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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV03–989–3 FIR]

Raisins Produced From Grapes Grown in California; Reduction in Production Cap for 2003 Diversion Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule reducing the production cap for the 2003 diversion program (RDP) for Natural (sun-dried) Seedless (NS) raisins from 2.75 to 2.0 tons per acre. The cap is specified 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).

EFFECTIVE DATE: June 11, 2003.

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

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

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

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, or policies, unless they present an irreconcilable conflict with this rule.

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

This final rule reduces the production cap for the 2003 RDP for NS raisins from 2.75 to 2.0 tons per acre. The cap is specified in the order. 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. The production cap limits the yield per acre that a producer can claim in a RDP. Reducing the cap for the 2003 RDP is expected to bring the figure in line with anticipated 2003 crop yields. This action was recommended by the RAC at a meeting on January 29, 2003.

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 bringing supplies into closer balance with market needs. Authority for the program is provided in § 989.56 of the order, and additional procedures are specified in § 989.156 of the order's administrative rules and regulations.

Pursuant to these sections, the RAC must meet 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. Approved producers curtail their production by vine removal or some other means established by the RAC. Such producers receive a certificate from the RAC that 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 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).

Production Cap

Section 989.56(a) of the order specifies a production cap of 2.75 tons per acre for any production unit of a producer approved for participation in a RDP. The RAC may recommend, subject to approval by USDA, reducing the 2.75 ton per acre production cap. The production cap limits the yield that a producer can claim. Producers who historically produce yields above the production cap can choose to produce a crop rather than participate in the diversion program. No producer is required to participate in a RDP.

Pursuant to § 989.156, producers who wish to participate in a program must submit an application to the RAC. Producers must specify, among other things, the raisin production and the acreage covered by the application. RAC staff verifies producers' production claims using handler acquisition reports and other available information. However, a producer could misrepresent production by claiming that some raisins produced on one ranch were produced on another, and use an inflated yield on the RDP application. Thus, the production cap limits the amount of raisins for which a producer participating in a RDP may be credited, and protects the program from overstated yields.

RAC Recommendation

The RAC met on January 29, 2003, and recommended allocating 35,000 tons of 2002 NS reserve raisins to a 2003 RDP. The program will be limited to vine removal for complete production units, with a 5-year moratorium on replanting raisin-variety grapes. Damages of $700 per ton of creditable fruit weight represented on the RDP certificate will be imposed on producers who replant prior to July 31, 2008. Harvest costs were established at $340 per ton. The RAC also recommended reducing the production cap from 2.75 to 2.0 tons per acre. With this year's large crop of about 373,000 tons, the RAC believes that the grape vines will produce a smaller crop next year. Thus, the RAC recommended reducing the cap from 2.75 to 2.0 tons per acre to reflect anticipated 2003 crop yields.

The RAC's RDP recommendation passed with 24 members in favor and 21 opposed. Those opposed expressed concern with the RDP as a whole, not the production cap. They believe that many producers have already pulled out their vines, and that attrition should occur naturally in the industry. Concern also was expressed that the tonnage allocated to the diversion program would be added to next year's crop estimate, thereby reducing next year's free tonnage percentage and producer returns. Those in favor of the program contend that, with a 2002 NS crop estimated at about 373,000 tons (deliveries through the week ending March 29, 2003, are at 387,780 tons), and a computed trade demand (comparable to market needs) of 196,185 tons, there would be 176,815 tons of reserve raisins. A diversion program is one avenue authorized under the order to utilize these reserve raisins.

On February 7, 2003, USDA approved the requirements of the RDP recommended by the RAC, with the exception of the production cap, which required informal rulemaking. This rule continues in effect an interim final rule implementing the RAC's recommendation to reduce the 2003 RDP production cap from 2.75 to 2.0 tons per acre. Paragraph (t) in § 989.156 of the order's rules and regulations was revised accordingly.

Final Regulatory Flexibility Analysis

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and 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 that $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 continues to revise § 989.156(t) of the order's rules and regulations regarding the RDP. Authority for this action is provided in § 989.56(a) of the order. 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. The order specifies a production cap limiting the yield per acre that a producer can claim in a RDP.

This rule continues to reduce the cap from 2.75 to 2.0 tons per acre to reflect next year's estimated yield. Regarding the impact of this action on affected entities, producers who participate in the 2003 RDP will nonetheless have the opportunity to earn income for not harvesting a 2003–04 crop. Producers who sell the certificates to handlers next fall will be paid for the free tonnage applicable to the diversion certificate minus the harvest cost for the diverted tonnage. Applicable harvest costs for the 2003 RDP were established by the RAC at $340 per ton.

Reducing the production cap will have little impact on raisin handlers. Handlers will pay producers for the free tonnage applicable to the diversion certificate minus the $340 per ton harvest cost. Handlers will redeem the certificates for 2002–03 crop NS reserve raisins and pay the RAC the $340 per ton harvest cost plus payment for receiving, storing, fumigating, handling (currently totaling $46 per ton), and inspecting (currently $9.00 per ton) the tonnage represented on the certificate. Reducing the production cap will have little impact on handler payments for reserve raisins under the 2003 RDP.

Alternatives to the recommended action included leaving the production cap at 2.75 tons per acre or reducing it to another figure besides 2.0 tons per acre. However, the majority of RAC members believe that a cap of 2.0 tons

per acre will more accurately reflect anticipated 2003 crop yields.

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 application) has been approved 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 January 29, 2003, and the RAC's Administrative Issues Subcommittee meeting on January 24, 2003, when this action was deliberated were both public meetings widely publicized throughout the raisin industry. All interested persons were invited to attend the meetings and participate in the industry's deliberations.

An interim final rule concerning this action was published in the **Federal Register** on March 19, 2003 (68 FR 13219). Copies of the rule were mailed by RAC staff to all RAC members and alternates, the Raisin Bargaining Association, handlers and dehydrators. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. That rule provided for a 15-day comment period that ended on April 3, 2003. No comments were received.

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

After consideration of all relevant material presented, including the information and recommendation submitted by the RAC and other available information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (68 FR 13219, March 19, 2003) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 989

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

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

■ Accordingly, the interim final rule amending 7 CFR part 989 which was published at 68 FR 13219 on March 19, 2003, is adopted as a final rule without change.

Dated: May 6, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–11704 Filed 5–9–03; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 40 and 150

RIN 3150–AH10

Source Material Reporting Under International Agreements; Confirmation of Effective Date

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The Nuclear Regulatory Commission (NRC) is confirming the effective date of October 1, 2003, for the direct final rule that appeared in the **Federal Register** of March 5, 2003 (68 FR 10362). This direct final rule amended the NRC's regulations on reporting source material with foreign obligations. This document confirms the effective date.

DATES: The effective date of October 1, 2003, is confirmed for this direct final rule.

ADDRESSES: Documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, Room O–1F23, 11555 Rockville Pike, Rockville, MD. These same documents may also be viewed and downloaded electronically via the rulemaking Web site (*http://ruleforum.llnl.gov*). For information about the interactive rulemaking Website, contact Ms. Carol Gallagher (301) 415–5905; e-mail: *CAG@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Merri Horn, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone (301) 415–8126; (e-mail: *mlh1@nrc.gov*).

SUPPLEMENTARY INFORMATION: On March 5, 2003 (68 FR 10362), the NRC published in the **Federal Register** a direct final rule amending its regulations in 10 CFR parts 40 and 150 to require licensees to report their holdings of source material with foreign obligations to the agency. In the direct final rule, NRC stated that if no significant adverse comments were received, the direct final rule would become final on the date noted above. The NRC did not receive any comments that warranted withdrawal of the direct final rule. Therefore, this rule will become effective as scheduled.

Dated at Rockville, Maryland, this 6th day of May, 2003.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 03–11699 Filed 5–9–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 241

[Release No. 34–47806]

Electronic Storage of Broker-Dealer Records

AGENCY: The Securities and Exchange Commission.

ACTION: Interpretation.

SUMMARY: The Securities and Exchange Commission is publishing its views on the operation of its rule permitting broker-dealers to store required records in electronic form. Under the rule, electronic records must be preserved exclusively in a non-rewriteable and non-erasable format. This interpretation clarifies that broker-dealers may employ a storage system that prevents alteration or erasure of the records for their required retention period.

EFFECTIVE DATE: May 12, 2003.

FOR FURTHER INFORMATION: Michael A. Macchiaroli, Associate Director, 202/942–0131; Thomas K. McGowan, Assistant Director, 202/942–4886; or Randall W. Roy, Special Counsel, 202/942–0798, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (''Commission'') is publishing guidance with respect to paragraph (f)(2)(ii)(A) of Rule 17a–4, which requires broker-dealers maintaining records electronically to use a digital storage medium or system that ''[p]reserve[s]

the records exclusively in a non-rewriteable, non-erasable format.'' [1]

I. Introduction

Broker-dealers are allowed to preserve records on ''electronic storage media.'' [2] Rule 17a–4 defines that term as ''any digital storage medium or system.'' [3] Paragraph (f)(2)(ii)(A) of Rule 17a–4 requires that the electronic storage media preserve the records exclusively in a non-rewriteable and non-erasable format.[4] The staff has received oral requests from broker-dealers for guidance on whether this requirement limits them to using optical platters, CD–ROMs, DVDs or similar physical mediums to achieve this result.

