of sediment discharged during land disturbance activities. EPA estimates that Option 2 would cost about \$505 million annually and would have about \$22 million in annual monetized benefits. The benefits of the

proposal would accrue to the public in the form of reduced sediment and polluted storm water discharged to the Nation's surface waters. The sediment and polluted storm water is discharged from active construction sites and settles into stream beds, drinking water reservoirs, and navigational channels. If the excess sediment discharged from construction sites could be reduced or avoided altogether, the public would benefit with improved water quality and less frequent dredging of drinking water reservoirs and navigational channels. This option is the more expensive of the options. The codification of the CGP plus self-inspection and certification (Option 2) would improve controls at construction sites and in the process reduce the amount of sediment and storm water discharged from construction sites. EPA found that the cost of sediment removed is about \$0.01 per pound. The Agency believes that this cost is reasonable for the pollutant reduction achieved.

Under Option 2, about \$50 million of annual incremental costs would accrue to State and local governments and about \$455 million to the private sector. The Agency does not have data to estimate the costs to Tribal lands and is searching for additional information about Tribal lands for the final rule. The Agency requests information about the impacts and costs on Tribal lands. Of the \$50 million in costs accruing to State and local government agencies, about \$5 million per year would be incurred by small government agencies, communities with less than 50,000 population, and about \$45 million would accrue to large communities, those with more than 50,000 population. EPA has analyzed the impacts on small government entities. This analysis is discussed later in this section. EPA estimates that about \$2 million of the annual benefits will come from improvements to State and local government-funded projects and about \$20 million in benefits will come from improvements to private sector projects. This distribution of the benefits reflects the distribution of construction and development in the United States economy. About 25 percent of all construction is funded by Federal, state and local governments, according to the 1997 Census of Construction. The Federal portion of the incremental costs of the proposal are not covered by UMRA.

State and local governments may find resources available at the Federal, State and local level to defray some of the costs associated with the proposed rule. The Clean Water Act State Revolving Fund (SRF) provides capitalization

grants to eligible States, that provide a twenty percent match, and then provide financial assistance to municipalities or State agencies. Some of these funds are eligible to finance storm water controls. In some cases, these funds are available to the private sector if projects are located in a designated estuary. Other funds are available through other programs such as grant and loan programs, public/private partnerships, and private sector contributions.

This proposal will not have any disproportionate impacts on particular regions of the country, or particular State, local, or Tribal governments, or communities, or particular segments of the private sector. The regulatory options proposed in today's document apply broadly to the construction and development industry in the United States. The proposed options will have an impact in those locations, wherever they happen to be, in which construction and development is occurring. Over time, different regions of the country experience more construction and development than other regions of the country. For example, at this time, California and Texas are experiencing a relatively large amount of development, along with Florida and Pennsylvania.

Option 3 is the no-regulation option for the construction and development industry. Under Option 3, there would be no costs or benefits directly attributable to government entities or to the private sector, with the following important exception. Executive Order 12866 advises agencies to consider the state of the world before and after the prospective regulation. Under the no-regulation option, the current state of the world would not be changed, nor would the discharge of sediment into the Nation's surface waters from C&D activities. These partially-controlled sediments would continue to contribute to the loss of water quality, and sedimentation in water reservoirs and streams. These effects can be attributed as costs imposed on society as an externality, and realized when choices are made to reclaim or restore the functionality of the water body. EPA's benefit methodology is limited in terms of the state-of-the-art to monetize these benefits. However, the Agency believes that the benefits may be substantially larger than EPA is claiming through monetized benefits.

Additional information about the costs and economic impacts of the proposed rule may be found in section XII of today's document. In addition, section XVI and section XVII of today's document provide information and analyses about the environmental

assessment and benefit analysis. The analyses for these proposed options may be found in the support documents in the record for this proposed action.

The proposed regulatory options would not impose any costs on the industry or government entities after termination of the applicable NPDES permits. Option 1 would require only permittee self-inspection and certification activities during the active construction period. Option 2, in addition to the inspection and certification requirements, would require installation, operation and maintenance of temporary ESCs during the active construction period. Option 2 would not require maintenance of these controls after the active construction period.

EPA has determined that the mandates under this proposal will not have a significant impact on the national economy in the form of productivity, economic growth, full employment, creation of productive jobs and international competitiveness. Nevertheless, the Agency has conducted an extensive analysis of the economic impacts of the proposed rule on the construction and development industry and the national economy. These analyses are presented in section XII of today's document. While the impact analysis shows that less than one percent of firms in the industry could potentially fail under the rule and that less than one percent of jobs in the industry could be lost from the most stringent options under analysis, the Agency concluded that, based upon the scale of this industry which is a major component of the U.S. economy, even a small percentage of jobs or firms closed is significant, especially in a sluggish economy. Accordingly, the burden on the economy is one of the reasons the Agency rejected more stringent options. The options proposed today are a result of an extensive economic analysis of a suite of construction and storm water options. The Agency determined that Option 1 is the least costly and least burdensome regulatory option.

EPA is not required by UMRA to consult with elected representatives (or their designated authorized employees) of the affected State, local, and Tribal governments, because the proposed rule would not impose a Federal mandate on State, local and tribal governments, in the aggregate, of \$100 million or more in any one year. The Agency estimates that the costs to State, local and tribal governments is about \$50 million on an annual basis. Nevertheless, EPA has conducted outreach to the public and private sectors to obtain their input on the proposed regulations. The Agency

has conducted two national public meetings in the past year: one in Washington, DC and one in Denver, Colorado. Representatives of several State and local agencies, and engineering consultants representing builders and developers attended these national meetings. The Agency also convened a 60-day Small Business Advocacy Review (SBAR) Panel on July 16, 2001 to obtain input from the small business community on the possible impacts of the proposed regulations on small businesses. The SBAR Panel was composed of representatives of the Office of Management and Budget, the Small Business Administration, and EPA. The SBAR Panel met with small entity representatives (SERs) and held conference calls with the SERs to discuss the impact of the proposal. The Panel issued a final report to the Administrator in October 2001. In addition, through the auspices of the National Association of Home Builders (NAHB), EPA conducted six focus group meetings with residential builders and developers to learn more about the economic and business practices of the construction and development industry. Finally, the Agency has conducted numerous conference calls with builders and developers to learn more about their business and technical practices and participated in conferences and meetings across the country.

EPA has determined that none of the options proposed today might significantly or uniquely affect small governments. Thus, today's rule is not subject to the requirements of section 203 of UMRA. Nevertheless, the Agency has taken steps to provide information and accessibility to small government agencies. The Agency has conducted an extensive small government economic impact analysis, because the Agency wants to understand the impacts of the proposed rule. Moreover, the Agency usually conducts a small government analysis for all effluent guidelines to comply with all applicable Federal requirements and Executive Orders. The most expensive proposed regulatory option would impose requirements for ESC at construction sites. These requirements are technology-based requirements for construction sites that are designed to work with the NPDES storm water program. Some construction and development projects are funded by State and local governments, but most are funded by the private sector. The Agency has determined that about 12 percent of all projects funded by State and local governments are funded by small

government entities, those with a population under 50,000, and about 88 percent are funded by large governments, those with a population greater than 50,000. EPA's economic analysis shows that the cost to small governments of the most costly option is significantly less than one tenth of one percent of the revenues of those communities.

Nevertheless, EPA considered approaches to reduce any impact and assessed methods to find better ways to meet the objectives of the proposal with as few impacts as possible. EPA used several methods to determine costs to small communities, and each method shows that the cost to small communities from the most costly option is much less than one tenth of one percent of their annual revenues. Under one method the Agency compared the aggregate incremental costs of the most costly option to small governments with the aggregate annual revenue of small governments. In another method, the Agency analyzed the impacts on average small government agencies, based upon data on small government annual revenues and costs. As a result, this rule will not result in a significant cost to small communities. The Agency requests comment on the impacts on small communities from the requirements under this proposal. The small government agency analysis can be found in the Economic Analysis.

EPA is developing procedures and methods with which to provide information about this proposal to small government agencies. In particular, the Agency has established a website to distribute information to the public, industry, and government entities, in particular small government agencies, about today's proposed rule. The website may be accessed at <http://www.epa.gov/waterscience/guide/construction/>. This website provides information on EPA's effluent guidelines program and will contain information about today's proposed regulation.

### *C. Regulatory Flexibility Act (RFA) as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)*

#### 1. Introduction

The RFA, 5 U.S.C. 601 *et. seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant

impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, EPA defined: (1) Small businesses, according to SBA size standards, as construction businesses that receive less than \$27.5 million in annual revenue and developers that receive less than \$5 million in annual revenue; (2) small government jurisdictions as small governments of a city, county, town, school district or special district with a population of less than 50,000; and (3) small organizations as any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

In accordance with section 603 of the RFA, EPA has prepared an initial regulatory flexibility analysis (IRFA) that examines the impact of the proposed rule on small entities along with regulatory alternatives that could reduce that impact. The IRFA is available for review in the docket and is summarized below.

The objective for the proposed effluent guidelines for the construction and development (C&D) industry is to reduce sediment and storm water discharged from active construction sites. EPA's analysis indicates that storm water discharges from construction sites contribute sediment to the nation's surface waters that is deposited in stream beds, lakes, navigational channels, and water supply reservoirs. Notwithstanding the social policy objective of reducing sediment and storm water discharges, EPA has conducted extensive analyses of the impacts on small businesses based upon the costs and impacts of three co-proposed options. EPA used the small business analyses to identify approaches that would reduce and minimize impacts on small businesses, while at the same time striking a balance that would achieve the highly desirable goal of reducing storm water pollution. EPA also is soliciting comments on other, less costly approaches to meet the objective of the proposal. The Economic Analysis in its entirety and the initial regulatory flexibility analysis (IRFA)(Chapter 6 within the Economic Analysis) provide EPA's analysis of the proposed requirements on small business entities. Additional information on the economic impacts and, in particular, the impacts on small businesses, may be found in section XII of today's document.

EPA proposes to set technology-based effluent guidelines to control sediment and storm water discharges from active

construction sites. Construction and development activity disturbs the soil on construction sites, and, in the process, releases sediment and storm water into surface streams, lakes, and water supply reservoirs. See section VI.B.2, Clearing, Excavating and Grading of today's document for additional details. Disturbed soil, if not managed properly, can be easily washed off-site during storm events. Storm water and sediment discharges during construction can cause an array of physical, chemical and biological impacts. Water quality impairment results, in part, because pollutants available at construction sites are released into surface waters. The interconnected process of erosion (detachment of the soil particles), sediment transport, and delivery is the primary pathway for introducing key pollutants, such as nutrients (nitrogen and phosphorous), metals and organic compounds into surface waters and aquatic systems.

The proposed rule would establish technology-based effluent guidelines for the control of erosion and sediment on active construction projects. The technology-based options would complement the requirements of the existing NPDES storm water requirements. EPA is proposing this regulation under the authorities of sections 301, 304, 306, 308, 402 and 501 of the Clean Water Act, 33 U.S.C. 1311, 1314, 1316, 1318, 1342 and 1361 and under authority of the Pollution Prevention Act of 1990, 42 U.S.C. 13101 *et seq.*, Public Law 101-508, November 5, 1990.

For purposes of assessing the economic impacts of today's rule on small entities through the IRFA, "small entity" is defined by SBA size standards for small businesses and RFA default definitions for small governmental jurisdictions and small organizations. The small entities directly regulated by this proposed rule include small land developers, small residential construction firms, small commercial and industrial firms, and small special trade firms. Over ninety percent of the businesses in the construction and development industry are small businesses. EPA recognizes the tremendous contributions that these small businesses make to the fabric of the American economy. Accordingly, the Agency has attempted to reduce impacts to small businesses while, at the same time, working to identify ways to achieve the objective of today's document.

Table XII-8 in section XII of today's document presents the results of EPA's small business analysis.

EPA also has analyzed the projected reporting, recordkeeping, and other compliance requirements under the Paperwork Reduction Act for today's proposed rule, including an estimate of the classes of small entities that would be subject to the proposed rule. The results of the analysis are reported in section XIX.A, Paperwork Reduction Act. EPA anticipates that small firms may incur some incremental costs for reporting, record keeping and other compliance requirements. However, these incremental costs are expected to be small. EPA has analyzed the incremental burden and costs of reporting and record keeping requirements. These costs are covered by the approved information collection request (ICR) for the existing NPDES Storm Water Program. Moreover, these costs are included in the engineering cost models and in the economic impact models that support the regulatory options in today's document.

EPA has not identified any rules that duplicate, overlap, or conflict with today's proposal. Moreover, this proposal would complement the existing NPDES storm water regulations.

There may be alternatives to the proposed options that accomplish the objectives of today's proposal. EPA is seeking comment on variations to these options and is particularly interested in information that would accomplish these objectives and minimize any significant economic impact on small entities.

The Agency has analyzed a broad suite of regulatory options and technology alternatives. The three regulatory options in today's document provide the final set of options that the Agency is considering for the proposal.

As required by section 609(b) of the RFA, as amended by SBREFA, EPA also conducted outreach to small entities and convened a Small Business Advocacy Review (SBAR) Panel to obtain advice and recommendations of representatives of the small entities that potentially would be subject to the rule's requirements. On July 16, 2001, EPA's Small Business Advocacy Chairperson convened the C&D SBAR panel under section 609(b). In addition to the Chairperson, the Panel consists of the Director of the Engineering and Analysis Division of the Office of Science and Technology within EPA's Office of Water, the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB), and the Acting Chief Counsel for Advocacy of the Small Business Administration (SBA).

Prior to convening the Panel on July 16, 2001, EPA held a conference call/

meeting on June 14, 2001 to receive information from prospective small entity representatives (SER) about plans for convening the Panel and their early concerns about the planned proposed regulation. EPA invited seven residential builders and developers, five heavy construction company representatives, one local government official, one trade association representative, and five consultants to serve as potential SERs during the pre-panel outreach process. The full Panel report lists the materials provided to the SERs and summarizes their comments. Their full written comments also are attached to the report. In light of these comments, the Panel considered the regulatory flexibility issues specified by RFA/SBREFA and developed the findings and discussion summarized below.

Consistent with the RFA/SBREFA requirements, the Panel evaluated the assembled materials and small-entity comments on issues related to the elements of the IRFA. A copy of the Panel report is included in the docket for this proposed rule.

## 2. Summary of Panel Recommendations

The SBAR Panel submitted a final report of the sixty day panel process, that convened on July 16, 2001, to the Administrator of EPA in October 2001. The following issues and EPA's response provides information about the discussions between the SBAR Panel and the SERs. The final SBAR Panel Report is available in the docket for the proposed effluent guidelines for the construction and development industry.

### a. Related Federal Rules

- The Panel recommended that EPA, during the development of the proposed effluent guidelines, evaluate the adequacy of the current NPDES storm water program. The Panel also recommended that EPA proceed with the development of proposed effluent guidelines, but that in doing so, keep open the option of ultimately declining to promulgate final guidelines until the effectiveness of Phase I and Phase II, without national effluent guidelines, can be evaluated more fully.

**EPA response.** EPA is proposing a set of three options that is consistent with the comments from the Small Business Advocacy Review (SBAR) Panel. One of the options would require additional ESCs. The three options are: (1) Self-inspection and certification for projects one acre or more; (2) Codify the CGP with self-inspection and certification for projects five acres or more; (3) a no-regulation option that considers the possibility of not issuing a final

regulation. The Agency appreciates the comments from the SBAR Panel, and the regulatory options in today's document reflect the Panel's final report.

- The Panel further recommended the inclusion in the proposal of regulatory language that would provide a mechanism by which construction sites could meet the effluent guidelines requirement by complying with State and/or local regulations that provide a comparable level of environmental protection. The Panel also noted and endorsed EPA's intention to incorporate any additional requirements for ESC and storm water management developed under the effluent guidelines into the existing construction general permitting system, which should ease the regulatory burden associated with the new requirements, at least in terms of permitting and related paperwork costs.