II. Background

Section 17(a)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') authorizes the Commission to issue rules requiring broker-dealers to make and keep for prescribed periods, and furnish copies thereof, such records as necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Exchange Act.[5] Pursuant to this authority, the Commission adopted Rules 17a–3 and 17a–4. Rule 17a–3 requires broker-dealers to make certain records, including trade blotters, asset and liability ledgers, income ledgers, customer account ledgers, securities records, order tickets, trade confirmations, trial balances, and various employment related documents.[6] Rule 17a–4 specifies the manner in which the records created in accordance with Rule 17a–3, and certain other records produced by broker-dealers, must be maintained.[7] It also specifies the required retention periods for these records.[8] For example, many of the records, including communications that relate to the broker-dealer's business as such, must be retained for three years; certain other records must be retained for longer periods.[9]

In combination, Rules 17a–3 and 17a–4 require broker-dealers to create, and preserve in an easily accessible manner, a comprehensive record of each securities transaction they effect and of their securities business in general. These requirements are integral to the Commission's investor protection function because the preserved records are the primary means of monitoring compliance with applicable securities laws, including antifraud provisions and financial responsibility standards. Recent events involving the deletion of emails by broker-dealers have affirmed the need to have measures in place to protect record integrity.

In 1997, the Commission amended paragraph (f) of Rule 17a–4 to allow broker-dealers to store records electronically.[10] The rule, by its terms, does not limit broker-dealers to using a particular type of technology such as optical disk. Instead, it allows them to employ any electronic storage media, subject to certain requirements, including that the media ''[p]reserve the records exclusively in a non-rewriteable, non-erasable format.''[11] This requirement does not mean that the records must be preserved indefinitely. Like paper and microfilm, electronic records need only be maintained for the relevant retention period specified in the rule.

III. Storing Records in a Non-Rewriteable, Non-Erasable Manner for a Specified Period

Broker-dealers and vendors of electronic record storage systems have asked whether broker-dealers may use, consistent with Rule 17a–4(f), systems they describe as storing records in a manner that prevents the records from being overwritten, erased or otherwise altered without relying solely on the system's hardware features. Specifically, these systems use integrated hardware and software codes that are intrinsic to the system to prevent the overwriting, erasure or alteration of the records. Thus, while the hardware storage medium used by these systems (*e.g.*, magnetic disk) is inherently rewriteable, the integrated codes intrinsic to the system prevent anyone from overwriting the records. Moreover, the codes used by these systems cannot be turned off to remove this feature. Thus, broker-dealers and venders claim these systems achieve the non-rewriteable and non-erasable requirement without relying solely on the systems' hardware features, such as is the case with optical platters, CD–ROMs and DVDs where digital information is permanently written onto the medium and, consequently, can never be changed or deleted.

One method using such a system stores a specified expiry or retention period with each record or file system. The system blocks record deletion or alteration by any manner of intervention until the expiry is reached or the retention period has lapsed. At expiry, or after the retention period, the records may be deleted from the system, thereby freeing space for reuse.

IV. Discussion

It is the view of the Commission that Rule 17a–4 does not require that a particular type of technology or method be used to achieve the non-rewriteable and non-erasable requirement in paragraph (f)(2)(ii)(A). Specifically, when we adopted Rule 17a–4(f), we stated:

> The Commission is adopting a rule today, which, instead of specifying the type of storage technology that may be used, sets forth standards that the electronic storage media must satisfy to be considered an acceptable method of storage under Rule 17a–4.[12]

A broker-dealer would not violate the requirement in paragraph (f)(2)(ii)(A) of the rule if it used an electronic storage system that prevents the overwriting, erasing or otherwise altering of a record during its required retention period through the use of integrated hardware and software control codes. Rule 17a–4 requires broker-dealers to retain records for specified lengths of time. Therefore, it follows that the non-erasable and non-rewriteable aspect of their storage need not continue beyond that period.

The Commission's interpretation does not include storage systems that only mitigate the risk a record will be overwritten or erased. Such systems—which may use software applications to protect electronic records, such as authentication and approval policies, passwords or other extrinsic security controls—do not maintain the records in a manner that is non-rewriteable and non-erasable. The external measures used by these other systems do not prevent a record from being changed or deleted. For example, they might limit access to records through the use of passwords. Additionally, they might create a ''finger print'' of the record based on its content. If the record is changed, the fingerprint will indicate that it was altered (but the original

[1] 17 CFR 240.17a–4(f)(2)(ii)(A).

[2] 17 CFR 240.17a–4(f).

[3] 17 CFR 240.17a–4(f)(1)(ii).

[4] Under the rule, the electronic storage media also must verify automatically the quality and accuracy of the storage media recording process; serialize the original and, if applicable, duplicate units of storage media, and time-date for the required period of retention the information placed on such electronic storage media; and have the capacity to readily download indexes and records preserved on the electronic storage media to any medium acceptable under paragraph (f) as required by the Commission or the self-regulatory organizations of which the member, broker, or dealer is a member.

[5] 15 U.S.C. 78q(a)(1).

[6] 17 CFR 240.17a–3.

[7] 17 CFR 240.17a–4.

[8] Id.

[9] *See e.g.* 17 CFR 240.17a–4(a)–(e).

[10] Exchange Act Release No. 38245 (Feb. 5, 1997), 62 FR 6469 (Feb. 12, 1997) (''Adopting Release'').

[11] 17 CFR 240.17a–4(f)(2)(ii)(A).

[12] Adopting Release, 62 FR at 6470.

record would not be preserved). The ability to overwrite or erase records stored on these systems makes them non-compliant with Rule 17a–4(f).

Any system used by a broker-dealer must comply with every requirement in paragraph (f) of the rule. Among other requirements in paragraph (f), the broker-dealer would need to have in place an audit system providing for accountability regarding the inputting of records into the storage system.[13] The audit procedures for a storage system using integrated software and hardware codes to comply with paragraph (f) would need to provide accountability regarding the length of time records are stored in a non-rewriteable and non-erasable manner. This should include senior management level approval of how the system is configured to store records for their required retention periods in a non-rewriteable and non-erasable manner. It would be prudent to configure such a storage system so that records input without an expiry or a retention period, by default, would be assigned a permanent retention period. This would help to ensure the records are maintained in accordance with the retention periods specified in Rule 17a–4 or other applicable Commission rules.

Moreover, there may be circumstances (such as receipt of a subpoena) where a broker-dealer is required to maintain records beyond the retention periods specified in Rule 17a–4 or other applicable Commission rules. Accordingly, a broker-dealer must take appropriate steps to ensure that records are not deleted during periods when the regulatory retention period has lapsed but other legal requirements mandate that the records continue to be maintained, and the broker-dealer's storage system must allow records to be retained beyond the retentions periods specified in Commission rules.

V. Conclusion

For the foregoing reasons, the Commission finds this interpretation to be consistent with section 17 of the Exchange Act and Rule 17a–4 thereunder.

List of Subjects in 17 CFR Part 241

Securities.

Amendment to the Code of Federal Regulations

■ For the reasons set out in the preamble, the Commission is amending title 17, chapter II of the Code of Federal Regulations as set forth below:

[13] 17 CFR 240.17a–4(f)(3)(v).

PART 241—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

■ Part 241 is amended by adding Release No. 34–47806 and the release date of May 7, 2003 to the list of interpretive releases.

By the Commission.

Dated: May 7, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–11727 Filed 5–9–03; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 10, 14, 20, 314, and 720

[Docket No. 99N–2637]

Public Information Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing final regulations to comply with the requirements of the Electronic Freedom of Information Amendments of 1996 (EFOIA). EFOIA is designed to broaden public access to Government documents by making them more accessible in electronic form and by streamlining the process by which agencies generally disclose information.

DATES: This rule is effective July 28, 2003.

FOR FURTHER INFORMATION CONTACT: Betty Dorsey, Freedom of Information Staff (HFI–30), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6567.

SUPPLEMENTARY INFORMATION:

I. Introduction

In the **Federal Register** of November 4, 1999 (64 FR 60143), FDA published a proposed rule that would amend its public information regulations in part 20 (21 CFR part 20) to comply with the requirements of the EFOIA and to clarify and update certain provisions unrelated to EFOIA. EFOIA authorizes, and in some instances requires, agencies to issue regulations implementing certain of its provisions, including provisions regarding the aggregation of Freedom of Information Act (FOIA) requests, the expedited processing of FOIA requests, and the establishment of separate queues for the processing of FOIA requests. In addition, EFOIA amends the time limits for responding to an FOIA request from 10 to 20 working days, the process by which an agency may extend the time for responding to an FOIA request, and the requirements for reporting on FOIA activities. EFOIA also includes provisions regarding the availability of records in electronic form, the establishment of ''electronic reading rooms,'' and provisions requiring agencies to inform requesters about the amount of information not being released to them.

In addition to the changes in the proposed rule, this document also reflects technical changes caused by the redesignation of several provisions and by the revocation of existing § 20.44 for the reasons outlined in the proposed rule.