*EPA response.* EPA plans to recognize States with excellent storm water programs. In those States, there would be no additional requirements beyond those currently in place. In addition, there would be no incremental costs to those States or the dischargers in those States.

EPA plans to implement the technology-based effluent guidelines through the existing NPDES storm water program. Moreover, EPA plans to implement the effluent guidelines through the construction general permits as recommended by the SBAR Panel.

#### b. Regulatory Alternatives

- Many of the SERs commented that quantitative or numerical effluent standards are not appropriate for storm water discharges. Another SER indicated that numeric limits are unproven in a construction discharge context and are extremely cost-ineffective. The Panel recommended against establishing across-the-board storm water monitoring requirements as part of the effluent guidelines.

*EPA response.* For the reasons discussed in section IX.B of today's document, EPA is not proposing quantitative or numerical effluent standards for construction and development, and is not proposing storm water monitoring requirements in today's proposed rule.

- The Panel urged EPA, as it conducts evaluations of the feasibility of establishing numeric effluent limitations to comply with the settlement agreement with NRDC, to fully consider the many challenges associated with developing numeric effluent standards, such as monitoring difficulties, site-specific variability, and

the stochastic nature of rainfall and runoff events. The Panel recommended that EPA acquire and evaluate data on both costs and effectiveness of such requirements from sites across the country, reflecting a variety of geographic, weather, soil, and other site conditions, before it makes any determination on the utility and feasibility of such standards. The Panel also recommended that any BMP certification requirements that may be included in the guidelines be limited to design parameters only and not include performance certification or liability of the certifier for failure of BMPs to perform as expected.

*EPA response.* As described in the Agency's response to the previous Panel recommendation, EPA is not proposing quantitative or numerical effluent standards. EPA has compiled data from across the country and found that numeric limits and monitoring requirements are not the most effective tools for management and control of storm water discharges.

- Several SERs suggested that EPA base the effluent guidelines on the existing CGP requirements. The panel recommended that EPA give consideration to this approach and that, at a minimum, EPA should present it for comment in the preamble to the proposed effluent guidelines as a regulatory option under consideration.

*EPA response.* EPA gave considerable weight to this recommendation from the SBAR Panel. The Agency has concluded that using the technology-based requirements to complement those in the CGP has considerable advantages and served as the basis for one of the options proposed today.

#### c. Methodological Issues

- The Panel recommended that EPA fully evaluate the appropriateness of the selected baseline requirements and the estimated costs, and the regulatory requirements and their costs in the development of the proposed rule. The Panel further recommended that EPA specifically consider the comments of the SERs in this effort.

*EPA response.* EPA has assessed the baseline and understands the progress that the industry has made in improving the implementation of ESCs. The Agency has conducted an analysis that reflects the current level of progress and the progress anticipated under the existing storm water programs.

EPA invites comments on all aspects of this proposal and its impacts on small entities.

#### D. Executive Order 12866: Regulatory Planning and Review

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

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

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

- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, EPA has concluded that this rule is a "significant regulatory action." As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

#### E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications." "Policies that have Federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule does not have Federalism implications. It will not have substantial direct effects on the States, on this 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. EPA estimates that the average impact on all authorized States and local governments of the most expensive of the options

proposed today is \$50 million (year 2000 \$) annually. EPA does not consider an impact of \$50 million (year 2000 \$) on States and local governments a substantial effect. Moreover, this annual cost is less than one tenth of one percent of the revenues of State and local government.

Further, the revised regulations would not alter the basic State-Federal scheme established in the Clean Water Act under which EPA authorizes States to carry out the NPDES permitting program. EPA expects the revised regulations to have little effect on the relationship between, or the distribution of power and responsibilities among, the Federal and State governments. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comments on this proposed rule from State and local officials.

#### *F. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) 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 proposed rule is not subject to Executive Order 13045 because it does not concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. This rule is based on technology performance, not health or safety risks.

#### *G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of

regulatory policies that have tribal implications."

"Policies that have Tribal implications" is defined in the Executive Order to include regulations that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and the Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. This proposed rule does not have tribal implications. It will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes as specified in Executive Order 13175. Today's proposed rule contains no Federal mandates for Tribal governments and does not impose any enforceable duties on Tribal governments. Thus, Executive Order 13175 does not apply to this rule. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and Tribal governments, EPA specifically solicits comment on this proposed rule from tribal officials.

#### *H. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, (Public Law 104-113, section 12(d); 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The Agency is not aware of any consensus-based technical standards for the types of controls contained in today's proposal. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

#### *I. Plain Language Directive*

Executive Order 12866 requires each agency to write all rules in plain language. EPA invites comments on how to make this proposed rule easier to understand.

#### *J. Executive Order 13211 (Energy Effects)*

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The treatment systems required by today's proposal rely on passive treatment techniques that do not utilize mechanical equipment. The proposed rule may require larger sediment basins in certain cases, and therefore may result in the use of additional fuel for construction equipment conducting excavation and soil moving activities. EPA estimates that this additional fuel usage will be approximately 700,000 gallons per year, which is insignificant compared to the annual consumption in the United States.

### **XX. Solicitation of Data and Comments**

#### *A. Specific Solicitation of Comments and Data*

EPA solicits comments on all aspects of today's proposal. In addition to the various topics on which EPA has specifically solicited comments throughout this proposal, EPA solicits comments in several additional areas.

Today's proposal at § 450.21(i) specifies requirements for permittees to remove accumulated sediment from sediment traps and ponds when design capacity has been reduced by 50 percent. Today's proposal does not require any other specific maintenance requirements, although some additional maintenance costs such as replacing mulching have been included in the costs of Option 2. EPA solicits comments on the assumption that these maintenance activities would be a natural outcome of the inspection requirements. Alternatively, EPA solicits comment on additional maintenance requirements that the Agency should consider requiring through regulation, as well as the costs and benefits of such requirements.

EPA solicits comments on the effectiveness and appropriateness of each of the technologies contained in today's proposal. The Agency also solicits comments on any other equivalent technologies the Agency should consider, as well as the costs,

benefits and effectiveness of such technologies.

EPA has attempted to capture all of the provisions of the EPA's "national" CGP (63 FR 7901, February 17, 1998) in today's proposal. EPA solicits comments on the components of the CGP that were inadvertently left out of today's proposal, as well as the costs and benefits of such components. In addition, EPA recognizes that the EPA CGP is scheduled to be revised in 2003 and that certain provisions contained in the permit may change prior to final action on the effluent guideline. EPA solicits comments on the appropriate approach to take to reconcile any changes made in the EPA CGP with today's proposal.

#### B. General Solicitation of Comment

EPA encourages public participation in this rulemaking. EPA asks that commenters address any perceived deficiencies in the record supporting this proposal and that suggested revisions or corrections to the rule, preamble or record be supported by data. EPA invites all parties to coordinate their data collection activities with the Agency to facilitate mutually beneficial and cost-effective data submissions. Please refer to the **FOR FURTHER INFORMATION** section at the beginning of this preamble for technical contacts at EPA.

#### List of Subjects

##### 40 CFR Part 122

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous substances, Reporting and recordkeeping requirements, Water pollution control.

##### 40 CFR Part 450

Environmental protection, Construction industry, Land development, Erosion, Sediment, Storm water, Water pollution control.

Dated: May 15, 2002.

**Christine Todd Whitman,**  
Administrator.

For the reasons set out in the preamble, EPA proposes to amend title 40, chapter I of the Code of Federal Regulations as follows:

#### [Option 1]

Part 122 is proposed to be amended to read as follows:

### **PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**

1. The authority citation for part 122 continues to read as follows:

**Authority:** The Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Section 122.44 is amended by revising paragraph (i)(4) and adding paragraph (t) to read as follows:

**§ 122.44 Establishing limitations, standards, and other permit conditions (applicable to State NPDES programs, see § 123.25).**

\* \* \* \* \*

(i) \* \* \*

(4) Requirements to report monitoring results for storm water discharges associated with industrial activity (other than construction activity pursuant to 40 CFR 122.26(b)(14)(x) and those discharges addressed in paragraph (i)(3) of this section) shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge. \* \* \*

\* \* \* \* \*

(t) *Inspection and certification for construction site storm water discharges.*

(1) *Site log book.* The permittee for a point source discharge under § 122.26(b)(14)(x) or § 122.26(b)(15) shall maintain a record of site activities in a site log book. The site log book shall be maintained as follows:

(i) A copy of the site log book shall be maintained on site and be made available to the permitting authority upon request;

(ii) In the site log book, the permittee shall certify, prior to the commencement of construction activities, that any plans required by the permit meet all Federal, State, Tribal and local erosion and sediment control requirements and are available to the permitting authority;

(iii) The permittee shall have a qualified professional (knowledgeable in the principles and practices of erosion and sediment controls, such as a licensed professional engineer, or other knowledgeable person) conduct an assessment of the site prior to groundbreaking and certify in the log book that the appropriate best management practices (BMPs) described in plans required by the permit have been adequately designed, sized and installed to ensure overall preparedness of the site for initiation of groundbreaking activities. The permittee shall record the date of initial groundbreaking in the site log book. The permittee shall also certify that any

inspection, stabilization and BMP maintenance requirements of the permit have been satisfied within 48 hours of actually meeting such requirements; and

(iv) The permittee shall post at the site, in a publicly-accessible location, a summary of the site inspection activities on a monthly basis;

(2) *Site Inspections.* The permittee or designated agent of the permittee (such as a consultant, subcontractor, or third-party inspection firm) shall conduct regular inspections of the site and record the results of such inspection in the site log book in accordance with paragraph (t)(1) of this section.

(i) After initial groundbreaking, permittees shall conduct site inspections at least every 14 calendar days and within 24 hours of the end of a storm event of 0.5 inches or greater. These inspections shall be conducted by a qualified professional. During each inspection, the permittee or designated agent shall record the following information:

(A) Indicate on a site map the extent of all disturbed site areas and drainage pathways. Indicate site areas that are expected to undergo initial disturbance or significant site work within the next 14 days;

(B) Indicate on a site map all areas of the site that have undergone temporary or permanent stabilization;

(C) Indicate all disturbed site areas that have not undergone active site work during the previous 14 days;

(D) Inspect all sediment control practices and note the approximate degree of sediment accumulation as a percentage of the sediment storage volume (for example 10 percent, 20 percent, 50 percent, etc.). Note all sediment control practices in the site log book that have sediment accumulation of 50 percent or more; and

(E) Inspect all erosion and sediment control BMPs and note compliance with any maintenance requirements such as verifying the integrity of barrier or diversion systems (e.g., earthen berms or silt fencing) and containment systems (e.g., sediment basins and sediment traps). Identify any evidence of rill or gully erosion occurring on slopes and any loss of stabilizing vegetation or seeding/mulching. Document in the site log book any excessive deposition of sediment or ponding water along barrier or diversion systems. Note the depth of sediment within containment structures, any erosion near outlet and overflow structures, and verify the ability of rock filters around perforated riser pipes to pass water.

(ii) Prior to filing of the Notice of Termination or the end of permit term, a final site erosion and sediment control

inspection shall be conducted by the permittee or designated agent. The inspector shall certify that the site has undergone final stabilization as required by the permit and that all temporary erosion and sediment controls (such as silt fencing) not needed for long-term erosion control have been removed.

#### [Option 2]

Part 122 is proposed to be amended and part 450 is proposed to be added to read as follows:

### **PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**

1. The authority citation for part 122 continues to read as follows:

**Authority:** The Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Section 122.44 is amended by revising paragraph (i)(3) as follows:

**§ 122.44 Establishing limitations, standards, and other permit conditions (applicable to State NPDES programs, see § 123.25).**

\* \* \* \* \*

(i) \* \* \*

(3) Requirements to report monitoring results for storm water discharges associated with industrial activity, with the exception of construction activity as defined in § 122.26(b)(14)(x), that are subject to an effluent limitation guideline shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year. Discharges from construction activity pursuant to § 122.26(b)(14)(x) shall be governed instead by 40 CFR part 450.

3. A new part 450 is added to read as follows:

### **PART 450—CONSTRUCTION AND DEVELOPMENT POINT SOURCE CATEGORY**

#### **Subpart A—General Provisions**

Sec.

450.10 Applicability.

450.11 General Definitions.

#### **Subpart B—Erosion and Sediment Controls**

450.21 Effluent limitations reflecting the best practicable technology currently available (BPT).

450.22 Effluent limitations reflecting the best available technology economically achievable (BAT).

450.23 Effluent limitations reflecting the best conventional pollutant control technology (BCT).

450.24 New source performance standards (NSPS).

**Authority:** Sections 301, 304, 306, 308, 402, and 501 of the Clean Water Act, as amended; 33 U.S.C. 1311, 1314, 1316, 1318, 1342, and 1361.

#### **Subpart A—General Provisions**

##### **§ 450.10 Applicability.**

This part applies to any point source discharges from construction and development activities that are subject to an NPDES permit under the definition of “construction activity” at 40 CFR 122.26(b)(14)(x). This may include, but is not restricted to, construction of residential buildings and non-residential buildings, and heavy construction (including highways and streets, bridges and tunnels, pipelines, transmission lines and industrial non-building structures). Where there is more than one operator of a discharge at a site, the requirements of this part may be shared among operators if all the requirements of this part are met for the entire site. The Storm Water Pollution Prevention Plan (SWPPP) required by § 450.21(d) shall clearly delineate the responsibilities of all operators.

##### **§ 450.11 General definitions.**

In addition to the definitions set forth in 40 CFR 122.2, 122.26(b) and 40 CFR 401.11, the following definitions apply to this part:

**Best Management Practices (BMPs)** means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to waters of the United States. BMPs also include treatment requirements, operating procedures, and practice to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

**Commencement of construction** means the initial removal of vegetation and disturbance of soils associated with clearing, grading or excavating activities or other construction activities.

**Final stabilization** means that either:

(1) All soil-disturbing activities at the site have been completed and a uniform (e.g., evenly distributed, without large bare areas) perennial vegetative cover with a density of 70 percent of the native background vegetative cover for the area has been established on all unpaved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed; or

(2) For individual lots in residential construction by either: The homebuilder completing final stabilization as specified above; or the homebuilder

establishing temporary stabilization including perimeter controls for an individual lot prior to occupation of the home by the homeowner and informing the homeowner of the need for, and benefits of, final stabilization; or

(3) For construction projects on land used for agricultural purposes (e.g., pipelines across crop or range land), final stabilization may be accomplished by returning the disturbed land to its preconstruction agricultural use. Disturbed areas that were not previously used for agricultural activities, such as buffer strips immediately adjacent to “waters of the United States,” and areas that are not being returned to their preconstruction agricultural use must meet the final stabilization criteria in paragraph (1) or (2) of this definition.

**Groundbreaking** means the commencement of construction activity at a site.

**New Source** means any source from which there may be a discharge associated with construction activity pursuant to 40 CFR 122.26(b)(14)(x) that will result in a building, structure, facility or installation from which there may be a discharge of pollutants regulated by new source performance standards elsewhere under subchapter N.

**Operator** for the purpose of this Part and in the context of storm water associated with construction activity, means any party associated with a construction project that meets either of the following two criteria:

(1) The party has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or

(2) The party has day-to-day operational control of those activities at a project that are necessary to ensure compliance with a storm water pollution prevention plan (SWPPP) for the site or other permit conditions (e.g., they are authorized to direct workers at a site to carry out activities required by the SWPPP required by § 450.21(d) or to comply with other permit conditions).

**Perimeter controls** means best management practices that are designed to prevent uncontrolled discharge of sediment from the site. Perimeter controls include BMPs such as diversion dikes, storm drain inlet protection, berms, and silt fencing.

**Qualified professional** means a person knowledgeable in the principles and practice of erosion and sediment controls, such as a licensed professional engineer, or other knowledgeable person.

*Runoff coefficient* means the fraction of total rainfall that will appear at the conveyance as runoff.