II. Discussion of Comments on the Proposed Rule

FDA received one comment on the proposed rule from a pharmaceutical research and development organization.

A. Section 20.33—Form or Format of Response

The proposal would revise the agency's regulation by adding a requirement to provide records in any requested form or format if the record is readily reproducible by the agency in the requested form or format. FDA offices responsible for responding to FOIA requests shall make reasonable efforts to maintain their records in forms or formats that are readily reproducible for FOIA purposes. Because of the wide range of possible forms and formats, a specific office responding to a FOIA request may not have means to respond to requests in all requested forms and formats. In its proposal, the agency noted that it is striving toward a common records filing structure that will enhance the agency's ability to respond to requests for records in a particular form or format.

The comment asked whether FDA has requested input from its constituents with regard to a common record filing structure, and, if not, recommended that FDA do so.

FDA has not requested input from its constituents on this matter, but will take this comment into consideration as the agency continues to develop a common records filing structure. However, until such a structure is in place, FDA will respond to requests for records in specified forms or formats based on its existing technological and resource capabilities.

B. Section 20.34—Search for Records

The proposal stated that in responding to a request for records, the agency shall make reasonable efforts to search for records kept in their electronic form or format, except when such efforts would significantly interfere with the operation of the agency's automated information systems.

The comment recommended that the agency provide an example of the kind of requests FDA believes would significantly interfere with the operation of the agency's automated information systems.

It is not readily possible for FDA to provide examples of situations that would significantly interfere with the operation of the agency's automated information systems. Because FDA has a decentralized system for processing FOIA requests, what constitutes significant interference may depend on the technical capabilities and resources of the particular office processing a request. Thus, the agency will be making these decisions on a case by case basis.

C. Section 20.40—Filing a Request for Records

As stated in the proposal, FDA will accept FOI requests via facsimile as well as via mail.

The comment requested that FDA also add e-mail as an acceptable means of filing a FOIA request in light of the common use of e-mail in today's business world. The agency is exploring the possibility of accepting electronic FOI requests, and at some future time may amend its regulations to permit the filing of electronic requests.

D. Section 20.44—Expedited Processing

The proposal implements section 8 of EFOIA, which requires agencies to provide for expedited processing of FOIA requests in cases where the person requesting the records demonstrates a ''compelling need'' and in other cases as determined by the agency.

The comment expressed concern that the scope of individuals or entities that can demonstrate ''compelling need'' is too narrow. In particular, the comment stated that the rule should be restructured so that pharmaceutical and other healthcare companies would also be in a position to obtain expedited processing when there is an urgency to inform the public about FDA regulatory activity, such as product recalls.

The definition of ''compelling need'' is set forth in the EFOIA statute (5 U.S.C. 552(a)(6)(E)) itself and cannot be changed by agency rulemaking. However, because EFOIA also permits agencies to grant expedited processing in other cases as determined by the agency, in those instances where the requester does not meet the statutory definition of ''compelling need'' but demonstrates a need for expedited processing, the agency has the discretion to grant such requests.

III. Environmental Impact

The agency has determined under 21 CFR 25.30(h) and (i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the final rule provides for greater flexibility in making requests, increased access to public information, and in certain cases, a faster agency response, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million, adjusted annually for inflation. As noted above, we find that this final rule would not have an effect of this magnitude on the economy.

VI. Paperwork Reduction Act of 1995

The final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

List of Subjects

21 CFR Part 10

Administrative practice and procedure, News media.

21 CFR Part 14

Administrative practice and procedure, Advisory committees, Color additives, Drugs, Radiation protection.

21 CFR Part 20

Confidential business information, Courts, Freedom of information, Government employees.

21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

21 CFR Part 720

Confidential business information, Cosmetics.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and the Freedom of Information Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 10, 14, 20, 314, and 720 are amended as follows:

PART 10—ADMINISTRATIVE PRACTICES AND PROCEDURES

■ 1. The authority citation for 21 CFR part 10 continues to read as follows:

Authority: 5 U.S.C. 551–558, 701–706; 15 U.S.C. 1451–1461; 21 U.S.C. 141–149, 321–397, 467f, 679, 821, 1034; 28 U.S.C. 2112, 42 U.S.C. 201, 262, 263b, 264.

§ 10.20 [Amended]

■ 2. Section 10.20 *Submission of documents to Dockets Management Branch; computation of time; availability for public disclosure* is amended in paragraph (c)(6) by removing the last sentence and in paragraph (j)(2)(ii) by removing ''§ 20.46'' and by adding in its place ''§ 20.48''.

PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE

■ 3. The authority citation for 21 CFR part 14 continues to read as follows:

Authority: 5 U.S.C. App. 2; 15 U.S.C. 1451–1461; 21 U.S.C. 41–50, 141–149, 321–394, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201, 262, 263b, 264.

§ 14.61 [Amended]

■ 4. Section 14.61 *Transcripts of advisory committee meetings* is amended in paragraph (d) by removing ''§ 20.42'' and by adding in its place ''§ 20.45'' and by removing ''§ 20.51'' and by adding in its place ''§ 20.53''.

PART 20—PUBLIC INFORMATION

■ 5. The authority citation for 21 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552; 18 U.S.C. 1905; 19 U.S.C. 2531–2582; 21 U.S.C. 321–393, 1401–1403; 42 U.S.C. 241, 242, 242a, 2421, 242n, 243, 262, 263, 263b–263n, 264, 265, 300u–300u–5, 300aa–1.

■ 6. Section 20.20 is amended by adding paragraph (e) to read as follows:

§ 20.20 Policy on disclosure of Food and Drug Administration records.

* * * * *

(e) ''Record'' and any other term used in this section in reference to information includes any information that would be an agency record subject to the requirements of this part when maintained by the agency in any format, including an electronic format.

■ 7. Section 20.22 is amended by redesignating the existing paragraph as paragraph (a) and by adding paragraph (b) to read as follows:

§ 20.22 Partial disclosure of records.

(a) * * *

(b)(1) Whenever information is deleted from a record that contains both disclosable and nondisclosable information, the amount of information deleted shall be indicated on the portion of the record that is made available, unless including that indication would harm an interest protected by an exemption under the Freedom of Information Act.

(2) When technically feasible, the amount of information deleted shall be indicated at the place in the record where the deletion is made.

■ 8. Section 20.26 is amended by adding paragraph (a)(4) and by revising paragraph (b) to read as follows:

§ 20.26 Indexes of certain records.

(a) * * *

(4) Records that have been released to any person in response to a Freedom of Information request and that the agency has determined have become, or are likely to become, the subject of subsequent requests for substantially the same records.

(b) Each such index will be made available through the Internet at http://www.fda.gov. A printed copy of each index is available by writing to the Freedom of Information Staff (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, or by visiting the Freedom of Information Public Reading Room in rm. 12A–30 at the same address.

§ 20.27 [Amended]

■ 9. Section 20.27 *Submission of records marked as confidential* is amended by removing the phrase ''to review them pursuant to the procedures established in § 20.44,''

§ 20.28 [Amended]

■ 10. *Section 20.28 Food and Drug Administration determinations of confidentiality* is amended by removing the phrase ''or by a written determination pursuant to the procedure established in § 20.44''.

§ 20.29 [Amended]

■ 11. Section 20.29 *Prohibition on withdrawal of records from Food and Drug Administration files* is amended by removing the phrase ''Except pursuant to the procedures established in § 20.44 for presubmission review of records, no'' from the first sentence and by adding in its place the word ''No''.

■ 12. Subpart B is amended by adding §§ 20.33 and 20.34 to read as follows:

§ 20.33 Form or format of response.

(a) The Food and Drug Administration shall make reasonable efforts to provide a record in any requested form or format if the record is readily reproducible by the agency in that form or format.

(b) If the agency determines that a record is not readily reproducible in the requested form or format, the agency may notify the requester of alternative forms and formats that are available. If the requester does not express a preference for an alternative in response to such notification, the agency may provide its response in the form and format of the agency's choice.

§ 20.34 Search for records.

(a) In responding to a request for records, the Food and Drug Administration shall make reasonable efforts to search for records kept in electronic form or format, except when such efforts would significantly interfere with the operation of the agency's automated information systems.

(b) The term ''search'' means to review, manually or by automated means, agency records for the purpose of locating those records that are responsive to the request.

■ 13. Section 20.40 is amended by revising paragraph (a) to read as follows:

§ 20.40 Filing a request for records.

(a) All requests for Food and Drug Administration records shall be made in writing by mailing or delivering the request to the Freedom of Information Staff (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, or by faxing it to 301–443–1726. All requests must contain the postal address and telephone number of the requester and the name of the person responsible for payment of any fees that may be charged.

* * * * *

■ 14. Section 20.41 is amended by revising the introductory text of paragraph (b) and paragraph (b)(3), in paragraph (b)(2) by removing ''§ 20.45'' and by adding in its place ''§ 20.47'', and by adding paragraph (c) to read as follows:

§ 20.41 Time limitations.