*Stabilization* means covering or maintaining an existing cover over soil. Cover can be vegetative (e.g., grass, trees, seed and mulch, shrubs, or turf) or non-vegetative (e.g., geotextiles, riprap, or gabions).

## Subpart B—Erosion and Sediment Control

### § 450.21 Effluent limitations reflecting the best practicable technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the application of the best practicable control technology currently available (BPT). Permittees with operational control over construction plans and specification, including the ability to make modifications to those plans and specifications (e.g., developer or owner), must ensure the project specifications that they develop meet the minimum requirements of a SWPPP required by paragraph (d) of this section.

(a) *General Erosion and Sediment Controls.* Each SWPPP shall include a description of appropriate controls designed to retain sediment on site to the extent practicable. These general erosion and sediment controls shall be included in the SWPPP developed pursuant to paragraph (d) of this section. The SWPPP must include a description of interim and permanent stabilization practices for the site, including a schedule of when the practices will be implemented.

Stabilization practices may include:

- (1) Establishment of temporary or permanent vegetation;
- (2) Mulching, geotextiles, or sod stabilization;
- (3) Vegetative buffer strips;
- (4) Protection of trees and preservation of mature vegetation.

(b) *Sediment controls.* The SWPPP must include a description of structural practices to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from exposed areas of the site to the degree attainable.

(1) For common drainage locations that serve an area with 10 or more acres disturbed at one time, a temporary (or permanent) sediment basin that provides storage for a calculated volume of runoff from a 2 year, 24-hour storm from each disturbed acre drained, or equivalent control measures, shall be provided where attainable until final

stabilization of the site. Where no such calculation has been performed, a temporary (or permanent) sediment basin providing 3,600 cubic feet of storage per acre drained, or equivalent control measures, shall be provided where attainable until final stabilization of the site. When computing the number of acres draining into a common location it is not necessary to include flows from off-site areas and flows from on-site areas that are either undisturbed or have undergone final stabilization where such flows are diverted around both the disturbed area and the sediment basin.

(2) In determining whether a sediment basin is attainable, the operator may consider factors such as site soils, slope, available area on site, etc. In any event, the operator must consider public safety, especially as it relates to children, as a design factor for the sediment basin, and alternative sediment controls shall be used where site limitations would preclude a safe basin design.

(3) For portions of the site that drain to a common location and have a total contributing drainage area of less than 10 disturbed acres, the operator should use smaller sediment basins and/or sediment traps.

(4) Where neither a sediment basin nor equivalent controls are attainable due to site limitations, silt fences, vegetative buffer strips or equivalent sediment controls are required for all down slope boundaries of the construction area and for those side slope boundaries deemed appropriate as dictated by individual site conditions.

(c) *Pollution Prevention Measures.* The SWPPP shall include the following pollution prevention measures:

(1) Litter, construction chemicals, and construction debris exposed to storm water shall be prevented from becoming a pollutant source in storm water discharges (e.g., screening outfalls, picked up daily); and

(2) A description of construction and waste materials expected to be stored on-site with updates as appropriate, and a description of controls to reduce pollutants from these materials including storage practices to minimize exposure of the materials to storm water, and spill prevention and response.

(d) *Storm Water Pollution Prevention Plan.* Operators subject to this part shall compile Storm Water Pollution Prevention Plans (SWPPPs) prior to groundbreaking at any construction site. In areas where EPA is not the permit authority, operators may be required to prepare documents that may serve as the functional equivalent of a SWPPP.

Such alternate documents will satisfy the requirements for a SWPPP so long as they contain the necessary elements of a SWPPP. A SWPPP shall incorporate the following information:

(1) A narrative description of the construction activity, including a description of the intended sequence of major activities that disturb soils on the site (major activities include grubbing, excavating, grading, and utilities and infrastructure installation, or any other activity that disturbs soils for major portions of the site);

(2) A general location map (e.g., portion of a city or county map) and a site map. The site map shall include descriptions of the following:

(i) Drainage patterns and approximate slopes anticipated after major grading activities;

(ii) The total area of the site and areas of disturbance;

(iii) Areas that will not be disturbed;

(iv) Locations of major structural and nonstructural controls identified in the SWPPP;

(v) Locations where stabilization practices are expected to occur;

(vi) Locations of off-site material, waste, borrow or equipment storage areas;

(vii) Surface waters (including wetlands); and

(viii) Locations where storm water discharges to a surface water;

(3) A description of available data on soils present at the site;

(4) A description of BMPs to be used to control pollutants in storm water discharges during construction as described elsewhere in this section;

(5) A description of the general timing (or sequence) in relation to the construction schedule when each BMP is to be implemented;

(6) An estimate of the pre-development and post-construction runoff coefficients of the site;

(7) The name(s) of the receiving water(s);

(8) Delineation of SWPPP implementation responsibilities for each site owner or operator;

(9) Any existing data that describe the storm water runoff characteristics at the site.

(e) *Updating the SWPPP.* The operator shall amend the SWPPP and corresponding erosion and sediment control BMPs whenever:

(1) There is a change in design, construction, or maintenance that has a significant effect on the discharge of pollutants to waters of the United States which has not been addressed in the SWPPP; or

(2) Inspections or investigations by site operators, local, State, Tribal or

Federal officials indicate that the SWPPP is proving ineffective in eliminating or significantly minimizing pollutant discharges.

(f) *Site Log Book/Certification.* The operator shall maintain a record of site activities in a site log book, as part of the SWPPP. The site log book shall be maintained as follows:

(1) A copy of the site log book shall be maintained on site and be made available to the permitting authority upon request;

(2) In the site log book, the operator shall certify, prior to the commencement of construction activities, that the SWPPP prepared in accordance with paragraph (d) of this section meets all Federal, State and local erosion and sediment control requirements and is available to the permitting authority;

(3) The operator shall have a qualified professional conduct an assessment of the site prior to groundbreaking and certify in the log book that the appropriate BMPs and erosion and sediment controls described in the SWPPP and required by paragraphs (a), (b), (c) and (d) of this section have been adequately designed, sized and installed to ensure overall preparedness of the site for initiation of groundbreaking activities. The operator shall record the date of initial groundbreaking in the site log book. The operator shall also certify that the requirements of paragraphs (g), (h) and (i) of this section have been satisfied within 48 hours of actually meeting such requirements;

(4) The operator shall post at the site, in a publicly-accessible location, a summary of the site inspection activities on a monthly basis.

(g) *Site Inspections.* The operator or designated agent of the operator (such as a consultant, subcontractor, or third-party inspection firm) shall conduct regular inspections of the site and record the results of such inspection in the site log book in accordance with paragraph (f) of this section.

(1) After initial groundbreaking, operators shall conduct site inspections at least every 14 calendar days and within 24 hours of the end of a storm event of 0.5 inches or greater. These inspections shall be conducted by a qualified professional. During each inspection, the operator or designated agent shall record the following information:

(i) On a site map, indicate the extent of all disturbed site areas and drainage

pathways. Indicate site areas that are expected to undergo initial disturbance or significant site work within the next 14-day period;

(ii) Indicate on a site map all areas of the site that have undergone temporary or permanent stabilization;

(iii) Indicate all disturbed site areas that have not undergone active site work during the previous 14-day period;

(iv) Inspect all sediment control practices and note the approximate degree of sediment accumulation as a percentage of the sediment storage volume (for example 10 percent, 20 percent, 50 percent, etc.). Record all sediment control practices in the site log book that have sediment accumulation of 50 percent or more; and

(v) Inspect all erosion and sediment control BMPs and record all maintenance requirements such as verifying the integrity of barrier or diversion systems (earthen berms or silt fencing) and containment systems (sediment basins and sediment traps). Identify any evidence of rill or gully erosion occurring on slopes and any loss of stabilizing vegetation or seeding/mulching. Document in the site log book any excessive deposition of sediment or ponding water along barrier or diversion systems. Record the depth of sediment within containment structures, any erosion near outlet and overflow structures, and verify the ability of rock filters around perforated riser pipes to pass water.

(2) Prior to filing of the Notice of Termination or the end of permit term, a final site erosion and sediment control inspection shall be conducted by the operator or designated agent. The inspector shall certify that the site has undergone final stabilization using either vegetative or structural stabilization methods and that all temporary erosion and sediment controls (such as silt fencing) not needed for long-term erosion control have been removed.

(h) *Stabilization.* The operator shall initiate stabilization measures as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, but in no case more than 14 days after the construction activity in that portion of the site has temporarily or permanently ceased. This requirement does not apply in the following instances:

(1) Where the initiation of stabilization measures by the 14th day after construction activity temporarily

or permanently ceased is precluded by snow cover or frozen ground conditions, stabilization measures shall be initiated as soon as practicable;

(2) Where construction activity on a portion of the site is temporarily ceased, and earth-disturbing activities will be resumed within 21 days, temporary stabilization measures need not be initiated on that portion of the site.

(3) In arid areas (areas with an average annual rainfall of 0 to 10 inches), semi-arid areas (areas with an average annual rainfall of 10 to 20 inches), and areas experiencing droughts where the initiation of stabilization measures by the 14th day after construction activity has temporarily or permanently ceased is precluded by seasonably arid conditions, the operator shall initiate stabilization measures as soon as practicable.

(i) *Maintenance.* Sediment shall be removed from sediment traps or sediment ponds when design capacity has been reduced by 50 percent.

#### **§ 450.22 Effluent limitations reflecting the best available technology economically achievable (BAT).**

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must employ the best management practices (BMPs) in this section, representing the application of the best available technology economically achievable (BAT): The effluent limitations are the same as those specified in § 450.21.

#### **§ 450.23 Effluent limitations reflecting the best conventional pollutant control technology (BCT).**

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must employ the best management practices (BMPs) in this section, representing the application of the best conventional pollutant control technology (BCT): The effluent limitations are the same as those specified in § 450.21.

#### **§ 450.24 New source performance standards (NSPS).**

Any new source subject to this subpart must achieve new source performance standards (NSPS): The effluent limitations are the same as those specified in § 450.21.

[FR Doc. 02-12963 Filed 6-21-02; 8:45 am]

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# Federal Register

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**Monday,  
June 24, 2002**

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## **Part IV**

# **Environmental Protection Agency**

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### **40 CFR Part 81**

**Determination and Proposed Effective  
Date Modification for the Determination  
of Nonattainment as of November 15,  
1999, and Reclassification of the Baton  
Rouge Ozone Nonattainment Area; Final  
Rule and Proposed Rule**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 81**

[LA-58-1-7522; FRL-7235-9]

**Determination of Nonattainment as of November 15, 1999, and Reclassification of the Baton Rouge Ozone Nonattainment Area****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing its finding that the Baton Rouge ozone nonattainment area (hereinafter referred to as the Baton Rouge area) did not attain the 1-hour ozone national ambient air quality standard (NAAQS or standard) by November 15, 1999, the attainment date for serious nonattainment areas set forth in the Clean Air Act (CAA or Act). By operation of law, the Baton Rouge area is to be reclassified from a serious to a severe nonattainment area on the effective date of this rule. In addition, EPA is requiring Louisiana to submit State Implementation Plan (SIP) revisions addressing the CAA's pollution control requirements for severe ozone nonattainment areas within 12 months of the effective date of this rule and establishing November 15, 2005, as the date by which the Baton Rouge area must attain the ozone NAAQS.

In a Judgment entered on March 7, 2002, the United States District Court for the Middle District of Louisiana, ordered EPA to determine, within 90 days, whether the Baton Rouge area had attained the applicable ozone standard under the CAA, and ordered EPA to promptly thereafter publish the required notice. *Louisiana Environmental Action Network (LEAN) v. Whitman*, No. 00-879-A. The rulemaking issued today complies with the Court's Judgment. See **SUPPLEMENTARY INFORMATION** regarding a proposed rule published elsewhere in this issue that would affect this final rule.

**DATES:** This final rule is effective on August 23, 2002.

**ADDRESSES:** Copies of documents relevant to this action are available for public inspection during normal business hours at the Environmental Protection Agency, Region 6, Air Planning Section (6PD-L), 1445 Ross Avenue, Dallas, Texas 75202-2733; and the Louisiana Department of

Environmental Quality (LDEQ), 7920 Bluebonnet Boulevard, Baton Rouge, Louisiana 70884. Please contact the appropriate office at least 24 hours in advance.

**FOR FURTHER INFORMATION CONTACT:** Ms. Maria L. Martinez, Air Planning Section (6PD-L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone (214) 665-2230.

**SUPPLEMENTARY INFORMATION:** In a separate document titled: "Proposed Effective Date Modification for Determination of Nonattainment as of November 15, 1999, and Reclassification of the Baton Rouge Ozone Nonattainment Area," published elsewhere in today's **Federal Register**, EPA is proposing to delay the effective date of this rule until October 4, 2002. In that document, EPA also sets forth its intent to propose to withdraw this final determination and reclassification, if EPA grants the State an attainment date extension before the effective date of this reclassification rule.

On May 10, 2000, the Governor of Louisiana submitted a request for an attainment date extension for the Baton Rouge area pursuant to EPA's "Guidance on Extension of Attainment Dates for Downwind Transport Areas" (Richard D. Wilson, Acting Assistant Administrator for Air and Radiation) issued July 16, 1998 (hereinafter referred to as the extension policy). On November 22, 2000, Tulane Law School, on behalf of the Louisiana Environmental Action Network (LEAN), filed a complaint in the United States District Court for the Middle District of Louisiana against EPA, alleging that EPA failed to discharge its duty to make and publish a determination whether the Baton Rouge area attained the 1-hour ozone NAAQS by November 15, 1999. On May 9, 2001, EPA published a proposal to determine that the Baton Rouge area did not attain the 1-hour ozone NAAQS or in the alternative allow Louisiana an opportunity to qualify for an attainment date extension pursuant to EPA's extension policy.

Louisiana is in the concluding stages of a process that could culminate in EPA final action on the Attainment Plan and Transport SIP (hereinafter referred to as Attainment Plan/Transport) that was submitted on December 31, 2001, and on a possible attainment date extension. This extension, if granted, would allow the area to remain classified as a serious nonattainment area. EPA is continuing to work to complete action on the extension

request by October 4, 2002. If EPA takes final action to extend the attainment date during the pre-effective period of this rule, EPA intends to withdraw this final determination and reclassification prior to the time that they become effective.

**Background**

Throughout this document whenever "we, us, or our" is used, we mean EPA. This section provides additional information by addressing the following questions:

- I. What Are The National Ambient Air Quality Standards?
- II. What Is the NAAQS For Ozone?
- III. What Is a SIP?
- IV. What Is the Baton Rouge Ozone Nonattainment Area?
- V. What Does This Action Do?
- VI. What Does the CAA Say about Determinations of Nonattainment and Reclassifications, and How Does it Apply to the Baton Rouge Area?
- VII. Why Did EPA Defer Making a Determination Regarding the Baton Rouge Area's Attainment Status Beyond the Time Frame Prescribed by the CAA?
- VIII. Why Is this Action Necessary?
- IX. What Is the Area's New Classification?
- X. What Is the New Attainment Date for the Baton Rouge Area?
- XI. When must Louisiana Submit SIP Revisions Fulfilling the Requirements for Severe Ozone Attainment Areas?
- XII. What Comments Were Received on the Proposed and Supplemental Proposed Rule for the Reclassification and Potential Eligibility for Extension of the Attainment Date?
- XIII. Administrative Requirements

**I. What Are the National Ambient Air Quality Standards?**

EPA has set NAAQS for six common air pollutants: carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide. The CAA requires that these standards be set at levels that protect public health and welfare with an adequate margin of safety. These standards, established under section 109 of the CAA, 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. What Is the NAAQS for Ozone?**

The NAAQS for ozone is expressed in two forms which are referred to as the 1-hour and 8-hour standards. Table 1 summarizes the ozone standards.