* * * * *

(b) Within 20 working days (excluding Saturdays, Sundays, and legal public holidays) after a request for records is logged in at the Freedom of Information Staff, the agency shall send a letter to the requester providing the agency's determination as to whether, or the extent to which, the agency will comply with the request, and, if any records are denied, the reasons for the denial.

* * * * *

(3) (i) In unusual circumstances, the agency may extend the time for sending the letter for an additional period.

(A) The agency may provide for an extension of up to 10 working days by providing written notice to the requester setting out the reasons for the extension and the date by which a determination is expected to be sent.

(B) The agency may provide for an extension of more than 10 working days by providing written notice to the requester setting out the reasons for the extension. The notice also will give the requester an opportunity to limit the

scope of the request so that it may be processed in a shorter time and/or an opportunity to agree on a timeframe longer than the 10 extra working days for processing the request.

(ii) Unusual circumstances may exist under any of the following conditions:

(A) There is a need to search for and collect the requested records from field facilities or other components that are separate from the agency component responsible for processing the request;

(B) There is a need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request; or

(C) There is need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request, or among two or more components of the Food and Drug Administration having substantial subject-matter interest in the determination.

* * * * *

(c) The Food and Drug Administration shall provide a determination of whether to provide expedited processing within 10 calendar days of receipt by the Freedom of Information Staff of the request and the required documentation of compelling need in accordance with § 20.44(b).

■ 15. Sections 20.45 through 20.53 are redesignated as §§ 20.47 through 20.55, §§ 20.42 and 20.43 are redesignated as §§ 20.45 and 20.46, new §§ 20.42 and 20.43 are added, and § 20.44 is revised, to read as follows:

§ 20.42 Aggregation of certain requests.

The Food and Drug Administration may aggregate certain requests by the same requester, or by a group of requesters acting in concert, if the requests involve clearly related matters and the agency reasonably believes that such requests actually constitute a single request which would otherwise satisfy the unusual circumstances specified in § 20.41(b)(3)(ii)(B). FDA may extend the time for processing aggregated requests in accordance with the unusual circumstances provisions of § 20.41.

§ 20.43 Multitrack processing.

(a) Each Food and Drug Administration component is responsible for determining whether to use a multitrack system to process requests for records maintained by that component. A multitrack system provides two or more tracks for processing requests, based on the amount of work and/or time required for a request to be processed. The availability of multitrack processing does not affect expedited processing in accordance with § 20.44.

(b) If multitrack processing is not adopted by a particular agency component, that component will process all requests in a single track, ordinarily on a first-in, first-out basis.

(c) If a multitrack processing system is established by a particular agency component, that component may determine how many tracks to establish and the specific criteria for assigning requests to each track. Multiple tracks may be established for requests based on the amount of work and/or time required for a request to be processed.

(d) Requests assigned to a given track will ordinarily be processed on a first-in, first-out basis within that track.

(e) If a request does not qualify for the fastest processing track, the requester may be provided an opportunity to limit the scope of the request in order to qualify for faster processing.

§ 20.44 Expedited processing.

(a) The Food and Drug Administration will provide expedited processing of a request for records when the requester demonstrates a compelling need, or in other cases as determined by the agency. A compelling need exists when:

(1) A failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) With respect to a request made by a person primarily engaged in disseminating information, there is a demonstrated urgency to inform the public concerning actual or alleged Federal Government activity.

(b) A request for expedited processing made under paragraph (a)(1) of this section must be made by the specific individual who is subject to an imminent threat, or by a family member, medical or health care professional, or other authorized representative of the individual, and must demonstrate a reasonable basis for concluding that failure to obtain the requested records on an expedited basis could reasonably be expected to pose a specific and identifiable imminent threat to the life or safety of the individual.

(c) A request for expedited processing made under paragraph (a)(2) of this section must demonstrate that:

(1) The requester is primarily engaged in disseminating information to the general public and not merely to a narrow interest group;

(2) There is an urgent need for the requested information and that it has a particular value that will be lost if not obtained and disseminated quickly; however, a news media publication or broadcast deadline alone does not qualify as an urgent need, nor does a request for historical information; and

(3) The request for records specifically concerns identifiable operations or activities of the Federal Government.

(d) All requests for expedited processing shall be filed in writing as provided by § 20.40. Each such request shall include information that demonstrates a reasonable basis for concluding that a compelling need exists within the meaning of paragraph (a) of this section and a certification that the information provided in the request is true and correct to the best of the requester's knowledge and belief. Any statements made in support of a request for expedited processing are subject to the False Reports to the Government Act (18 U.S.C. 1001).

(e) The Assistant Commissioner for Public Affairs (or delegatee) will determine whether to grant a request for expedited processing within 10 days of receipt by the Freedom of Information Staff of all information required to make a decision.

(f) If the agency grants a request for expedited processing, the agency shall process the request as soon as practicable.

(g) If the agency denies a request for expedited processing, the agency shall process the request with other nonexpedited requests.

(h) If the agency denies a request for expedited processing, the requester may appeal the agency's decision by writing to the official identified in the denial letter.

■ 16. Newly redesignated § 20.45 is amended in paragraph (a) introductory text by removing ''§ 20.43'' and by adding in its place ''§ 20.46'', by revising the introductory text of paragraph (c), by removing the third sentence in paragraph (c)(1), and by revising paragraph (c)(6) to read as follows:

§ 20.45 Fees to be charged.

* * * * *

(c) *Fee schedule.* The Food and Drug Administration charges the following fees in accordance with the regulations of the Department of Health and Human Services at 45 CFR part 5.

* * * * *

(6) *Sending records by express mail or other special methods.* This service is not required by the Freedom of Information Act. If the Food and Drug Administration agrees to provide this service, the requester will be required to directly pay, or be directly charged by, the courier. The agency will not agree to any special delivery method that does

not permit the requester to directly pay or be directly charged for the service.

* * * * *

■ 17. Newly redesignated § 20.46 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 20.46 Waiver or reduction of fees.

(a) *Standard.* The Assistant Commissioner for Public Affairs (or delegatee) will waive or reduce the fees that would otherwise be charged if disclosure of the information meets both of the following tests:

* * * * *

§ 20.48 [Amended]

■ 18. Newly redesignated § 20.48 *Judicial review of proposed disclosure* is amended by removing ''§ 20.45'' and by adding in its place ''§ 20.47''.

■ 19. Newly redesignated § 20.49 is amended by revising paragraphs (a) and (c) to read as follows:

§ 20.49 Denial of a request for records.

(a) A denial of a request for records, in whole or in part, shall be signed by the Assistant Commissioner for Public Affairs (or delegatee).

* * * * *

(c) A letter denying a request for records, in whole or in part, shall state the reasons for the denial and shall state that an appeal may be made to the Deputy Assistant Secretary for Public Affairs (Media), Department of Health and Human Services. The agency will also make a reasonable effort to include in the letter an estimate of the volume of the records denied, unless providing such an estimate would harm an interest protected by an exemption under the Freedom of Information Act. This estimate will ordinarily be provided in terms of the approximate number of pages or some other reasonable measure. This estimate will not be provided if the volume of records denied is otherwise indicated through deletions on records disclosed in part.

* * * * *

§ 20.53 [Amended]

■ 20. Newly redesignated § 20.53 is amended by removing ''§ 20.42'' and by adding in its place ''§ 20.45''.

§ 20.81 [Amended]

■ 21. Section 20.81 *Data and information previously disclosed to the public* is amended by removing paragraph (b) and by redesignating paragraph (c) as new paragraph (b).

§ 20.83 [Amended]

■ 22. Section 20.83*Disclosure required by court order* is amended in paragraph (a) by removing ''either'' and by removing the phrase ''or by a written determination pursuant to the procedure established in § 20.44''.

■ 23. Section 20.107 is amended by revising paragraph (a) to read as follows:

§ 20.107 Food and Drug Administration manuals.

(a) Food and Drug Administration administrative staff manuals and instructions that affect a member of the public are available for public disclosure. An index of all such manuals is available by writing to the Freedom of Information Staff (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, or by visiting the Freedom of Information Public Reading Room, located in rm. 12A–30 at the same address. The index and all manuals created by the agency on or after November 1, 1996, will be made available through the Internet at http://www.fda.gov.

* * * * *

§ 20.111 [Amended]

■ 24. Section 20.111 *Data and information submitted voluntarily to the Food and Drug Administration* is amended in paragraph (b) by removing the phrase ''or by a written determination pursuant to the procedure established in § 20.44'' and in paragraph (c)(4) by removing the last sentence.

■ 25. Section 20.120 is added to subpart F to read as follows:

§ 20.120 Records available in Food and Drug Administration Public Reading Rooms.

(a) The Food and Drug Administration operates two public reading rooms. The Freedom of Information Staff's Public Reading Room is located in rm. 12A–30, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20857, the phone number is 301–827–6500. The Dockets Management Branch's Public Reading Room is located in rm. 1061, 5630 Fishers Lane, Rockville, MD 20857; the phone number is 301–827–6860. Both public reading rooms are open from 9 a.m. to 4 p.m., Monday through Friday, excluding legal public holidays.