TABLE 1.—SUMMARY OF OZONE STANDARDS

| Standard     | Value          | Type <sup>a</sup><br>Method of compliance                                                                                                                             |
|--------------|----------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1-hour ..... | 0.12 ppm ..... | Primary and Secondary. Must not be exceeded, on average, more than one day per year over any three-year period at any monitor within an area.                         |
| 8-hour ..... | 0.08 ppm ..... | Primary and secondary. The average of the annual fourth highest daily maximum 8-hour average ozone concentration measured at each monitor over any three-year period. |

<sup>a</sup> Primary standards are designed to protect public health and secondary standards are designed to protect public welfare and the environment.

The 1-hour ozone standard of 0.12 parts per million (ppm) was promulgated in 1979. The 1-hour ozone standard continues to apply to Baton Rouge and it is the classification of the Baton Rouge area with respect to the 1-hour ozone standard that is addressed in this document.

### III. What Is a SIP?

Section 110 of the CAA requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the NAAQS established by EPA.

After engaging in any state-required public participation, each state must submit these regulations and control strategies to us for approval and incorporation into the Federally enforceable SIP.

Each Federally approved SIP protects air quality primarily by addressing air

pollution at its point of origin. These SIPs can be extensive. They may contain state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

### IV. What Is the Baton Rouge Ozone Nonattainment Area?

The Baton Rouge ozone nonattainment area, located in southern Louisiana, consists of East Baton Rouge, West Baton Rouge, Ascension, Iberville, and Livingston Parishes.

Under section 107(d)(1)(C) of the CAA, each ozone area designated nonattainment for the 1-hour ozone standard prior to enactment of the 1990 CAA Amendments, such as the Baton Rouge area, was designated nonattainment by operation of law upon enactment of the 1990 Amendments. In

addition, under section 181(a) of the Act, each area designated nonattainment under section 107(d) was classified as “marginal,” “moderate,” “serious,” “severe,” or “extreme,” depending on the severity of the area’s air quality problem. The design value for an area, i.e., the highest of the fourth highest 1-hour daily maximums in a given three-year period, characterizes the severity of the air quality problem. Table 2 provides the design value ranges for each nonattainment classification. Ozone nonattainment areas with design values between 0.160 and 0.180 ppm, such as the Baton Rouge area (which had a design value of 0.164 ppm in 1989), were classified as serious. These nonattainment designations and classifications were initially codified in 40 CFR Part 81 (see 56 FR 56694, November 6, 1991).

TABLE 2.—OZONE NONATTAINMENT CLASSIFICATIONS

| Area class     | Design value (ppm)      | Attainment date    |
|----------------|-------------------------|--------------------|
| Marginal ..... | 0.121 up to 0.138 ..... | November 15, 1993. |
| Moderate ..... | 0.138 up to 0.160 ..... | November 15, 1996. |
| Serious .....  | 0.160 up to 0.180 ..... | November 15, 1999. |
| Severe .....   | 0.180 up to 0.280 ..... | November 15, 2005. |
| Extreme .....  | 0.280 and above .....   | November 15, 2010. |

In addition, 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 air pollution controls, to show progress toward attainment of the ozone standard through incremental emissions reductions, and to provide for attainment of the ozone standard as expeditiously as practicable, but no later than November 15, 1999. The SIP requirements for serious areas are listed primarily in section 182(c) of the CAA.

### V. What Does This Action Do?

On May 9, 2001, EPA proposed its finding that the Baton Rouge ozone nonattainment area did not attain the 1-hour ozone NAAQS by the applicable attainment date (66 FR 23646). The proposed finding was based upon ambient air quality data from the years 1997, 1998, 1999. These data showed

that the 1-hour ozone NAAQS of 0.12 parts per million (ppm) had been exceeded on an average of more than one day per year over this three-year period and that the area did not qualify for an attainment date extension under section 181(a)(5). EPA also proposed that the appropriate reclassification of the area was too severe.

In that proposed action, we also stated that Louisiana was seeking an extension of its attainment date pursuant to EPA’s extension policy, published in a March 25, 1999, *Federal Register* notice (64 FR 14441). EPA’s extension policy addresses areas which are affected by downwind transport of ozone and/or ozone precursors.

EPA proposed to take final action on the determination of nonattainment and reclassification of the Baton Rouge area only after the area had received an opportunity to qualify for an attainment

date extension under the extension policy. Louisiana submitted an Attainment Plan/Transport SIP on December 31, 2001 for the Baton Rouge area. EPA was in the process of reviewing the Attainment Plan/Transport SIP when the United States District Court for the Middle District of Louisiana entered a Judgment on March 7, 2002, ordering EPA to determine, by June 5, 2002, whether the Baton Rouge area had attained the applicable ozone standard under the CAA. *LEAN v. Whitman*, No. 00–879–A. Given the compliance date of the Court’s Judgment and the current status of the State’s Attainment Plan/Transport SIP, EPA is not at this time able to complete its consideration of the applicability of its extension policy to the Baton Rouge area.

This action finalizes our finding that the Baton Rouge area did not to attain

the 1-hour ozone NAAQS by November 15, 1999, as prescribed in section 181 of the CAA, and fulfills EPA's nondiscretionary duty pursuant to section 182 of the Act. In addition, this action sets the dates by which Louisiana must submit SIP revisions addressing the CAA's pollution control requirements for severe ozone nonattainment areas and attain the 1-hour NAAQS for ozone. EPA's rulemaking actions are to be effective 60 days from publication in the **Federal Register**, unless the effective date is delayed as set forth below.

In its decision, the United States District Court for the Middle District of Louisiana acknowledged its limited authority under 42 U.S.C. 7604, ruling that it lacked the authority to issue an order restricting the effective date that EPA selects for its action. *LEAN v. Whitman*, No. 00-879-A.<sup>1</sup>

In a separate document titled: "Proposed Effective Date Modification for Determination of Nonattainment as of November 15, 1999, and Reclassification of the Baton Rouge Ozone Nonattainment Area," published elsewhere in today's **Federal Register**, EPA is proposing to delay the effective date of this rule until October 4, 2002. In that document, EPA also sets forth its intent to withdraw this final determination and reclassification, if EPA grants the State an attainment date extension before the effective date of this reclassification rule. EPA believes that, if the Baton Rouge area is reclassified, the proposed additional time is necessary to allow regulated entities in the Baton Rouge area time to prepare for the new requirements that would become applicable in the area upon the effective date of the nonattainment determination and reclassification. During the period prior to the effective date, EPA and the State would also continue to work toward completing a separate rulemaking on the issue of whether Baton Rouge should be granted an extension of its attainment date based on Louisiana's December 31, 2001, Attainment Plan/Transport SIP pursuant to EPA's extension policy.

EPA intends to withdraw this final determination of nonattainment and reclassification if we approve an attainment date extension within the pre-effective period.

Thus, EPA is today fully complying with the Court's Judgment while continuing to work with Louisiana to make progress toward final rulemaking action on an attainment date extension request for the Baton Rouge area. Louisiana and EPA are in the final stages of completing the actions necessary for a final rule. EPA believes that it is in the public interest to move forward to complete that rulemaking. Completion of the rulemaking prior to the effective date of today's action would allow EPA to assess and take into consideration the role of transported pollution in Baton Rouge's nonattainment problems, and to provide for an equitable distribution of responsibility for achieving attainment of the ozone standard in the area. In addition, concluding rulemaking on the attainment date extension would allow EPA to make available to the Baton Rouge area the attainment date extension policy that EPA has applied to other areas affected by transport. EPA has issued six final rulemakings granting requests for attainment areas: Washington, D.C. (66 FR 585, January 3, 2001), Greater Connecticut (66 FR 633, January 3, 2001), Springfield, Massachusetts (66 FR 665, January 3, 2001), Beaumont, Texas (66 FR 26913, May 15, 2001), St. Louis, Missouri (66 FR 33996, June 26, 2001), and Atlanta, Georgia (67 FR 30574, May 7, 2002). Thus, EPA's rulemaking actions today should be viewed in the context of complying with the Court's Judgment while continuing to conduct rulemaking on its nationwide program to address the role of transported air pollutants in ozone nonattainment areas.

#### **VI. What Does the CAA Say About Determinations of Nonattainment and Reclassifications, and How Does It Apply to the Baton Rouge Area?**

Under sections 107(d)(1)(C) and 181(a) of the Act, the Baton Rouge area was designated nonattainment for the 1-hour ozone NAAQS and classified as "serious" based on its design value of 0.164 ppm in 1989. These nonattainment designations and classifications were codified in 40 CFR

Part 81 (see 56 FR 56694, November 6, 1991).

In addition, states containing areas that were classified as serious nonattainment areas were required to submit SIPs to provide for certain controls, to show progress toward attainment, and to provide for attainment as expeditiously as practicable, but not later than November 15, 1999 (section 181(a)(1)). Serious areas SIP requirements are found primarily in section 182(c) of the CAA.

Section 181(b)(2)(A) of the Act specifies that:

Within 6 months following the applicable attainment date (including any extension thereof) for an ozone nonattainment area, the Administrator shall determine, based on the area's design value (as of the attainment date), whether the area attained the standard by that date. Except for any Severe or Extreme areas, any area that the Administrator finds has not attained the standard by that date shall be reclassified by operation of law in accordance with table 1 of subsection (a) to the higher of—

(i) The next higher classification for the area, or

(ii) The classification applicable to the area's design value as determined at the time of the notice required under subparagraph (B).

No area shall be reclassified as Extreme under clause (ii).

Furthermore, section 181(b)(2)(B) of the Act provides that:

The Administrator shall publish a notice in the **Federal Register** no later than 6 months following the attainment date, identifying each area that the Administrator has determined under subparagraph (A) as having failed to attain and identifying the reclassification, if any, described under subparagraph (A).

On May 9, 2001, EPA proposed its finding that the Baton Rouge area did not attain the 1-hour ozone standard by the applicable date (66 FR 23646). The proposed finding was based upon ambient ozone concentration data for the period 1997–1999, from the monitoring sites in the Baton Rouge area, which recorded an average of more than one exceedance per day per year (see Table 3).

<sup>1</sup> For additional information on other court rulings on the issue of the effective date for such an action, see, *Sierra Club v. Browner*, 130 F.Supp. 2d 78 (D.D.C. 2001), aff'd., 285 F. 3d 63 (D.C.Cir. 2002).

TABLE 3.—AIR QUALITY DATA FOR THE BATON ROUGE AREA (1997–1999)

| Site                                 | Number of days over standard (1997–1999) | Number of expected days over standard (1997–1999) | Average number of expected exceedance days per year | Site design value (ppm) |
|--------------------------------------|------------------------------------------|---------------------------------------------------|-----------------------------------------------------|-------------------------|
| Site (Parish):                       |                                          |                                                   |                                                     |                         |
| Pride (East Baton Rouge) .....       | 1                                        | 1.1                                               | 0.4                                                 | 0.116                   |
| Baker (East Baton Rouge) .....       | 3                                        | 3.0                                               | 1.0                                                 | 0.123                   |
| Capitol (East Baton Rouge) .....     | 3                                        | 3.1                                               | 1.0                                                 | 0.122                   |
| LSU (East Baton Rouge) .....         | 4                                        | <sup>a</sup> 4.1                                  | <sup>a</sup> 1.4                                    | <sup>a</sup> 0.126      |
| Carville (Iberville) .....           | 2                                        | 2.0                                               | 0.7                                                 | 0.120                   |
| Plaquemine (Iberville) .....         | 2                                        | 2.0                                               | 0.7                                                 | 0.120                   |
| Grosse Tete (Iberville) .....        | 5                                        | <sup>a</sup> 5.3                                  | <sup>a</sup> 1.8                                    | <sup>b</sup> 0.126      |
| Port Allen (West Baton Rouge) .....  | 3                                        | 3.0                                               | 1.0                                                 | 0.119                   |
| Dutchtown (Ascension) .....          | 3                                        | 3.0                                               | 1.0                                                 | 0.123                   |
| French Settlement (Livingston) ..... | 3                                        | 3.0                                               | 1.0                                                 | 0.123                   |

<sup>a</sup> A violation occurs when the number of expected exceedances is greater than 3.1 over a 3-year (rolling) period (or a 3-year (rolling) average greater than 1.04). The statistical term “expected exceedances” is an arithmetic average explained at 40 CFR part 50, appendix H.

<sup>b</sup> Represents the 1997–1999 design value for the Baton Rouge area. Raw data source: U.S. EPA Aerometric Information Retrieval System (AIRS) database.

The air quality data in Table 3 were available for comment in our May 9, 2001, proposed finding of the area’s failure to attain the ozone NAAQS. We received no comments pertaining to these data. Therefore, pursuant to section 181(b)(2)(B) of the CAA, we hereby make the determination that the Baton Rouge area did not attain the one-hour standard by the November 15, 1999, attainment date. For a listing of the average number of days when ambient ozone concentrations exceeded the one-hour ozone standard see 66 FR 23646 (May 9, 2001).

#### VII. Why Did EPA Defer Making a Determination Regarding the Baton Rouge Area’s Attainment Status Beyond the Time Frame Prescribed by the CAA?

For some time, EPA has recognized that pollutant transport can impair an area’s ability to meet air quality standards by the date prescribed in the Act. In March 1995 a collaborative, Federal-state process to assess the ozone transport problem began. Through a two-year effort known as the Ozone Transport Assessment Group (OTAG), EPA worked in partnership with the 37 easternmost states and the District of Columbia, industry representatives, academia, and environmental groups to develop recommended strategies to address transport of ozone and ozone-forming pollutants across state boundaries.

On November 7, 1997, EPA acted on OTAG’s recommendations and issued a proposal (the proposed oxides of nitrogen (NO<sub>x</sub>) SIP call, 62 FR 60318) requiring 22 states and the District of Columbia to submit state plans addressing the regional transport of ozone. These SIPs will decrease the transport of ozone across state

boundaries in the eastern half of the United States by reducing emissions of NO<sub>x</sub> (a precursor to ozone formation). EPA took final action on the NO<sub>x</sub> SIP call on October 27, 1998 (63 FR 57356). EPA expects the final NO<sub>x</sub> SIP call will assist many areas in attaining the 1-hour ozone standard.

On July 16, 1998, in consideration of these factors and the realization that many areas are unable to meet the CAA-mandated attainment dates due to transport, EPA issued an attainment date extension policy. Under this policy, the attainment date for an area may be extended provided that the following criteria are met: (1) The area is 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 nonattainment (by “affected by transport,” EPA means an area whose air quality is affected by transport from an upwind area to a degree that affects the area’s ability to attain); (2) an approvable attainment demonstration is submitted along with any necessary, adopted local measures and with an attainment date that shows that the area will attain the 1-hour standard no later than the date that the reductions are expected from upwind areas under the final NO<sub>x</sub> SIP call and/or the statutory attainment date for upwind nonattainment areas, *i.e.*, assuming the boundary conditions reflect those upwind reductions; (3) the area has adopted all applicable local measures required under the area’s current classification and any additional measures necessary to demonstrate attainment, assuming the reductions occur as required in the upwind areas; and (4) the area provides 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 (64 FR 14441, March 25, 1999).

EPA contemplated that when it acted to approve such an area’s attainment demonstration, it would, as necessary, extend that area’s attainment date to a date appropriate for that area in light of the schedule for achieving the necessary upwind reductions. As a result, the area would no longer be subject to reclassification or “bump-up” for failure to attain by its original attainment date under section 181(b)(2).

On May 10, 2000, the Governor of Louisiana submitted a letter to EPA committing to meet the criteria of the extension policy by August 31, 2001.<sup>2</sup> To support the Governor’s request that EPA consider an attainment date extension for the Baton Rouge area based on transported air pollution, the Louisiana Department of Environmental Quality (LDEQ) submitted to EPA a report entitled, “Assessment of the Contribution of Emissions from the Houston Area to Ozone Concentrations in the Five-Parish Baton Rouge Nonattainment Area,” dated May 3, 2000, indicating that pollutants transported from Texas may have impeded attainment of the 1-hour ozone standard in Baton Rouge. A copy of this report can be found in the docket for the proposed rulemaking.

As previously noted, on May 9, 2001, EPA proposed (66 FR 23646) its finding that the Baton Rouge area did not attain the 1-hour ozone NAAQS by its

<sup>2</sup> The Governor’s commitment letter and EPA’s response to the letter are included in the docket for the proposed rulemaking.

attainment date and announced the area's potential eligibility for an attainment date extension under the extension policy. The area's eligibility was dependent, in part, on EPA's approval of an attainment demonstration. Our proposed action described the conditions that EPA anticipated would lead to final action on both alternatives.

We outlined the necessary steps that Louisiana needed to take in order for us to consider extending the Baton Rouge area attainment date under the extension policy. Those steps included:

1. Demonstrate that the Baton Rouge area's air quality is affected by transport from (a) an upwind area in Louisiana with a later attainment date, or (b) an upwind area in another State, which significantly contributes to Baton Rouge's continued ozone nonattainment.

2. Submit to EPA an approvable attainment demonstration by August 31, 2001.<sup>3</sup> This demonstration must show that the Baton Rouge area will attain as expeditiously as practicable, but no later than the attainment date of the upwind area.

3. Submit any additional local control measures needed for expeditious attainment.

4. Submit proof that all applicable local control measures required under the serious classification have been adopted. As part of this demonstration, Louisiana's SIP submittal must include at least the following:

- (a) Any changes to Louisiana's Nonattainment New Source Review program necessary to ensure that the State's rules meet EPA's nonattainment new source review requirements.

- (b) Contingency measures that meet the requirements of section 182(c)(9) of the Act.

- (c) Any revisions to the vehicle inspection and maintenance (I/M) program necessary to meet the applicable federal I/M program requirements.

5. Provide that all newly adopted control measures will be implemented as expeditiously as practicable. All measures must be implemented no later than the date that the upwind reductions needed for attainment will be achieved.

We anticipated that when we acted to approve such an area's attainment demonstration, we would, as necessary, extend that area's attainment date to the

date appropriate for that area in light of the schedule for achieving the necessary upwind reductions. The area would then no longer be subject to reclassification or "bump-up" for failure to attain by its original attainment date under section 181(b)(2) since we would extend the Baton Rouge area's attainment date to a date consistent with the approved attainment demonstration. Under these circumstances, the area would retain its serious nonattainment status. In other words, EPA would propose to defer the attainment determination required under section 181(b)(2)(B) of the Act until such time as the new, extended attainment date had passed. However, if Louisiana did not meet the criteria of the extension policy, we proposed to finalize the finding of failure to attain, and the Baton Rouge area would be reclassified to severe ozone nonattainment.

#### VIII. Why Is This Action Necessary?

On November 22, 2000, LEAN filed a complaint in the United States District Court for the Middle District of Louisiana against EPA (*LEAN v. Whitman*, No. 00-879-A) regarding the attainment status and classification of the Baton Rouge area. On March 7, 2002, the United States District Court for the Middle District of Louisiana entered a Judgment compelling EPA to determine, by June 5, 2002, whether the Baton Rouge area had attained the applicable ozone standard under the CAA. The Court also ordered EPA to publish in the **Federal Register** a notice of a final action reflecting both the determination and any reclassification of the area required as a result of the determination. Our final determination and this notice are in direct response to the Court's Judgment.

#### IX. What Is the Area's New Classification?

Section 181(b)(2)(A) of the Act requires that, when an area is reclassified for failure to attain, its reclassification be the higher of either 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**. The ozone design value for the Baton Rouge area following the enactment of the 1990 CAA amendments (1987-1989) was 0.164 ppm. The preliminary design value<sup>4</sup> for the Baton Rouge area at the time of the proposed finding of failure to attain was based on air quality monitoring data in

2000 and corresponded to a design value of 0.135 ppm<sup>5</sup>. The preliminary design value for the most recent compliance period, 1999-2001, is 0.128 ppm.<sup>6</sup> This design value of 0.128 ppm falls within the range linked to the classification of "marginal" nonattainment. By contrast, the next higher classification for the Baton Rouge area is "severe" nonattainment. Since "severe" is a higher nonattainment classification than "marginal," under the statutory scheme prescribed by the Act, the area is reclassified to severe nonattainment on the effective date of this rule. No area can be reclassified as extreme under section 181(b)(2), and therefore a serious area, such as Baton Rouge, that does not meet the serious area attainment date, must be reclassified to "severe."

#### X. What Is the New Attainment Date for the Baton Rouge Area?

Under section 181(a)(1) of the Act, the new attainment deadline for serious ozone nonattainment areas reclassified to severe under section 181(b)(2) would generally be as expeditious as practicable but no later than the date applicable to the new classification, i.e., November 15, 2005.

#### XI. When Must Louisiana Submit SIP Revisions Fulfilling the Requirements for Severe Ozone Nonattainment Areas?

Under section 181(a)(1) of the Act, the attainment deadline for serious ozone nonattainment areas reclassified to severe under section 181(b)(2) is as expeditiously as practicable but no later than November 15, 2005. Under section 182(i), such areas are required to submit SIP revisions addressing the severe area requirements for the 1-hour ozone NAAQS. Under section 182(d), severe area plans are required to meet all the requirements for serious area plans plus the requirements for severe areas, including, but not limited to: (1) A 25 ton per year major stationary source threshold; (2) additional reasonably available control technology (RACT) rules for sources subject to the new lower major applicability cutoff; (3) a new source review (NSR) offset requirement of at least 1.3 to 1; (4) a rate of progress in emission reductions of ozone precursors of at least 3 percent per year from 2000 until the attainment year; and (5) a fee requirement for major

<sup>5</sup> A listing of the ozone exceedances (1995-1999) and 3-year design values (95-97, 96-98, 98-00) by monitoring site can be found in the docket file for the May 9, 2001 (66 FR 23646) proposed rulemaking.

<sup>6</sup> A listing of the preliminary ozone exceedances and design values can be found in the docket file for this rulemaking.

<sup>3</sup> We proposed to extend the August 31, 2001 submittal deadline to December 31, 2001, on July 25, 2001 (Supplemental Proposed Rule, 66 FR 38608). No adverse comments were received on the proposed deadline extension, therefore, the extension was granted.

<sup>4</sup> Preliminary design value is the design value pending the final Quality Assurance/Quality Control checks of the air monitoring data.

sources of volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>)<sup>7</sup> should the area fail to attain by 2005.<sup>8</sup> We have issued a "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" that sets forth our preliminary views on these section 182 requirements and how we will act on SIPs submitted under Title I. See generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992).

Additionally, since the Baton Rouge area has did not attain by the serious area attainment date and in order to fulfill the contingency measures requirements of sections 172(c)(9) and 182(c)(9) of the CAA, Louisiana is also required to submit a revision to the SIP containing additional contingency measures in their severe area SIP.

The Baton Rouge severe area plan must also contain adopted regulations, and/or enforceable commitments to adopt and implement control measures in regulatory form by specified dates, sufficient to make the required rate of progress and to attain the 1-hour ozone NAAQS as expeditiously as practicable but no later than November 15, 2005. Section 182(i) further provides that we may adjust the CAA deadlines for submitting these severe area SIP requirements. In addition to establishing a new attainment date, EPA must also address the schedule by which Louisiana is required to submit SIP revisions meeting the CAA's pollution control requirements for severe areas. An option on which EPA invited comments (66 FR 23646), was to require that Louisiana submit SIP revisions fulfilling all of the severe area requirements, no later than one year after final action on the reclassification. We also proposed that if the submission showed that the area could attain the one-hour ozone NAAQS sooner than the attainment date established in this final reclassification notice, we would adjust the attainment date to reflect the earlier date, consistent with the requirement in section 181(a)(1) that the NAAQS be attained as expeditiously as practicable. EPA did not receive any comments on the proposed schedule. Therefore, EPA is requiring Louisiana to submit SIP revisions addressing the Act's pollution control requirements for severe ozone

nonattainment areas within 12 months of the effective date of this rule.

## **XII. What Comments Were Received on the Proposed Determination of Nonattainment and Reclassification, and How Has EPA Responded?**

EPA received comments from the public on the Notice of Proposed Rulemaking (NPR) published on May 9, 2001 (66 FR 23646) for the proposed Clean Air Reclassification and Notice of Potential Eligibility for Extension of Attainment Date, Louisiana; Baton Rouge Ozone Nonattainment Area. In that notice, we proposed to find that the Baton Rouge serious ozone nonattainment area did not attain the one-hour ozone National Ambient Air Quality Standard by November 15, 1999. Alternatively, we proposed to evaluate the Baton Rouge area's potential eligibility for an attainment date extension if Louisiana made a submittal by August 31, 2001,<sup>9</sup> that satisfied with the conditions of EPA's attainment date extension policy.

EPA also received comments from the public on the supplemental proposed rulemaking published on July 25, 2001 (66 FR 38608) for the "Clean Air Reclassification and Notice of Potential Eligibility for Extension of Attainment Date, Louisiana; Baton Rouge Ozone Nonattainment Area." This notice supplemented the proposed actions of the May 9, 2001, notice, by proposing to extend the deadline for submission of an attainment plan from August 31, 2001, to December 31, 2001.

In this action EPA is addressing the relevant comments on the May 9, 2001, proposal and the July 25, 2001, proposals. A summary of the relevant comments, and EPA responses to the comments, is provided below.

### *Comments on EPA's Attainment Date Extension Policy*

*Comment:* Eleven comment letters were received with statements of support for EPA's proposed transport-based attainment date extension. Two comment letters were received in opposition to the transport-based attainment date extension. The commenters in support believed that the Baton Rouge area was affected by the transport of ozone from the Houston-Galveston, Texas, nonattainment area. The commenters in opposition, believed that either the Baton Rouge area did not meet the conditions under EPA's

transport-based attainment date extension policy, that the time for making an attainment determination was overdue, and/or the Act did not give EPA the authority to grant the transport-based attainment date extension.

*Response:* EPA is not able to complete its consideration of the applicability of the extension policy to the Baton Rouge area prior to the court-ordered deadline for making a determination. Therefore, EPA is not granting an extension in this action. Comments relating to the attainment date extension will be addressed if EPA takes final action regarding an extension of Baton Rouge's attainment date based on transport. However, responses to previous comments received on the policy can be found in the rulemakings approving attainment date extensions for Washington, DC, Greater Connecticut, and Springfield, Massachusetts, published January 3, 2001 (66 FR 585, 66 FR 633, 66 FR 665, respectively), for Beaumont/Port Arthur, Texas, published May 15, 2001 (66 FR 26914), St. Louis, Missouri, published June 26, 2001 (66 FR 33996), and Atlanta, Georgia, published May 7, 2002 (67 FR 30574).

EPA was in the process of determining whether Louisiana could undertake the actions necessary for the area to qualify for the attainment date extension when the United States District Court for the Middle District of Louisiana entered a Judgment on March 7, 2002, ordering EPA to determine, by June 5, 2002, whether the Baton Rouge area had attained the applicable ozone standard under the CAA. EPA cannot reach a decision on the attainment date extension request from Louisiana by the time the Court has ordered EPA to act. Therefore, EPA is using the existing attainment date in making the court-ordered determination. However, as explained above, in a separate **Federal Register** document EPA is proposing to delay the effective date of today's determination of nonattainment and reclassification to October 4, 2002. In that notice, EPA announces its intent to propose to withdraw today's determination of nonattainment and reclassification if EPA approves an attainment date extension before the effective date of today's action.

### *Comments Related to the Proposed Reclassification*

EPA received nine comment letters opposing and two comment letters supporting the proposed reclassification of the Baton Rouge area from a serious classification to severe classification. The comments opposing the

<sup>7</sup> Ozone is not emitted directly into the air, but is formed through the photochemical reaction of NO<sub>x</sub> and VOCs.

<sup>8</sup> Section 182(d)(3) sets a deadline of December 31, 2000, to submit the plan revision requiring fees for major sources should the area fail to attain. This date can be adjusted pursuant to CAA section 182(i). We proposed to adjust this date to coincide with the submittal deadline for the rest of the severe area plan requirements.

<sup>9</sup> We proposed to extend the August 31, 2001 submittal deadline to December 31, 2001, on July 25, 2001 (Supplemental Proposed Rule, 66 FR 38608). No adverse comments were received on the proposed deadline extension, therefore, the extension was granted.

reclassification cited the progress toward attainment that the Baton Rouge area has accomplished, the contribution of the transport of ozone from upwind sources, and the potential negative impacts the reclassification may have on the area.

Comment: The Baton Rouge area has made significant progress in mitigating its ozone problems and it is close to achieving attainment of the one-hour ozone standard. The efforts of the Louisiana Department of Environmental Quality and the Ozone Task Force (OTF) in generating a SIP with prominent features of reasonable and effective emissions control strategies were cited in the comments opposing the proposed reclassification. Also stated were opinions on: the current air quality data indicating a marginal classification if the Baton Rouge were evaluated today; the influence of transport of ozone from upwind sources, and, lastly; the effect reclassification would have by slowing down the process of cleaning up the air because of all of the work that has already been done in the preparation of the December 31, 2001, SIP.

Response: We commend the work that the Louisiana Department of Environmental Quality has performed, the efforts of the OTF, and the resulting progress of the Baton Rouge area in mitigating their ozone conditions. These efforts were reflected in the submitted Attainment Plan/Transport SIP dated December 31, 2001. EPA was in the process of reviewing the Attainment Plan/Transport SIP when the United States District Court for the Middle District of Louisiana issued a Judgment on March 7, 2002, ordering EPA to determine, by June 5, 2002, whether the Baton Rouge area had attained the applicable ozone standard under the CAA. Given the Court's Order and the current status of EPA's review of the Attainment Plan/Transport SIP, EPA is unable to act on the attainment date extension request from Louisiana at this time.

Under section 181(b)(2)(A) of the CAA, the attainment determination is made solely on the basis of air quality data, and any reclassification is by operation of law. So in keeping with the existing court-ordered deadline to make an attainment determination, EPA must make a determination of nonattainment and by operation of law, the Baton Rouge area is to be reclassified from a serious to a severe nonattainment area on the effective date of this rule. Details on the evaluation of the air quality data can be found in the proposal for this action at 66 FR 23646 (May 9, 2001).

#### *Comments Related to the Consequences of Reclassification*

Comment 1: If the Baton Rouge area is reclassified to severe, additional control measures will be required by the CAA. These control measures include the use of reformulated gasoline, the establishment of transportation control measures, a change in the definition of "major source," an adjustment of the offset ratio for modifications or new construction of major sources, and the imposition of a VOC emission fee if the Baton Rouge area does not achieve attainment by November 15, 2005. These severe area controls would be unduly burdensome on business and economic growth in the area.

Response 1: Under section 181(b)(2)(A), the attainment determination is made solely on the basis of air quality data, and any reclassification is by operation of law. If an area is reclassified to "severe," the requirements of 182(d) apply.

With respect to the perceived burden imposed on industry by the severe area requirements, EPA notes that the severe area planning requirements are imposed by section 182(d) of the CAA and the economic impact of reclassification is not a consideration in making the attainment determination under section 181(b)(2) of the CAA. It is, however, appropriate for the state to consider specific economic impacts in meeting the planning requirements of section 182(d) and in developing specific regulatory requirements for specific resources.

Comment 2: The Louisiana Chemical Association (LCA) commented on the Reformulated Gas program. LCA stated that when an area is reclassified as severe, it becomes a "covered area" under Clean Air Act section 211(k)(10)(D) and is required to use RFG which must have a minimum 2% (wt.) oxygen content most commonly met through the use of either methyl tertiary butyl ether (MTBE) or ethanol. LCA describes several problems associated with the use of MTBE and ethanol, including contamination of drinking water supplies by MTBE, potential federal legislation to ban MTBE, increased cost of fuel using ethanol, increased VOC emissions from fuel using ethanol, carcinogenicity of ethanol, and potentially insufficient supplies of ethanol.