(b) The following records are available at the Freedom of Information Staff's Public Reading Room:

(1) A guide for making requests for records or information from the Food and Drug Administration;

(2) Administrative staff manuals and instructions to staff that affect a member of the public;

(3) Food and Drug Administration records which have been released to any person in response to a Freedom of Information request and which the agency has determined have become or are likely to become the subject of subsequent requests for substantially the same records;

(4) Indexes of records maintained in the Freedom of Information Staff's Public Reading Room; and

(5) Such other records and information as the agency determines are appropriate for inclusion in the public reading room.

(c) The following records are available in the Dockets Management Branch's Public Reading Room:

(1) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(2) Statements of policy and interpretation adopted by the agency that are still in force and not published in the **Federal Register**;

(3) Indexes of records maintained in the Dockets Management Branch's Public Reading Room; and

(4) Such other records and information as the agency determines are appropriate for inclusion in the public reading room.

(d) The agency will make reading room records created by the Food and Drug Administration on or after November 1, 1996, available electronically through the Internet at the agency's World Wide Web site which can be found at http://www.fda.gov. At the agency's discretion, the Food and Drug Administration may also make available through the Internet such additional records and information it believes will be useful to the public.

PART 314—APPLICATION FOR FDA APPROVAL TO MARKET A NEW DRUG

■ 26. The authority citation for 21 CFR part 314 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 355a, 356, 356a, 356b, 356c, 371, 374, 379e.

§ 314.65 [Amended]

■ 27. Section 314.65*Withdrawal by the applicant of an unapproved application* is amended by removing ''§ 20.42'' and by adding in its place ''§ 20.45''.

§ 314.72 [Amended]

■ 28. Section 314.72 *Change in ownership of an application*is amended in paragraph (a)(2)(iii) by removing ''§ 20.42'' and by adding in its place ''§ 20.45''.

PART 720—VOLUNTARY FILING OF COSMETIC PRODUCT INGREDIENT COMPOSITION STATEMENTS

■ 29. The authority citation for 21 CFR part 720 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 361, 362, 371, 374.

§ 720.8 [Amended]

■ 30. Section 720.8 *Confidentiality of statements* is amended by removing from the second sentence of paragraph (a) the phrase ''and in § 20.44 of this chapter''.

Dated: May 3, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–11647 Filed 5–9–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Diego 03–010]

RIN 1625–AA00 [Formerly RIN 2115–AA97]

Security Zones; San Diego Bay, CA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is expanding the geographical boundaries of the permanent security zones at Naval Base San Diego; Naval Submarine Base, San Diego; and Naval Base Coronado, California at the request of the U.S. Navy. Modification and expansion of these security zones is needed to ensure the physical protection of naval vessels moored within each zone by accommodating the Navy's placement of anti-small boat barrier booms within the zones. Entry into these zones is prohibited unless authorized by the Captain of the Port (COTP) San Diego; Commander, Naval Base San Diego; Commander, Naval Base Point Loma; Commander, Naval Base Coronado; or Commander, Navy Region Southwest.

DATES: The suspension of 33 CFR 165.1101, 165.1103, and 165.1104 (effective from 11:59 p.m. on February 11, 2003 to 11:59 p.m. on May 12, 2003, published in the **Federal Register** at 68 FR 7073–7080, on February 12, 2003) is lifted effective 11:59 p.m. on April 14, 2003. This rule is effective on April 15, 2003.

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 docket [COTP San Diego 03–010] and are available for inspection or copying at Coast Guard Marine Safety Office San Diego, 2716 North Harbor Drive, San Diego, California, 92101. Marine Safety Office San Diego, Port Operations Department between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Joseph Brown, Port Safety and Security, at (619) 683–6495.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On February 11, 2003, we published a notice of proposed rulemaking (NPRM) entitled [Security Zones; San Diego Bay, CA] in the **Federal Register** (68 FR 6844). We received 0 letters commenting on the proposed rule. No public hearing was requested, and none was held.

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**. The Maritime Administration (MARAD) recently issued MARAD Advisory 03–03 (182100Z MAR 03) informing operators of maritime interests of increased threat possibilities to vessels and facilities and a higher risk of terrorist attacks to the maritime community in the United States. Further, national security and intelligence officials warn that future terrorist attacks against United States interests are likely. The measures contemplated by the rule are intended to prevent waterborne acts of sabotage or terrorism, which terrorists have demonstrated a capability to carry out. Any delay in making this regulation effective would be contrary to the public interest because immediate action is necessary to protect U.S. naval interests against the possible loss of life, injury, or damage to property.

Background and Purpose

On September 16th and 17th, 2002, the Coast Guard published three temporary final rules suspending 33 CFR 165.1101, 33 CFR 165.1103, and 33 CFR 165.1104 and implementing temporary security zones at Naval Base San Diego, Naval Base Coronado, and Naval Submarine Base San Diego. See 67 FR 58524, 67 FR 58526, and 67 FR 58333. Modified versions of these zones have been in place since 1998 and the Coast Guard has not received any comments during that time and no negative incidents have been reported.

The U.S. Navy requested that the Coast Guard implement these security zones in coordination with their installation of anti-small boat barrier booms at the three locations. If you would like to obtain information about the U.S. Navy's action, contact the Assistant Chief of Port Operations, Navy Region Southwest at 619–556–2400.

The Coast Guard is modifying the security zones to allow the U.S. Navy to put anti-small boat barrier booms at Naval Base San Diego (33 CFR 165.1101); Naval Submarine Base, San Diego (33 CFR 165.1103); and Naval Base Coronado (33 CFR 165.1104). The modification and expansion of these security zones is needed to ensure the physical protection of naval vessels moored in the area by providing adequate standoff distance. The Coast Guard's action supports the Navy's action and is limited to the expansion of the existing zones.

The modification and expansion of these security zones will also prevent recreational and commercial craft from interfering with military operations involving all naval vessels home-ported at Naval Base Coronado, Naval Submarine Base San Diego, and Naval Base San Diego, and it will protect transiting recreational and commercial vessels, and their respective crews, from the navigational hazards posed by such military operations. It will also safeguard vessels and waterside facilities from destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of a similar nature. Entry into, transit through, or anchoring within this security zone is prohibited unless authorized by the Captain of the Port San Diego; Commander, Naval Base San Diego; Commander, Naval Base Point Loma; Commander, Naval Base Coronado; or Commander, Navy Region Southwest.

Discussion of Rule

Specifically, the Coast Guard is expanding the security zone boundaries at the request of the U.S. Navy so that the U.S. Navy can install anti-small boat barrier booms.

In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures on U.S. ports and waterways. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, 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. The Coast Guard also has authority to establish security zones pursuant to the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*) and implementing regulations promulgated by the President in 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, and a civil penalty of not more than $25,000 for each day of a continuing violation.

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 issued 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

These rules are not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and do 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 them under that Order. They are not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

Due to National Security interests, the implementation of these security zones is necessary for the protection of the United States and its people. The size of the zone is the minimum necessary to provide adequate protection for U.S. Naval vessels, their crews, adjoining areas, and the public. The entities most likely to be affected, if any, are pleasure craft engaged in recreational activities and sightseeing. Any hardships experienced by persons or vessels are considered minimal compared to the national interest in protecting U.S. Naval vessels, their crews, and the public.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether these rules 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 these rules would not have a significant economic impact on a substantial number of small entities because the expanded zones will still allow sufficient room for vessels to transit the channel unimpeded.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that these rules would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree these rules would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding these rules so that they can better evaluate its effects on them and participate in the rulemakings. If the rules would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Joseph Brown, Marine Safety Office San Diego at (619) 683–6495.

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 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 these rules and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1D, these rules are categorically excluded from further environmental documentation because our action is limited to the expansion of existing security zones. The U.S. Navy has separately considered the impact of their proposed project including the placement of anti-small boat barrier booms. While we reviewed the Navy's environmental documentation, our analysis pertains solely to the expanded placement of the small markers designating the security zones already in the waterway. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping 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; Department of Homeland Security Delegation No. 0170.

§ 165.T11–047 [Removed]

■ 2. Remove 165.T11–047.

■ 3. Revise § 165.1101 to read as follows:

§ 165.1101 Security Zone: San Diego Bay, CA.

(a) *Location.* The following area is a security zone: The water area within Naval Station, San Diego enclosed by the following points: Beginning at 32°41′16.5″ N, 117°08′01″ W (Point A); thence running southwesterly to 32°41′02.5″ N, 117°08′08.5″ W (Point B); to 32°40′55.0″ N, 117°08′00.0″ W (Point C); to 32°40′49.5″ N, 117°07′55.5″ W (Point D); to 32°40′44.6″ N, 117°07′49.3″ W (Point E); to 32°40′37.8 N, 117°07′43.2″ W, (Point F); to 32°40′30.9″ N, 117°07′39.0″ W (Point G); 32°40′24.5″ N, 117°07′35.0″ W (Point H); to 32°40′17.2″ N, 117°07′30.8″ W (Point I); to 32°40′10.6″ N, 117°07′30.5″ W (Point J); to 32°39′59.0″ N, 117°07′29.0″ W (Point K); to 32°39′49.8″ N, 117°07′27.2″ W (Point L); to 32°39′43.0″ N, 117°07′25.5″ W (Point M); 32°39′36.5″ N, 117°07′24.2″ W, (Point N); thence running easterly to 32°39′38.5″ N, 117°07′06.5″ W (Point O); thence running generally northwesterly along the shoreline of the Naval Station to the place of beginning. All coordinates referenced use datum: NAD 1983.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entry into the area of this zone is prohibited unless authorized by the Captain of the Port San Diego; Commander, Naval Base San Diego; or Commander, Navy Region Southwest.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 619–683–6495 or on VHF channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(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) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of this security zone by the U. S. Navy.

§ 165.T11–031 [Removed]

■ 4. Remove § 165.T11–031.

■ 5. Revise § 165.1103 to read as follows:

§ 165.1103 Security Zone: San Diego Bay, CA.

(a) *Location.* The following area is a security zone: The water adjacent to the Naval Submarine Base, San Diego, commencing on a point on the shoreline of Ballast Point, at 32° 41′11.2″ N, 117° 13′57.0″ W (Point A), thence northerly to 32° 41′31.8″ N, 117° 14′00.6″ W (Point B), thence westerly to 32° 41′32.7″ N, 117° 14′03.2″ W (Point C), thence southwesterly to 32° 41′30.5″ N, 117° 14′17.5″ W (Point D), thence generally southeasterly along the shoreline of the Naval Submarine Base to the point of beginning, (Point A). All coordinates referenced use datum: NAD 1983.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entry into the area of this zone is prohibited unless authorized by the Captain of the Port San Diego; Commander, Naval Base Point Loma; or Commander, Navy Region Southwest.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 619–683–6495 or on VHF channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(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) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of this security zone by the U.S. Navy.

§ 165.T11–049 [Removed]

■ 6. Remove § 165.T11–049.

■ 7. Revise 165.1104 to read as follows:

§ 165.1104 Security Zone: San Diego Bay, CA.

(a) *Location.* The following area is a security zone: on the waters along the northern shoreline of Naval Base Coronado, the area enclosed by the following points: Beginning at 32°42′53.0″ N, 117°11′45.0 W (Point A); thence running northerly to 32°42′55.5″ N, 117°11′45.0″ W, (Point B); thence running easterly to 32°42′57.0″ N, 117°11′31.0″ W, (Point C); thence southeasterly to 32°42′42.0″ N, 117°11′04.0″ W (Point D); thence southeasterly to 32°42′21.0″ N, 117°10′47.0″ W (Point E) thence running southerly to 32°42′13.0″ N, 117°10′51.0″ W (Point F); thence running generally northwesterly along the shoreline of Naval Base Coronado to the place of beginning. All coordinates referenced use datum: NAD 1983.

(b) *Regulations.* (1) In accordance with the general regulations in Sec. 165.33 of this part, entry into the area of this zone is prohibited unless authorized by the Captain of the Port San Diego; Commander, Naval Base Coronado, or Commander, Navy Region Southwest.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 619–683–6495 or on VHF channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(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) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of this security zone by the U.S. Navy.

Dated: April 15, 2003.

Stephen P. Metruck,

Commander, U.S. Coast Guard, Captain of the Port, San Diego, California.

[FR Doc. 03–11166 Filed 5–9–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[MS–200326a; FRL–7497–3]

Approval and Promulgation of State Plan for Designated Facilities and Pollutants: MS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving the sections 111(d)/129 plan submitted by the Mississippi Department of Environmental Quality (MDEQ) for the State of Mississippi on August 29, 2002, for implementing and enforcing the Emissions Guidelines (EG) applicable to existing Commercial and Industrial Solid Waste Incineration (CISWI) Units that Commenced Construction On or Before November 30, 1999.

DATES: This direct final rule is effective July 11, 2003, unless EPA receives adverse comments by June 11, 2003. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Joydeb Majumder, EPA Region 4, Air Toxics and Monitoring Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–3104. Copies of materials submitted to EPA may be examined during normal business hours at the above listed Region 4 location. Anyone interested in examining this document should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Joydeb Majumder at (404) 562–9121 or Heidi LeSane at (404) 562–9035.

SUPPLEMENTARY INFORMATION:

I. Background

On December 1, 2000, pursuant to sections 111 and 129 of the Clean Air Act (Act), EPA promulgated new source performance standards (NSPS) applicable to new CISWIs and EG applicable to existing CISWIs. The NSPS and EG are codified at 40 CFR part 60, subparts CCCC and DDDD, respectively. Subparts CCCC and DDDD regulate the following: Particulate matter, opacity, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, dioxins and dibenzofurans.

Section 129(b)(2) of the Act requires States to submit to EPA for approval State Plans that implement and enforce the EG. State Plans must be at least as protective as the EG, and become Federally enforceable upon approval by EPA. The procedures for adoption and submittal of State Plans are codified in 40 CFR part 60, subpart B. EPA originally promulgated the subpart B provisions on November 17, 1975. EPA amended subpart B on December 19, 1995, to allow the subparts developed under section 129 to include specifications that supersede the general provisions in subpart B regarding the schedule for submittal of State Plans, the stringency of the emission limitations, and the compliance schedules.

This action approves the State Plan submitted by MDEQ for the State of Mississippi to implement and enforce subpart DDDD, as it applies to existing CISWI units only.

II. Discussion

MDEQ submitted to EPA on August 29, 2002, the following in their 111(d)/129 State Plan for implementing and enforcing the EG for existing CISWIs under their direct jurisdiction in the State of Mississippi: Public Participation-Demonstration that the Public Had Adequate Notice and Opportunity to Submit Written Comments and Attend the Public Hearing; Emissions Standards and Compliance Schedules; Emission Inventories, Source Surveillance, and Reports; and Legal Authority.

The approval of the Mississippi State Plan is based on finding that: (1) MDEQ provided adequate public notice of public hearings for the EG for CISWIs, and (2) MDEQ also demonstrated legal authority to adopt emission standards and compliance schedules to designated facilities; authority to enforce applicable laws, regulations, standards, and compliance schedules, and authority to seek injunctive relief; authority to obtain information necessary to determine whether designated facilities are in compliance with applicable laws, regulations, standards, and compliance schedules, including authority to require record keeping and to make inspections and conduct tests of designated facilities; and authority to require owners or operators of designated facilities to install, maintain, and use emission monitoring devices and to make periodic reports to the Sate on the nature and amount of emissions from such facilities.

MDEQ cites the following references for the legal authority: The Mississippi Statues § 49–2–4. Department of Environmental Quality; executive director; qualification, § 49–2–5. Commission on Environmental Quality, § 49–2–13. Powers and duties of executive director, § 49–17–17. Powers and duties, § 49–17–43 Penalties, and§ 49–17–21. Inspections and investigations; access to and maintenance of records; testing and sampling; and monitoring equipment.

An enforcement mechanism is a legal instrument by which the MDEQ can enforce a set of standards and conditions. The MDEQ has adopted 40 CFR 60, Subpart DDDD, into Section 13, APC–S–1, of the Mississippi Air Emission Regulations for the Prevention, Abatement, and Control of Air Contaminants. Therefore, MDEQ's mechanism for enforcing the standards and conditions of 40 CFR 60, subpart DDDD, is Rule APC–S–1, Section 13. On the basis of these statutes and rules of the State of Mississippi, the State Plan is approved as being at least as protective as the Federal requirements for existing CISWI units.

MDEQ adopted all emission standards and limitations applicable to existing CISWI units. These standards and limitation have been approved as being at least as protective as the Federal requirements contained in subpart DDDD for existing CISWI units.

MDEQ submitted the compliance schedule for CISWIs under their jurisdiction in the State of Mississippi. This portion of the Plan has been reviewed and approved as being at least as protective as Federal requirements for existing CISWI units.

MDEQ submitted an emissions inventory of all designated pollutants for CISWI units under their jurisdiction in the State of Mississippi. This portion of the Plan has been reviewed and approved as meeting the Federal requirements for existing CISWI units.

MDEQ includes its legal authority to require owners and operators of designated facilities to maintain records and report to their Agency the nature and amount of emissions and any other information that may be necessary to enable their Agency to judge the compliance status of the facilities in Appendix D of the State Plan. In Appendix D, MDEQ also submits its legal authority to provide for periodic inspection and testing and provisions for making reports of CISWI emissions data, correlated with emission standards that apply, available to the general public.

The State Plan outlines the authority to meet the requirements of monitoring, recordkeeping, reporting, and compliance assurance. This portion of the Plan has been reviewed and approved as being at least as protective as Federal requirements for existing CISWI units.

MDEQ will provide progress reports of plan implementation updates to the EPA on an annual basis. These progress reports will include the required items pursuant to 40 CFR part 60, subpart B. This portion of the plan has been reviewed and approved as meeting the Federal requirement for State Plan reporting.

This action approves the State Plan submitted by MDEQ for the State of Mississippi to implement and enforce subpart DDDD, as it applies to existing CISWI units only.