Response 2: The commenter is correct that the Clean Air Act requires mandatory participation in the federal RFG program for an ozone non-attainment area which is reclassified as severe, effective one year after the reclassification, see Section

211(k)(10)(D) of the CAA. This requirement under the Clean Air Act is implemented as a matter of law; EPA does not have discretion to change, waive, or fail to implement this requirement. This requirement has previously been implemented in June 1, 1996, one year following the reclassification of the Sacramento, California, metropolitan area to severe non-attainment status, see April 25, 1995, 60 FR 20237. It will also be implemented in December, 2002, when one year elapses following the reclassification of the San Joaquin Valley, California, area to severe non-attainment status, see November 8, 2001, 66 FR 56476.

The commenter has identified a number of concerns about the use of oxygenates in RFG, most of which were discussed in The Report of the Blue Ribbon Panel on Oxygenates in Gasoline, "Achieving Clean Air and Clean Water," (September, 1999) which is available on the EPA website at the following location: <http://www.epa.gov/otaq/consumer/fuels/oxypanel/blueribb.htm>. This report, which was provided to EPA's Clean Air Act Advisory Committee in accordance with the requirements of the Federal Advisory Committee Act, recommends a number of actions be taken to address water quality concerns from the use of oxygenates in gasoline. Some of these actions can be taken by state and federal environmental agencies within their existing authority, and some of these actions require federal legislative action. The Congressional bills mentioned by the commenter are some of the many legislative actions that have been proposed to address these issues; additional Congressional bills are pending today that have been introduced in the current Congressional session for the same purpose, but none of these bills has yet become law.

EPA has initiated all of the actions recommended by the Blue Ribbon Panel that are within EPA's existing authority, including actions to improve the rate of compliance with EPA's existing underground storage tank (UST) requirements (designed to prevent leaks from gasoline stored in USTs to groundwater) and actions to strengthen EPA's existing programs to protect water quality. In the meantime, the federal RFG program continues to provide substantial air quality benefits to those areas currently participating in the program.

Comment 3: LCA states that requirements for special gasoline blends in one area of the state will harm the gasoline distribution and supply system, citing an article in USA Today dated

June 27, 2000, which says the gasoline distribution system is designed to handle six grades of gasoline and since the 1970s has had to accommodate at least seven new varieties of cleaner-burning fuels. The article says this can cause gas prices to increase.

*Response 3:* EPA reiterates its response to Comment 2, that mandatory participation in the federal RFG program for areas reclassified as severe is a statutory requirement which EPA has no discretion to change, waive, or fail to implement. We also note that, at the direction of the National Energy Policy Development Group in its May, 2001, report on "National Energy Policy", EPA studied the effects on fuel supply and distribution of unique fuel blends (often called "boutique" fuels,) and released two reports in October, 2001, both of which are available on EPA's website at the following location: <http://www.epa.gov/otaq/fuels.htm#oct2401>. Impacts on prices are discussed in these two reports.

*Comment 4:* LCA states that it is likely vehicles will re-fuel outside the RFG covered area in order to avoid the higher prices, which would reduce the efficacy of the program. LCA also states that the RFG requirement makes no sense when these problems could be avoided by allowing the state more time to demonstrate the need for an extension of the attainment deadline due to transport of emissions from Houston.

*Response 4:* EPA reiterates its response to Comment 2, that mandatory participation in the federal RFG program for areas reclassified as severe is a statutory requirement which EPA has no discretion to change, waive, or fail to implement. We also note that the commenter has provided no support for its statement that vehicles will re-fuel outside the RFG covered area in order to avoid higher prices. We are unaware that this is a significant problem in any of the existing RFG covered areas.

*Comment 5:* The LCA commented on the negative impacts of the volatile organic carbon (VOC) emission fee program requirement in CAA sections 182(d)(3) and 185.

*Response 5:* The emission fee program is a specific requirement under the CAA for severe or extreme ozone nonattainment areas. It is required to be implemented only in the event a severe nonattainment area does not attain by the applicable attainment date of November 15, 2005. Furthermore, EPA believes that is unlikely that the fee requirements will have to be implemented if the State proceeds with the planned emission reductions since these should result in the Baton Rouge

area attaining the one hour ozone standard.

*Comment 6:* One commenter contends that section 181(b)(2) of the Clean Air Act is unconstitutional on its face and/or as applied when it requires reclassification to severe where the area is affected by transport and where its current design value is "marginal." The commenter claims that the exercise of the Police Power is unconstitutional under the Due Process clause of the Constitution because there is no rational relationship between the ends chosen by Congress and its purpose. The commenter further alleges that this interpretation of section 181(b)(2) violates the Equal Protection Clause because areas affected by transport within the U.S. are not provided the same protection afforded to areas affected by transport from outside of the U.S. under section 179B.

*Response 6:* The bare constitutional challenges are without merit. The commenter provides no support for its allegations of unconstitutionality and no case law upholding its assertions. Moreover, section 181(b)(2) passes Constitutional muster under the Due Process and Equal Protection clauses.

*Comment 7:* A commenter contends that the VOC emission fee, if imposed, is an illegal and unconstitutional tax under the U.S. and Louisiana constitutions.

*Response 7:* The commenter provides no support for its bare assertions of illegality and unconstitutionality. Moreover, the emission fee is not being imposed on sources by this rulemaking but is merely a SIP submission requirement of the CAA to which severe ozone nonattainment areas are subject.

### XIII. 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. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

This rule also does not have 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. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a

rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. section 804(2). This rule will be effective August 23, 2002.

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 August 23, 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 81**

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

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

Dated: June 5, 2002.

**Gregg A. Cooke,**  
*Regional Administrator, Region 6.*

Part 81, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 81—[AMENDED]**

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

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

2. In § 81.319 the table for Louisiana—Ozone is amended by revising the entry for the Baton Rouge area to read as follows:

**§ 81.319 Louisiana**  
\* \* \* \* \*

LOUISIANA—OZONE (1-HOUR STANDARD)

| Designated area               | Designation       |                     | Classification    |         |
|-------------------------------|-------------------|---------------------|-------------------|---------|
|                               | Date <sup>1</sup> | Type                | Date <sup>1</sup> | Type    |
| Baton Rouge Area:             |                   |                     |                   |         |
| Ascension Parish .....        | 11/15/90          | Nonattainment ..... | 8/23/02           | Severe. |
| East Baton Rouge Parish ..... | 11/15/90          | Nonattainment ..... | 8/23/02           | Severe. |
| Iberville Parish .....        | 11/15/90          | Nonattainment ..... | 8/23/02           | Severe. |
| Livingston Parish .....       | 11/15/90          | Nonattainment ..... | 8/23/02           | Severe. |
| West Baton Rouge Parish ..... | 11/15/90          | Nonattainment ..... | 8/23/02           | Severe. |
| * * *                         | *                 | *                   | *                 | *       |

<sup>1</sup> This date is October 18, 2000, unless otherwise noted.

\* \* \* \* \*

**ENVIRONMENTAL PROTECTION  
AGENCY****40 CFR Part 81**

[LA-58-1-7522; FRL-7236-1]

**Proposed Effective Date Modification  
for the Determination of Nonattainment  
as of November 15, 1999, and  
Reclassification of the Baton Rouge  
Ozone Nonattainment Area****AGENCY:** Environmental Protection  
Agency (EPA).**ACTION:** Proposed delay of effective date.

**SUMMARY:** EPA is proposing to delay the effective date of its final rule entitled "Determination of Nonattainment as of November 15, 1999, and Reclassification of the Baton Rouge Nonattainment Area," published elsewhere in today's **Federal Register**, until October 4, 2002. As promulgated, the rule states that it is effective 60 days after publication in the **Federal Register**. EPA believes that the proposed additional delay of the effective date until October 4, 2002, is necessary, in part, to allow regulated entities in the Baton Rouge area to prepare for compliance with the new requirements that would become applicable in the area upon the effective date of the nonattainment determination and reclassification.

During the pre-effective date period, EPA would also continue to work on completing a separate rulemaking on the issue of whether Baton Rouge should be granted an extension of its attainment date pursuant to EPA's Guidance on "Extension of Air Quality Attainment Dates for Downwind Transport Area," (64 FR 14441, March 25, 1999) (hereinafter referred to as extension policy) and continue to retain its serious classification. In this action, EPA is also stating its intent to propose to withdraw its final determination of nonattainment and notice of reclassification, published elsewhere in this issue if EPA approves an attainment date extension before the effective date of that final action.

**DATES:** Comments must be received on or before July 24, 2002.

**ADDRESSES:** Written comments should be mailed to Mr. Thomas H. Diggs, Chief, Air Planning Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733.

**FOR FURTHER INFORMATION CONTACT:** Ms. Maria L. Martinez, Air Planning Section (6PD-L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone (214) 665-2230.

**SUPPLEMENTARY INFORMATION:**

**Background**

In a Judgment entered on March 7, 2002, the United States District Court for the Middle District of Louisiana Court, ordered EPA to determine, by June 5, 2002, whether the Baton Rouge area had attained the applicable ozone standard under the Clean Air Act (hereinafter referred to as the CAA or Act). *Louisiana Environmental Action Network (LEAN) v. Whitman*, 00-879-A. The Court also ordered EPA to publish in the **Federal Register** a notice of a final action reflecting both the determination and any reclassification of the area required as a result of the determination. EPA's final rulemaking notice responding to the Court's Judgment is published elsewhere in today's **Federal Register**. The Court also held that it was not acting to restrict the effective date that EPA selects for its action.

Throughout this document whenever "we, us, or our" is used, we mean EPA.

On May 10, 2000, the Governor of Louisiana submitted a request for an attainment date extension for the Baton Rouge area pursuant to EPA's extension policy. On November 22, 2000, LEAN filed a complaint in the United States District Court for the Middle District of Louisiana against EPA (*LEAN v. Whitman*, No 00-879-A), alleging that EPA failed to discharge its duty to make and publish a determination that the Baton Rouge Ozone Nonattainment Area, (as defined at 56 FR 56,694, 56,768), did not attain the National Ambient Air Quality Standard for ozone by November 15, 1999. The state of Louisiana, the City of Baton Rouge/Parish of East Baton Rouge, Entergy Gulf States, Inc. and Entergy Gulf South, Inc., Louisiana Chemical Association, and Louisiana Mid-Continent Oil & Gas Association were intervenors in the litigation. On May 9, 2001, EPA published a proposal to determine that the Baton Rouge area did not attain the 1-hour ozone NAAQS or in the alternative allow Louisiana an opportunity to qualify for an attainment date extension pursuant to EPA's extension policy.

Additionally, Louisiana submitted its Attainment Plan and Transport State Implementation Plan (Attainment Plan/Transport SIP) on December 31, 2001. Louisiana is in the concluding stage of a process that could culminate in EPA final action on the Attainment Plan/Transport SIP that was submitted on December 31, 2001, and on a possible attainment date extension. This extension, if granted, would allow the area to remain classified as a serious nonattainment area.

During court proceedings, LEAN argued for the Court to order EPA to issue a determination with a restricted effective date. As part of its February 27, 2002, decision, the United States District Court for the Middle District of Louisiana acknowledged its limited authority under 42 U.S.C. 7604, ruling that it lacked the authority to issue an order restricting the effective date that EPA selects for its action. *LEAN v. Whitman*, No. 00-879-A.<sup>1</sup>

On March 7, 2002, the Court entered a Judgment compelling EPA to determine, by June 5, 2002, whether the Baton Rouge area had attained the applicable ozone standard under the CAA. The Court also ordered EPA to publish in the **Federal Register** a notice of a final action reflecting both the determination and any reclassification of the area required as a result of the determination. Our rule entitled "Determination of Nonattainment as of November 15, 1999, and Reclassification of the Baton Rouge Ozone Nonattainment Area," published elsewhere in today's **Federal Register** is in response to the Court's Judgment.

EPA believes that the proposed delay of the effective date is necessary to allow regulated entities in the Baton Rouge area a period of time to prepare for the new requirements that are applicable to severe nonattainment areas. For example, on the effective date of the reclassification to severe, under the Baton Rouge SIP, the threshold for "major sources" will be reduced from 50 tons of emissions on an annual basis to 25 tons. Thus, a number of facilities with volatile organic compound (VOC) or nitrogen oxide (NO<sub>x</sub>) emission levels between 50 and 25 tons per year may become subject to major source requirements for the first time.<sup>2</sup> Preliminary information provided by the Louisiana Department of Environmental Quality (LDEQ) indicates that approximately 20 to 50 sources will be subject to these new requirements for the first time. EPA believes it is reasonable to delay the effective date of our rule entitled "Determination of Nonattainment as of November 15, 1999, and Reclassification of the Baton Rouge Ozone Nonattainment Area" by six weeks to provide such sources

<sup>1</sup> For additional information on other court rulings on the issue of the effective date for such an action, see, *Sierra Club v. Browner*, 130 F. Supp. 2d 78 (D.D.C. 2001), aff'd., 285 F. 3d 63 (D.C. Cir. 2002).

<sup>2</sup> See section 182(d) in conjunction with section 182(f) of the Clean Air Act for the severe area major source thresholds for these pollutants.

additional time to prepare for the impact of these new requirements.<sup>3</sup>

EPA will continue to work on completing a separate rulemaking on the issue of whether Baton Rouge should be granted an extension of its attainment date pursuant to EPA's extension policy, and remain classified as a serious nonattainment area. Louisiana is in the final stages of completing the actions necessary to be considered for an attainment date extension under EPA's extension policy. EPA believes that it is in the public interest to move forward to complete a rulemaking regarding Louisiana's Attainment Plan/Transport SIP. Completion of the rulemaking prior to the effective date of today's action would allow EPA to assess and take into consideration the role of transported pollution in Baton Rouge's nonattainment problems, and to provide for an equitable distribution of responsibility for achieving attainment of the ozone standard in the area. Such a course would harmonize the need to allow the Agency to fulfill its duty to take into account upwind transport, while adhering to a fixed and very near-term schedule. It would also allow EPA to apply the attainment date extension policy which EPA has applied in other areas affected by transport to the Baton Rouge area. EPA has issued final rulemakings granting requests for attainment date extensions based on its policy in six ozone nonattainment areas: Washington, DC (66 FR 585, January 3, 2001), Greater Connecticut (66 FR 633, January 3, 2001), Springfield, Massachusetts (66 FR 665, January 3, 2001), Beaumont, Texas (66 FR 26913, May 15, 2001), St. Louis, Missouri (66 FR 33996, June 26, 2001), and Atlanta, Georgia (67 FR 30574, May 7, 2002).

If EPA takes final action to delay the effective date for the nonattainment determination, EPA could be in a position to take action to approve an extension of the attainment date for Baton Rouge before the nonattainment determination becomes effective. Section 181(b)(2)(A) of the Act requires that EPA determine whether an area has attained within six months of its attainment date. If the attainment date were extended, there would be a new future attainment date. Thus, if the attainment date were extended, EPA's obligation to determine attainment would not yet have occurred. If EPA were to extend the attainment date for Baton Rouge, EPA would withdraw the published nonattainment determination and the consequent reclassification,

which would not yet have gone into effect.

EPA is seeking public comment on whether it would be appropriate to delay the effective date of its final rulemaking until October 4, 2002, in order to allow area sources to prepare to meet new severe requirements. The public comment period on delaying the effective date will run for 30 days after publication of this document. EPA expects to propose an action with respect to this submission, and to take final action on this submission and an attainment date extension by October 4, 2002, the delayed effective date proposed herein.

**PROPOSED ACTION:** For the reasons state above, EPA proposes to delay to October 4, 2002, the effective date of the final rule entitled "Determination of Nonattainment as of November 15, 1999, and Reclassification of the Baton Rouge Ozone Nonattainment Area," published elsewhere in today's **Federal Register**.

#### Administrative Requirements

##### A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), EPA is required to determine whether regulatory actions are significant and therefore should be subject to Office of Management and Budget (OMB) review, economic analysis, and the requirements of the Executive Order. The Executive Order defines a "significant regulatory action" as one that is likely to result in a rule that may meet at least one of the four criteria identified in section 3(f), including, under paragraph (1), that the rule may "have an annual effect on the economy of \$100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities."