III. Final Action

This action approves the State Plan submitted by MDEQ for the State of Mississippi to implement and enforce subpart DDDD, as it applies to existing CISWI units only. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the State Plan should adverse comments be filed. This rule will be effective July 11, 2003, without further notice unless the Agency receives adverse comments by June 11, 2003.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on July 11, 2003, and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 11, 2003. 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 62

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

Dated: April 30, 2003.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

■ Chapter I, title 40 of the Code of Federal Regulation is amended as follows:

PART 62—[AMENDED]

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

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

Subpart Z—Mississippi

■ 2. Subpart Z is amended by adding an undesignated center heading and § 62.6127 to read as follows:

Air Emissions From Commercial and Industrial Solid Waste Incineration (CISWI) Units—Section 111(d)/129 Plan

§ 62.6127 Identification of Sources.

The Plan applies to existing Commercial and Industrial Solid Waste Incineration Units that Commenced Construction On or Before November 30, 1999.

[FR Doc. 03–11751 Filed 5–9–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 301, 302, 303, 304, and 307

RIN 0970–AB81

Child Support Enforcement Program; State Plan Approval and Grant Procedures, State Plan Requirements, Standards for Program Operations, Federal Financial Participation, Computerized Support Enforcement Systems

AGENCY: Office of Child Support Enforcement (OCSE), HHS.

ACTION: Final rule.

SUMMARY: This final rule responds to comments on, and makes technical corrections to, interim final child support enforcement regulations published in the **Federal Register** on February 9, 1999.

The 1999 interim final rule eliminated regulations, in whole or in part, that were rendered obsolete by, or inconsistent with, welfare reform legislation and a series of related laws that followed.

DATES: These regulations are effective on June 11, 2003.

FOR FURTHER INFORMATION CONTACT: Eileen Brooks, Deputy Director, Policy Division, OCSE, (202) 401–5369, *ebrooks@acf.hhs.gov*.

SUPPLEMENTARY INFORMATION:

Statutory Authority

These regulations are published under the authority granted to the Secretary by section 1102 of the Social Security Act (the Act). Section 1102 of the Act requires the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which he is responsible under the Act.

Interim Final Regulatory Provisions

Interim final regulations published on February 9, 1999 (64 FR 6237) amended Child Support Enforcement program regulations throughout 45 CFR chapter III for conformity with statutory changes enacted in concert with welfare reform. The 1999 regulatory document amended: §§ 301.1, 302.12, 302.31, 302.32, 302.34, 302.35, 302.50, 302.51, 302.52, 302.54, 302.70, 302.75, 302.80, 303.3, 303.5, 303.7, 303.8, 303.15, 303.20, 303.30, 303.31, 303.70, 303.71, 303.72, 303.100, 303.101, 303.102, 304.12, 304.20, 304.21, 304.26, 304.29, and 304.40 and made nomenclature edits throughout parts 301, 302, 303, and 304. In addition, the 1999 interim final rule removed §§ 302.57, 303.21, 303.80, 303.103, 303.105, and former part 305, which were wholly rendered obsolete by, or inconsistent with, statutory changes resulting from welfare reform and related follow-up legislation. These statutes are: Public Law 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Public Law 105–33, the Balanced Budget Act of 1997 (BBA); Public Law 105–89, the Adoption and Safe Families Act of 1997 (ASFA); and Public Law 105–200, the Child Support Performance and Incentive Act of 1998 (CSPIA).

Response to Comments and Changes to 1999 Interim Final Rule

We received comments from over 20 representatives of Federal, State and local agencies, national organizations, advocacy groups, and private citizens on the interim final rule published on February 9, 1999 in the **Federal Register** (64 FR 6237). We appreciate the care that commenters took in their reviews. No comments were received on the request for comments on the information collection activity published on July 16, 1999 in the **Federal Register** (64 FR 38444).

This final rule includes changes made throughout Child Support Enforcement regulations in response to comments we received in the 1999 document. It also includes additional technical corrections identified after publication of the 1999 interim final rule that are of a nature that we believe would not require additional comment, such as changes in punctuation or spelling.

General

1. *Comment:* We received one comment recommending that the rule be issued formatted with strikeouts and underlines indicating removals and additions from the current regulation.

Response: The **Federal Register**'s publication policy does not allow issuance of regulations with strikeouts and underlines. The annually-updated version of the Code of Federal Regulations (CFR) contains all final revisions to child support program regulations revised as of October 1 of each year. The Government Printing Office web site at *www.gpo.gov* includes the latest available version of the CFR.

2. *Comment:* We received a comment that we were inconsistent by removing some regulations but adding language in other regulations.

Response: The interim final rule was drafted to minimize restatement of statutory language in Federal regulations. Therefore, we only added language needed for conformity with statutory language. In some cases, the inconsistency between the regulation and PRWORA was so great that the regulation was removed. In response to comments received and to avoid confusion, we have incorporated some statutory requirements in the Federal regulations (*e.g., see* § 303.8, Review and adjustment of child support orders). In addition, because the rule was issued as an Interim Final Rule, instead of a Notice of Proposed Rulemaking, it was limited to those changes that were required by statute and were non-discretionary. Changes involving policy choices will be issued through separate rulemaking.

3. *Comment:* We received several comments indicating that we missed nomenclature changes needed in various sections of the regulations. For example, changes were needed to replace ''absent'' parent with ''noncustodial'' parent and to correct ''an'' noncustodial to ''a'' noncustodial parent.

Response: We have made these straightforward corrections to the regulations throughout parts 301 through 304 and 307 and will not repeat these comments and responses individually as we discuss each changed regulation.

4. *Comment:* We received comments on several sections of the regulations that were not included in the interim final rule.

Response: We are unable to address these comments in this final rule, but will retain them for consideration in any future revisions to those sections.

General Definitions—§ 301.1

1. *Comment:* One commenter said that the definitions for ''overdue support'' and ''past-due support'' create

confusion and legal problems for the program. ''Overdue support means a delinquency * * *'' and ''Past-due support means the amount of support * * * which has not been paid.'' Lack of clarity in these definitions and in use of the term ''delinquency'' in the regulations leaves interpretation of these terms to local courts. The commenter cites court rulings that: (1) Preclude use of Federal income tax refund offset when an individual is current in his court-ordered repayment plan; (2) past-due support is created by default in performance rather than by the existence of outstanding arrears; and (3) arrearages resulting from the retroactive application of the support order do not constitute past-due support subject to the Federal income tax refund intercept.

Response: These regulatory definitions restate the definitions used in the Act and were not changed by any recent amendments to the Act. ''Overdue support'' is a term defined in section 466(e) of the Act and is applicable to section 466 remedies. It was added when that section on mandatory State enforcement laws was first included in title IV–D by the 1984 amendments to the Act. The term ''past-due support'' is defined in section 464(c) of the Act and used in sections 454(6) and 454(18) and throughout section 464 to refer to delinquencies qualifying for Federal income tax refund offset. Because these are statutory definitions with particular meanings and applications, we have not altered them. According to Black's Law Dictionary, the term ''delinquent'' means due and unpaid at the time appointed by law. In the case of child support, a judgment for unpaid support or an arrearage amount would be a delinquency. Delinquency is used in these regulations as a general term to distinguish current support from other support.

2. *Comment:* One commenter suggested that, under definitions, the term ''non-title IV–A Medicaid recipient'' be amended to ''non-IV–A Medicaid recipient''.

Response: We agree and have made this revision. The term ''Non-title IV–A Medicaid Recipient'' is revised by removing ''Non-title IV–A'' and replacing it with ''Non-IV–A''.

Single and Separate Organizational Unit—§ 302.12

1. *Comment:* One commenter noted that paragraph (a)(1)(i) deletes reference to § 205.100 although there has been no amendment to that section. The commenter also indicated that the word ''other'' should be removed from paragraph (a)(1)(ii) for clarity.

Response: Section 205.100 is obsolete with respect to title IV–A as reauthorized under welfare reform. It is still permissible for the IV–D agency to be located within any agency designated to administer title IV–A, but there is no longer a requirement for a single State agency in the Temporary Assistance for Needy Families (TANF) program. Therefore, the word ''other'' in newly-designated paragraph (a)(1)(ii) is appropriate.

Establishing Paternity and Securing Support—§ 302.31

1. *Comment:* One commenter noted that the preamble to the interim final rule said that we were removing § 302.31(a)(4), but it was not removed. This reference appeared in the discussion of § 303.80.

Response: Reference to removal of § 302.31(a)(4) was incorrect. The content of § 302.31(a)(3) was removed and paragraph (a)(3) was reserved by the interim final rule. Because we have no plans to use the reserved paragraph (a)(3), we are deleting it in this final rule and have made a technical correction redesignating paragraph (a)(4) as (a)(3).

Collection and Disbursement of Support Payments by the IV–D Agency—§ 302.32

1. *Comment:* Two commenters indicated that disbursement timeframes in paragraphs (b)(1), (2) and (3) should start from the date of receipt by the State disbursement unit (SDU), pursuant to section 454B(c) of the Act.

Response: We agree with these comments and have revised the paragraphs, as needed, to make them consistent with the statute. We will revise paragraph (b)(1) by substituting ''date'' for ''initial point''. Paragraph (b)(1) already has the language ''receipt by the SDU''. We will revise paragraphs (b)(2)(ii), (b)(2)(iii) and (b)(3)(i) by changing references to receipt by the State to reference receipt by the SDU.

2. *Comment:* One commenter questioned if the language in § 302.32(b)(2)(i) ''(other than payments sent to the family from the State share of assigned collections)'' is in reference to States that pass through part of or all of the collection in TANF cases. Another commenter indicated that, regarding paragraph (b)(2)(i), collections in TANF cases cannot be disbursed to the family within 2 business days of receipt by the SDU or of the end of the month of receipt. The County Welfare Department must first determine total assistance paid to the family for the month. The commenter indicated that it is impossible to determine if a pass-through or other support payment is available to the family until the total assistance paid to the family during the month is known. Once the total assistance paid is provided to the IV–D agency after the end of the month, the IV–D agency conducts the welfare payment distribution process to determine if the family is entitled to a pass-through or other support payment. The commenter requests that the regulations be amended so that States be allowed to make these payments within 2 business days of the determination of the amount of support payable to the family after the end of the month.

Response: The language quoted by the first commenter does refer to payments that States pass through to families. Section 454B of the Act, entitled Collection and Disbursement of Support Payments, requires the SDU to ''distribute all amounts payable under section 457(a) within 2 business days after receipt from the employer or other source or periodic income, if sufficient information identifying the payee is provided.'' Addressing the issue raised by the second commenter goes beyond a technical change to the regulations and therefore cannot be dealt with in this document. We will consider these comments in future proposed rulemaking on this section.

3. *Comment:* One commenter asked that, since the SDU does not receive and disburse Federal income tax refund intercepts, could we include reference in paragraph (b)(2)(iv) to other entities (*e.g.,* IV–D agencies) that may receive and disburse them?

Response: The commenter is correct that Federal income tax refund offset collections are not necessarily sent to the SDU; they are sent to an account designated by the State IV–D agency for receipt of these monies. However, payments made to the family from these funds must be disbursed by the SDU, therefore we have not made this change to the regulation.

4. *Comment:* The commenter also asked whether we plan to include in the regulations information from OCSE–AT–98–24 on the definition of ''assistance paid to the family''.

Response: Since this definition is addressed in existing agency issuances, we do not believe it is necessary to capture it in regulation. Please note that OCSE–AT–99–10 revised the definition of assistance for child support purposes in OCSE–AT–98–24, for consistency with the final TANF regulations.

State Parent Locator Service—§ 302.35

1. *Comment:* One commenter requested that the preamble clarify that reference to the removal of medical support obligations from § 302.35(c)(1), which addresses appropriate requests to

the State parent locator service for use of the Federal Parent Locator Service, is merely a technical change because the language is obsolete and that the change has no substantive effect on the use of the SPLS or FPLS to collect medical support.

Response: We agree. The deletion of ''or medical support obligations if an agreement is in effect under § 306.2 of this chapter'' in § 302.35(c)(1) has no substantive effect on the use of the SPLS or FPLS to collect medical support under the IV–D program. The language was deleted because former Part 306 governing optional cooperative agreements between IV–D and Medicaid agencies is no longer in effect.

2. *Comment:* One commenter requested that in § 302.35(c)(4) the phrase ''parental kidnapping or child custody or visitation'' cases be used because it is consistent with other sections of the statute and regulations.

Response: We agree and have changed the terminology to reflect the order of wording elsewhere in regulations. We are amending paragraph (c)(4) by removing '', visitation'' and adding, ''or visitation'' after ''custody'' to conform to changes to section 463(a)(2) of the Act defining persons authorized to access the FPLS for custody or visitation purposes.

3. *Comment:* One commenter suggested that States need more guidance on the role of the SPLS under PRWORA, including the appropriate use of State databases to respond to requests, how to address family violence concerns, and ''locate-only'' requests in non-IV–D support cases. The commenter indicated that there has been an increase in the number of ''locate-only'' requests submitted to the SPLS and States have concerns about appropriately verifying and responding to these requests. The commenter suggested that the Secretary provide further guidance to ensure that the vast amount of data now available through the SPLS and FPLS is properly safeguarded.

Response: We agree that these issues are very important and we have already issued guidance. In DCL–00–36, dated March 15, 2000, OCSE published a summary list of current statutory citations, regulatory citations, and OCSE policy documents covering authorized requests for FPLS information and information from statewide child support enforcement systems. Key documents include: AT–99–09, dated June 16, 1999, on safeguarding of FPLS information; AT–98–27, dated September 17, 1998 and DCL–98–122, dated November 25, 1998, on the family violence indicator; AT–98–26, dated August 25, 1998, forwarding final regulations implementing statewide automated systems requirements; PIQ–98–05, dated August 12, 1998, on requests for FPLS information for making or enforcing a child custody or visitation determination; and PIQ–98–02, dated May 18, 1998 on court access to FPLS information. Other important OCSE documents are: The Federal Case Registry Interface Guidance Document, Section 6.7 Request for Locate; and the Automated Systems for Child Support Enforcement: A Guide for States, outlining system certification requirements.

To gather additional information on States' needs in this area, OCSE convened a work group to review current policy on the locate function and safeguarding of information handled by State IV–D agencies. The group met for 7 months in 2001 and provided very useful guidance to OCSE regarding States' concerns. We are currently developing proposed regulations on the SPLS and safeguarding of State information in order to address these issues. We are also developing guidance to States on use of the FPLS in non-IV–D child support cases.

In addition to the above, in reviewing § 302.35, we identified an error in wording in paragraph (c)(2), which refers to ''any agency'' of a court that may request FPLS information. We are making a technical correction to this paragraph by replacing ''agency'' with ''agent'' to reflect the statutory language from which this provision is derived.

Provision of Service in Interstate IV–D Cases—§ 302.36

1. *Comment:* One commenter noted that § 303.7(b)(3) references ''Federally-approved interstate forms'' and suggested that a provision should be added to § 302.36 to require use of Federally approved interstate forms per section 454(9)(E) of the Act.

Response: We do not generally include statutory references in the regulations except where necessary for understanding the requirements. Since § 302.36 requires the State to provide interstate services in accordance with the requirements of § 303.7, and § 303.7 requires use of the Federally-approved interstate forms, we do not believe that an additional reference to the forms requirement is needed in regulation.

Assignment of Rights—§ 302.50

1. *Comment:* Several commenters suggested we change the title ''Assignment of rights'' for clarity. One suggested ''Obligations with assigned rights'' and the other suggested ''Assignment of rights to support obligations''.

Response: We agree that ''Assignment of rights'' is confusing and are revising the title of this section to ''Assignment of rights to support'' because an individual assigns his or her rights to support, not to the support obligation itself. This language is consistent with language used in the regulation section.

In addition, in reviewing this section, we identified misplaced punctuation. To correct this, we are amending paragraph (b)(2) by replacing ''; or'' at the end of the paragraph with a period.

Distribution of Support Collections—§ 302.51

1. *Comment:* A State commenter raised concerns about revisions to procedures for distribution of State tax intercept collections. The State has a high State income tax and realizes significant collections from State tax intercept. Federal and State tax intercept, while having different thresholds for collection, have previously been distributed to satisfy arrearages. OCSE–AT–97–17 indicated that States can decide distribution order where section 457 of the Act is silent.

Response: Section 457 of the Act only provides one exception to applying collections first to satisfy the current support obligation. Section 457(a)(2)(B)(iv) of the Act requires that Federal income tax refund offset collections must be applied first to satisfy arrearages. Therefore, there is no discretion in Federal law to allow State income tax refund offset collections to be distributed like Federal income tax refund offsets. To clarify, however, OCSE–AT–97–17 states that States may satisfy different categories of assigned arrearages in any order because section 457 is silent in this regard. It does not allow States to choose whether to apply a collection to arrearages rather than current support.

In reviewing this section, we identified an incorrect citation to section 457 of the Act. To correct it, we are amending § 302.51(a)(3) by inserting ''B'' in the citation so that it reads ''section 457(a)(2)(B)(iv)''.

2. *Comment:* One commenter suggested that we amend the regulation to be consistent with OCSE–AT–97–17, Q & A 41, to allow States to hold future payments until the due date or immediately pay them to the family in former assistance cases.

Response: Section 302.51(b), which was formerly § 302.51(c), addresses the distribution or allocation of collections to satisfy future support in current assistance cases and prohibits a State from applying or distributing those

collections to satisfy future support unless all assigned current and past-due support is paid. Q & A 41 of OCSE–AT–97–17 is not consistent with disbursement timeframes in section 454B of the Act and will be revised. Any collection in a former or never assistance case that is owed to the family must be sent to the family within 2 business days of receipt in the SDU. This would include future payments owed to the family. The 2-day time frame was required by PRWORA, which also required IV–D agencies to establish SDUs. Since the February 9, 1999 publication of the interim final regulation, implementation of the SDUs has allowed States to comply with the 2-day requirement without difficulty.

3. *Comment:* One commenter indicated that the requirement under paragraph (a)(4)(iii) to contact the employer when the employer fails to report the date of withholding is burdensome and jeopardizes disbursement within 2 days of receipt of the collection. The commenter indicated that the State should use the date of the employer's check or it should be left