The Agency has determined that this proposed effective date modification would result in none of the effects identified in section 3(f) of the Executive Order. This proposal would merely delay the effective date of EPA's determination of nonattainment and would not impose any new requirements on any sectors of the economy, or on state, local, or tribal governments or communities.

##### B. Executive Order 13045

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 proposed action is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

##### C. Executive Order 13175

On November 6, 2000, the President issued Executive Order 13175 (65 FR 67249) entitled, "Consultation and Coordination with Indian Tribal Governments." Executive Order 13175 took effect on January 6, 2001, and revokes Executive Order 13084 (Tribal Consultation) as of that date. This proposal does not affect the communities of Indian tribal governments. Accordingly, the requirements of Executive Order 13175 do not apply.

##### D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This proposal to delay the effective date of EPA's nonattainment determination does not create any new requirements. Instead, this rulemaking would only delay the effective date of a factual determination, and would not regulate any entities. Therefore, pursuant to 5 U.S.C. 605(b), I certify that today's proposal would not have a significant impact on a substantial number of small entities within the meaning of those terms for RFA purposes.

##### E. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal

<sup>3</sup> EPA has taken a similar action for the St. Louis Nonattainment Area (66 FR 27306, May 16, 2001).

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 by the rule.

EPA believes, as discussed above, that the delay of the effective date of a determination of nonattainment would not constitute a Federal mandate, as defined in section 101 of the UMRA, because it would not impose an enforceable duty on any entity.

#### *F. Executive Order 13132*

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure “meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” 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 proposed delay of the effective date of a nonattainment determination would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because this action does not impose any new requirements on any sectors of the economy, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed action.

#### *G. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–

113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

#### **List of Subjects in 40 CFR Part 81**

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

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

Dated: June 5, 2002.

**Gregg A. Cooke,**

*Regional Administrator, Region 6.*

[FR Doc. 02–15713 Filed 6–21–02; 8:45 am]

**BILLING CODE 6560–50–P**



# Federal Register

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**Monday,  
June 24, 2002**

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**Part V**

## **Department of Transportation**

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**Federal Aviation Administration**

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**Proposed Advisory Circular 43-L39, L-39  
Albatross Military Jet Recommended  
Inspection Program and Overhaul Times;  
Notice**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****Proposed Advisory Circular 43–L39, L–39 Albatross Military Jet Recommended Inspection Program and Overhaul Times**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of availability of proposed Advisory Circular and request for comments.

**SUMMARY:** This notice announces the availability of and requests comments on proposed Advisory Circular (AC) 43–L39, L–39 Albatross Military Jet Recommended Inspection Program and Overhaul Times. The proposed AC provides a recommended inspection program and overhaul times L–39 Albatross aircraft issued experimental airworthiness certificates for the purpose of exhibition. This AC provides a means, but not the only means, of addressing the inspections and overhaul times for the purpose of complying with continued airworthiness requirements specified in an aircraft's operating limitations. This notice is necessary to give all interested persons the opportunity to present their views on the proposed AC.

**DATES:** Comments must be received on or before August 23, 2002.

**ADDRESSES:** Send all comments on the proposed AC to: Federal Aviation Administration, Continuous Airworthiness Maintenance Division (Attention: AFS–305), 800 Independence Avenue, SW., Washington, DC 20591, or electronically to [william.obrien@faa.gov](mailto:william.obrien@faa.gov).

**FOR FURTHER INFORMATION CONTACT:** Bill O'Brien, AFS–305, at the address above, by e-mail at [william.obrien@faa.gov](mailto:william.obrien@faa.gov), or telephonically at (202) 267–3796.

**SUPPLEMENTARY INFORMATION:****Comments Invited**

The proposed AC is available on the FAA Web site at <http://www.faa.gov/avr/afs/acs/ac-idx.htm>, under AC No. 43–L39. Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Please identify AC 43–L39, L–39 Albatross Military Jet Recommended Inspection Program and Overhaul Times, and submit comments, either hard copy or electronic, to the appropriate address listed above. Comments may be inspected at the above address between 9 a.m. and 4 p.m. weekdays, except Federal holidays.

**Background**

The L–39 Albatross aircraft is an all metal, two place, tandem, military jet training aircraft. Almost 3000 L–39 aircraft have been manufactured in the Czech Republic by Aero Vodochody and the aircraft currently constitutes the most numerous former military jet trainer imported into the United States civilian aircraft market. There are currently over 110 registered L–39 aircraft operating in the United States. Additionally, almost 200 L–39 aircraft are undergoing repairs and alterations in the United States in preparation for the issuance of airworthiness certificates.

L–39 aircraft registered in the United States have been issued experimental certificates for the purpose of exhibition. In conjunction with the issuance of experimental certificates for the purpose of exhibition, the Administrator issues operating limitations under Title 14, Code of Federal Regulations (14 CFR) 91.319. These operating limitations have required the aircraft to be inspected in accordance with a specified program. Applicants for experimental exhibition airworthiness certificates, however, have experienced difficulty in developing or obtaining acceptable

inspection programs for L–39 aircraft. This has resulted in a lack of standardization in the inspection programs used to support these aircraft and has significantly increased the time required for these aircraft to obtain airworthiness certification. The FAA therefore has developed the recommended aircraft inspection program specified in this proposed AC. Making this program available to applicants should encourage standardization in the scope and detail of inspection programs referenced in operating limitations and facilitate the issuance of airworthiness certificates to operate L–39 aircraft for the purpose of exhibition.

The FAA recognizes that the manufacturer's inspection program did not originally contemplate civilian operation of the aircraft for the purpose of exhibition and therefore is specifically requesting comments on the scope of the program for civilian application and that portion of the program pertaining to ejection seat inspection. The FAA is particularly interested in comments on how the manufacturer's engine overhaul times can be extended and comments that include more detailed procedures for performing L–39 ejection seat and canopy inspections.

Use of the recommended inspection program and compliance with recommended overhaul times should provide a uniform level of safety for operators of these aircraft while simultaneously streamlining the process for airworthiness certification.

Issued in Washington, DC, on June 13, 2002.

**Louis C. Cusimano,**

*Deputy Director, Flight Standards Service, AFS–2.*

[FR Doc. 02–15834 Filed 6–21–02; 8:45 am]

**BILLING CODE 4910–13–M**

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-523-6641. This list is also available online at <http://www.nara.gov/fedreg/plawcurr.html>.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-1808). The text will also be made available on the Internet from GPO Access at <http://www.access.gpo.gov/nara/nara005.html>. Some laws may not yet be available.

### H.R. 1366/P.L. 107-190

To designate the United States Post Office building located at 3101 West Sunflower Avenue in Santa Ana, California, as the "Hector G. Godinez Post Office Building". (June 18, 2002; 116 Stat. 710)

### H.R. 1374/P.L. 107-191

To designate the facility of the United States Postal Service located at 600 Calumet Street in Lake Linden, Michigan, as the "Philip E. Ruppe Post Office Building". (June 18, 2002; 116 Stat. 711)

### H.R. 3789/P.L. 107-192

To designate the facility of the United States Postal Service located at 2829 Commercial Way in Rock Springs, Wyoming, as the "Teno Roncalio Post Office Building". (June 18, 2002; 116 Stat. 712)

### H.R. 3960/P.L. 107-193

To designate the facility of the United States Postal Service located at 3719 Highway 4 in Jay, Florida, as the "Joseph W. Westmoreland Post Office Building". (June 18, 2002; 116 Stat. 713)

### H.R. 4486/P.L. 107-194

To designate the facility of the United States Postal Service located at 1590 East Joyce Boulevard in Fayetteville, Arkansas, as the "Clarence B. Craft Post Office Building". (June 18, 2002; 116 Stat. 714)

### H.R. 4560/P.L. 107-195

Auction Reform Act of 2002 (June 19, 2002; 116 Stat. 715)

**Last List June 18, 2002**

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| Title                                                   | Stock Number            | Price | Revision Date             |
|---------------------------------------------------------|-------------------------|-------|---------------------------|
| <b>1, 2 (2 Reserved)</b> .....                          | (869-048-00001-1) ..... | 9.00  | Jan. 1, 2002              |
| <b>3 (1997 Compilation and Parts 100 and 101)</b> ..... | (869-048-00002-0) ..... | 59.00 | <sup>1</sup> Jan. 1, 2002 |
| <b>4</b> .....                                          | (869-048-00003-8) ..... | 9.00  | <sup>4</sup> Jan. 1, 2002 |
| <b>5 Parts:</b>                                         |                         |       |                           |
| 1-699 .....                                             | (869-048-00004-6) ..... | 57.00 | Jan. 1, 2002              |
| 700-1199 .....                                          | (869-048-00005-4) ..... | 47.00 | Jan. 1, 2002              |
| 1200-End, 6 (6 Reserved) .....                          | (869-048-00006-2) ..... | 58.00 | Jan. 1, 2002              |
| <b>7 Parts:</b>                                         |                         |       |                           |
| 1-26 .....                                              | (869-048-00001-1) ..... | 41.00 | Jan. 1, 2002              |
| 27-52 .....                                             | (869-048-00008-9) ..... | 47.00 | Jan. 1, 2002              |
| 53-209 .....                                            | (869-048-00009-7) ..... | 36.00 | Jan. 1, 2002              |
| 210-299 .....                                           | (869-048-00010-1) ..... | 59.00 | Jan. 1, 2002              |
| 300-399 .....                                           | (869-048-00011-9) ..... | 42.00 | Jan. 1, 2002              |
| 400-699 .....                                           | (869-048-00012-7) ..... | 57.00 | Jan. 1, 2002              |
| 700-899 .....                                           | (869-048-00013-5) ..... | 54.00 | Jan. 1, 2002              |
| 900-999 .....                                           | (869-048-00014-3) ..... | 58.00 | Jan. 1, 2002              |
| 1000-1199 .....                                         | (869-048-00015-1) ..... | 25.00 | Jan. 1, 2002              |
| 1200-1599 .....                                         | (869-048-00016-0) ..... | 58.00 | Jan. 1, 2002              |
| 1600-1899 .....                                         | (869-048-00017-8) ..... | 61.00 | Jan. 1, 2002              |
| 1900-1939 .....                                         | (869-048-00018-6) ..... | 29.00 | Jan. 1, 2002              |
| 1940-1949 .....                                         | (869-048-00019-4) ..... | 53.00 | Jan. 1, 2002              |
| 1950-1999 .....                                         | (869-048-00020-8) ..... | 47.00 | Jan. 1, 2002              |
| 2000-End .....                                          | (869-048-00021-6) ..... | 46.00 | Jan. 1, 2002              |
| <b>8</b> .....                                          | (869-048-00022-4) ..... | 58.00 | Jan. 1, 2002              |
| <b>9 Parts:</b>                                         |                         |       |                           |
| 1-199 .....                                             | (869-048-00023-2) ..... | 58.00 | Jan. 1, 2002              |
| 200-End .....                                           | (869-048-00024-1) ..... | 56.00 | Jan. 1, 2002              |
| <b>10 Parts:</b>                                        |                         |       |                           |
| 1-50 .....                                              | (869-048-00025-4) ..... | 58.00 | Jan. 1, 2002              |
| 51-199 .....                                            | (869-048-00026-7) ..... | 56.00 | Jan. 1, 2002              |
| 200-499 .....                                           | (869-048-00027-5) ..... | 44.00 | Jan. 1, 2002              |
| 500-End .....                                           | (869-048-00028-3) ..... | 58.00 | Jan. 1, 2002              |
| <b>11</b> .....                                         | (869-048-00029-1) ..... | 34.00 | Jan. 1, 2002              |
| <b>12 Parts:</b>                                        |                         |       |                           |
| 1-199 .....                                             | (869-048-00030-5) ..... | 30.00 | Jan. 1, 2002              |
| 200-219 .....                                           | (869-048-00031-3) ..... | 36.00 | Jan. 1, 2002              |
| 220-299 .....                                           | (869-048-00032-1) ..... | 58.00 | Jan. 1, 2002              |
| 300-499 .....                                           | (869-048-00033-0) ..... | 45.00 | Jan. 1, 2002              |
| 500-599 .....                                           | (869-048-00034-8) ..... | 42.00 | Jan. 1, 2002              |
| 600-End .....                                           | (869-048-00035-6) ..... | 61.00 | Jan. 1, 2002              |
| <b>13</b> .....                                         | (869-048-00036-4) ..... | 47.00 | Jan. 1, 2002              |

| Title                  | Stock Number            | Price | Revision Date             |
|------------------------|-------------------------|-------|---------------------------|
| <b>14 Parts:</b>       |                         |       |                           |
| 1-59 .....             | (869-048-00037-2) ..... | 60.00 | Jan. 1, 2002              |
| 60-139 .....           | (869-048-00038-1) ..... | 58.00 | Jan. 1, 2002              |
| 140-199 .....          | (869-048-00039-9) ..... | 29.00 | Jan. 1, 2002              |
| 200-1199 .....         | (869-048-00040-2) ..... | 47.00 | Jan. 1, 2002              |
| 1200-End .....         | (869-048-00041-1) ..... | 41.00 | Jan. 1, 2002              |
| <b>15 Parts:</b>       |                         |       |                           |
| 0-299 .....            | (869-048-00042-9) ..... | 37.00 | Jan. 1, 2002              |
| 300-799 .....          | (869-048-00043-7) ..... | 58.00 | Jan. 1, 2002              |
| 800-End .....          | (869-048-00044-5) ..... | 40.00 | Jan. 1, 2002              |
| <b>16 Parts:</b>       |                         |       |                           |
| 0-999 .....            | (869-048-00045-3) ..... | 47.00 | Jan. 1, 2002              |
| 1000-End .....         | (869-048-00046-1) ..... | 57.00 | Jan. 1, 2002              |
| <b>17 Parts:</b>       |                         |       |                           |
| 1-199 .....            | (869-048-00048-8) ..... | 47.00 | Apr. 1, 2002              |
| 200-239 .....          | (869-044-00049-1) ..... | 51.00 | Apr. 1, 2001              |
| 240-End .....          | (869-044-00050-4) ..... | 55.00 | Apr. 1, 2001              |
| <b>18 Parts:</b>       |                         |       |                           |
| *1-399 .....           | (869-048-00051-8) ..... | 59.00 | Apr. 1, 2002              |
| 400-End .....          | (869-048-00052-6) ..... | 24.00 | Apr. 1, 2002              |
| <b>19 Parts:</b>       |                         |       |                           |
| 1-140 .....            | (869-048-00053-4) ..... | 57.00 | Apr. 1, 2002              |
| *141-199 .....         | (869-048-00054-2) ..... | 56.00 | Apr. 1, 2002              |
| 200-End .....          | (869-048-00055-1) ..... | 29.00 | Apr. 1, 2002              |
| <b>20 Parts:</b>       |                         |       |                           |
| 1-399 .....            | (869-044-00056-3) ..... | 45.00 | Apr. 1, 2001              |
| 400-499 .....          | (869-044-00057-1) ..... | 57.00 | Apr. 1, 2001              |
| 500-End .....          | (869-044-00058-0) ..... | 57.00 | Apr. 1, 2001              |
| <b>21 Parts:</b>       |                         |       |                           |
| 1-99 .....             | (869-048-00059-3) ..... | 39.00 | Apr. 1, 2002              |
| *100-169 .....         | (869-048-00060-7) ..... | 46.00 | Apr. 1, 2002              |
| 170-199 .....          | (869-048-00061-5) ..... | 47.00 | Apr. 1, 2002              |
| 200-299 .....          | (869-044-00062-8) ..... | 16.00 | Apr. 1, 2001              |
| 300-499 .....          | (869-044-00063-6) ..... | 27.00 | Apr. 1, 2001              |
| 500-599 .....          | (869-044-00064-4) ..... | 44.00 | Apr. 1, 2001              |
| 600-799 .....          | (869-048-00065-8) ..... | 16.00 | Apr. 1, 2002              |
| 800-1299 .....         | (869-044-00066-1) ..... | 52.00 | Apr. 1, 2001              |
| 1300-End .....         | (869-044-00067-9) ..... | 20.00 | Apr. 1, 2001              |
| <b>22 Parts:</b>       |                         |       |                           |
| 1-299 .....            | (869-044-00068-7) ..... | 56.00 | Apr. 1, 2001              |
| *300-End .....         | (869-048-00069-1) ..... | 43.00 | Apr. 1, 2002              |
| <b>23</b> .....        | (869-044-00070-9) ..... | 40.00 | Apr. 1, 2001              |
| <b>24 Parts:</b>       |                         |       |                           |
| *0-199 .....           | (869-048-00071-2) ..... | 57.00 | Apr. 1, 2002              |
| 200-499 .....          | (869-044-00072-5) ..... | 45.00 | Apr. 1, 2001              |
| 500-699 .....          | (869-048-00073-9) ..... | 29.00 | Apr. 1, 2002              |
| 700-1699 .....         | (869-044-00074-1) ..... | 55.00 | Apr. 1, 2001              |
| 1700-End .....         | (869-048-00075-5) ..... | 29.00 | Apr. 1, 2002              |
| <b>25</b> .....        | (869-044-00076-8) ..... | 57.00 | Apr. 1, 2001              |
| <b>26 Parts:</b>       |                         |       |                           |
| §§ 1.0-1.160 .....     | (869-044-00077-6) ..... | 43.00 | Apr. 1, 2001              |
| §§ 1.61-1.169 .....    | (869-044-00078-4) ..... | 57.00 | Apr. 1, 2001              |
| §§ 1.170-1.300 .....   | (869-048-00079-8) ..... | 55.00 | Apr. 1, 2002              |
| §§ 1.301-1.400 .....   | (869-044-00080-6) ..... | 41.00 | Apr. 1, 2001              |
| §§ 1.401-1.440 .....   | (869-044-00081-4) ..... | 58.00 | Apr. 1, 2001              |
| *§§ 1.441-1.500 .....  | (869-048-00082-8) ..... | 47.00 | Apr. 1, 2002              |
| §§ 1.501-1.640 .....   | (869-044-00083-1) ..... | 44.00 | Apr. 1, 2001              |
| §§ 1.641-1.850 .....   | (869-044-00084-9) ..... | 53.00 | Apr. 1, 2001              |
| §§ 1.851-1.907 .....   | (869-044-00085-7) ..... | 54.00 | Apr. 1, 2001              |
| §§ 1.908-1.1000 .....  | (869-044-00086-5) ..... | 53.00 | Apr. 1, 2001              |
| §§ 1.1001-1.1400 ..... | (869-044-00087-3) ..... | 55.00 | Apr. 1, 2001              |
| §§ 1.1401-End .....    | (869-044-00088-1) ..... | 58.00 | Apr. 1, 2001              |
| 2-29 .....             | (869-044-00089-0) ..... | 54.00 | Apr. 1, 2001              |
| 30-39 .....            | (869-048-00090-9) ..... | 39.00 | Apr. 1, 2002              |
| 40-49 .....            | (869-048-00091-7) ..... | 26.00 | Apr. 1, 2002              |
| 50-299 .....           | (869-048-00092-5) ..... | 38.00 | Apr. 1, 2002              |
| 300-499 .....          | (869-044-00093-8) ..... | 54.00 | Apr. 1, 2001              |
| 500-599 .....          | (869-044-00094-6) ..... | 12.00 | <sup>5</sup> Apr. 1, 2001 |
| 600-End .....          | (869-048-00095-0) ..... | 16.00 | Apr. 1, 2002              |
| <b>27 Parts:</b>       |                         |       |                           |
| 1-199 .....            | (869-044-00096-2) ..... | 57.00 | Apr. 1, 2001              |

| Title                                    | Stock Number            | Price | Revision Date             | Title                                     | Stock Number            | Price                     | Revision Date |
|------------------------------------------|-------------------------|-------|---------------------------|-------------------------------------------|-------------------------|---------------------------|---------------|
| 200-End .....                            | (869-044-00097-1) ..... | 26.00 | Apr. 1, 2001              | 100-135 .....                             | (869-044-00151-9) ..... | 38.00                     | July 1, 2001  |
| <b>28 Parts:</b> .....                   |                         |       |                           | 136-149 .....                             | (869-044-00152-7) ..... | 55.00                     | July 1, 2001  |
| 0-42 .....                               | (869-044-00098-9) ..... | 55.00 | July 1, 2001              | 150-189 .....                             | (869-044-00153-5) ..... | 52.00                     | July 1, 2001  |
| 43-end .....                             | (869-044-00099-7) ..... | 50.00 | July 1, 2001              | 190-259 .....                             | (869-044-00154-3) ..... | 34.00                     | July 1, 2001  |
| <b>29 Parts:</b> .....                   |                         |       |                           | 260-265 .....                             | (869-044-00155-1) ..... | 45.00                     | July 1, 2001  |
| 0-99 .....                               | (869-044-00100-4) ..... | 45.00 | July 1, 2001              | 266-299 .....                             | (869-044-00156-0) ..... | 45.00                     | July 1, 2001  |
| 100-499 .....                            | (869-044-00101-2) ..... | 14.00 | <sup>6</sup> July 1, 2001 | 300-399 .....                             | (869-044-00157-8) ..... | 41.00                     | July 1, 2001  |
| 500-899 .....                            | (869-044-00102-1) ..... | 47.00 | <sup>6</sup> July 1, 2001 | 400-424 .....                             | (869-044-00158-6) ..... | 51.00                     | July 1, 2001  |
| 900-1899 .....                           | (869-044-00103-9) ..... | 33.00 | July 1, 2001              | 425-699 .....                             | (869-044-00159-4) ..... | 55.00                     | July 1, 2001  |
| 1900-1910 (§§ 1900 to<br>1910.999) ..... | (869-044-00104-7) ..... | 55.00 | July 1, 2001              | 700-789 .....                             | (869-044-00160-8) ..... | 55.00                     | July 1, 2001  |
| 1910 (§§ 1910.1000 to<br>end) .....      | (869-044-00105-5) ..... | 42.00 | July 1, 2001              | 790-End .....                             | (869-044-00161-6) ..... | 44.00                     | July 1, 2001  |
| 1911-1925 .....                          | (869-044-00106-3) ..... | 20.00 | <sup>6</sup> July 1, 2001 | <b>41 Chapters:</b> .....                 |                         |                           |               |
| 1926 .....                               | (869-044-00107-1) ..... | 45.00 | July 1, 2001              | 1, 1-1 to 1-10 .....                      | 13.00                   | <sup>3</sup> July 1, 1984 |               |
| 1927-End .....                           | (869-044-00108-0) ..... | 55.00 | July 1, 2001              | 1, 1-11 to Appendix, 2 (2 Reserved) ..... | 13.00                   | <sup>3</sup> July 1, 1984 |               |
| <b>30 Parts:</b> .....                   |                         |       |                           | 3-6 .....                                 | 14.00                   | <sup>3</sup> July 1, 1984 |               |
| 1-199 .....                              | (869-044-00109-8) ..... | 52.00 | July 1, 2001              | 7 .....                                   | 6.00                    | <sup>3</sup> July 1, 1984 |               |
| 200-699 .....                            | (869-044-00110-1) ..... | 45.00 | July 1, 2001              | 8 .....                                   | 4.50                    | <sup>3</sup> July 1, 1984 |               |
| 700-End .....                            | (869-044-00111-7) ..... | 53.00 | July 1, 2001              | 9 .....                                   | 13.00                   | <sup>3</sup> July 1, 1984 |               |
| <b>31 Parts:</b> .....                   |                         |       |                           | 10-17 .....                               | 9.50                    | <sup>3</sup> July 1, 1984 |               |
| 0-199 .....                              | (869-044-00112-8) ..... | 32.00 | July 1, 2001              | 18, Vol. I, Parts 1-5 .....               | 13.00                   | <sup>3</sup> July 1, 1984 |               |
| 200-End .....                            | (869-044-00113-6) ..... | 56.00 | July 1, 2001              | 18, Vol. II, Parts 6-19 .....             | 13.00                   | <sup>3</sup> July 1, 1984 |               |
| <b>32 Parts:</b> .....                   |                         |       |                           | 18, Vol. III, Parts 20-52 .....           | 13.00                   | <sup>3</sup> July 1, 1984 |               |
| 1-39, Vol. I .....                       |                         | 15.00 | <sup>2</sup> July 1, 1984 | 19-100 .....                              | 13.00                   | <sup>3</sup> July 1, 1984 |               |
| 1-39, Vol. II .....                      |                         | 19.00 | <sup>2</sup> July 1, 1984 | 1-100 .....                               | (869-044-00162-4) ..... | 22.00                     | July 1, 2001  |
| 1-39, Vol. III .....                     |                         | 18.00 | <sup>2</sup> July 1, 1984 | 101 .....                                 | (869-044-00163-2) ..... | 45.00                     | July 1, 2001  |
| 1-190 .....                              | (869-044-00114-4) ..... | 51.00 | <sup>6</sup> July 1, 2001 | 102-200 .....                             | (869-044-00164-1) ..... | 33.00                     | July 1, 2001  |
| 191-399 .....                            | (869-044-00115-2) ..... | 57.00 | July 1, 2001              | 201-End .....                             | (869-044-00165-9) ..... | 24.00                     | July 1, 2001  |
| 400-629 .....                            | (869-044-00116-8) ..... | 35.00 | <sup>6</sup> July 1, 2001 | <b>42 Parts:</b> .....                    |                         |                           |               |
| 630-699 .....                            | (869-044-00117-9) ..... | 34.00 | July 1, 2001              | 1-399 .....                               | (869-044-00166-7) ..... | 51.00                     | Oct. 1, 2001  |
| 700-799 .....                            | (869-044-00118-7) ..... | 42.00 | July 1, 2001              | 400-429 .....                             | (869-044-00167-5) ..... | 59.00                     | Oct. 1, 2001  |
| 800-End .....                            | (869-044-00119-5) ..... | 44.00 | July 1, 2001              | 430-End .....                             | (869-044-00168-3) ..... | 58.00                     | Oct. 1, 2001  |
| <b>33 Parts:</b> .....                   |                         |       |                           | <b>43 Parts:</b> .....                    |                         |                           |               |
| 1-124 .....                              | (869-044-00120-9) ..... | 45.00 | July 1, 2001              | 1-999 .....                               | (869-044-00169-1) ..... | 45.00                     | Oct. 1, 2001  |
| 125-199 .....                            | (869-044-00121-7) ..... | 55.00 | July 1, 2001              | 1000-end .....                            | (869-044-00170-5) ..... | 56.00                     | Oct. 1, 2001  |
| 200-End .....                            | (869-044-00122-5) ..... | 45.00 | July 1, 2001              | <b>44</b> .....                           | (869-044-00171-3) ..... | 45.00                     | Oct. 1, 2001  |
| <b>34 Parts:</b> .....                   |                         |       |                           | <b>45 Parts:</b> .....                    |                         |                           |               |
| 1-299 .....                              | (869-044-00123-3) ..... | 43.00 | July 1, 2001              | 1-199 .....                               | (869-044-00172-1) ..... | 53.00                     | Oct. 1, 2001  |
| 300-399 .....                            | (869-044-00124-1) ..... | 40.00 | July 1, 2001              | 200-499 .....                             | (869-044-00173-0) ..... | 31.00                     | Oct. 1, 2001  |
| 400-End .....                            | (869-044-00125-0) ..... | 56.00 | July 1, 2001              | 500-1199 .....                            | (869-044-00174-8) ..... | 45.00                     | Oct. 1, 2001  |
| <b>35</b> .....                          | (869-044-00126-8) ..... | 10.00 | <sup>6</sup> July 1, 2001 | 1200-End .....                            | (869-044-00175-6) ..... | 55.00                     | Oct. 1, 2001  |
| <b>36 Parts</b> .....                    |                         |       |                           | <b>46 Parts:</b> .....                    |                         |                           |               |
| 1-199 .....                              | (869-044-00127-6) ..... | 34.00 | July 1, 2001              | 1-40 .....                                | (869-044-00176-4) ..... | 43.00                     | Oct. 1, 2001  |
| 200-299 .....                            | (869-044-00128-4) ..... | 33.00 | July 1, 2001              | 41-69 .....                               | (869-044-00177-2) ..... | 35.00                     | Oct. 1, 2001  |
| 300-End .....                            | (869-044-00129-2) ..... | 55.00 | July 1, 2001              | 70-89 .....                               | (869-044-00178-1) ..... | 13.00                     | Oct. 1, 2001  |
| <b>37</b> .....                          | (869-044-00130-6) ..... | 45.00 | July 1, 2001              | 90-139 .....                              | (869-044-00179-9) ..... | 41.00                     | Oct. 1, 2001  |
| <b>38 Parts:</b> .....                   |                         |       |                           | 140-155 .....                             | (869-044-00180-2) ..... | 24.00                     | Oct. 1, 2001  |
| 0-17 .....                               | (869-044-00131-4) ..... | 53.00 | July 1, 2001              | 156-165 .....                             | (869-044-00181-1) ..... | 31.00                     | Oct. 1, 2001  |
| 18-End .....                             | (869-044-00132-2) ..... | 55.00 | July 1, 2001              | 166-199 .....                             | (869-044-00182-9) ..... | 42.00                     | Oct. 1, 2001  |
| <b>39</b> .....                          | (869-044-00133-1) ..... | 37.00 | July 1, 2001              | 200-499 .....                             | (869-044-00183-7) ..... | 36.00                     | Oct. 1, 2001  |
| <b>40 Parts:</b> .....                   |                         |       |                           | 500-End .....                             | (869-044-00184-5) ..... | 23.00                     | Oct. 1, 2001  |
| 1-49 .....                               | (869-044-00134-9) ..... | 54.00 | July 1, 2001              | <b>47 Parts:</b> .....                    |                         |                           |               |
| 50-51 .....                              | (869-044-00135-7) ..... | 38.00 | July 1, 2001              | 0-19 .....                                | (869-044-00185-3) ..... | 55.00                     | Oct. 1, 2001  |
| 52 (52.01-52.1018) .....                 | (869-044-00136-5) ..... | 50.00 | July 1, 2001              | 20-39 .....                               | (869-044-00186-1) ..... | 43.00                     | Oct. 1, 2001  |
| 52 (52.1019-End) .....                   | (869-044-00137-3) ..... | 55.00 | July 1, 2001              | 40-69 .....                               | (869-044-00187-0) ..... | 36.00                     | Oct. 1, 2001  |
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| 61-62 .....                              | (869-044-00141-1) ..... | 35.00 | July 1, 2001              | 1 (Parts 1-51) .....                      | (869-044-00190-0) ..... | 60.00                     | Oct. 1, 2001  |
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| 63 (63.600-63.1199) .....                | (869-044-00143-8) ..... | 44.00 | July 1, 2001              | 2 (Parts 201-299) .....                   | (869-044-00192-6) ..... | 53.00                     | Oct. 1, 2001  |
| 63 (63.1200-End) .....                   | (869-044-00144-6) ..... | 56.00 | July 1, 2001              | 3-6 .....                                 | (869-044-00193-4) ..... | 31.00                     | Oct. 1, 2001  |
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| 72-80 .....                              | (869-044-00146-2) ..... | 55.00 | July 1, 2001              | 15-28 .....                               | (869-044-00195-1) ..... | 53.00                     | Oct. 1, 2001  |
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| 86 (86.600-1-End) .....                  | (869-044-00149-7) ..... | 45.00 | July 1, 2001              | 1-99 .....                                | (869-044-00197-7) ..... | 55.00                     | Oct. 1, 2001  |
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<sup>1</sup> Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

<sup>2</sup> The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

<sup>3</sup> The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

<sup>4</sup> No amendments to this volume were promulgated during the period January 1, 2001, through January 1, 2002. The CFR volume issued as of January 1, 2001 should be retained.

<sup>5</sup> No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

<sup>6</sup> No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained.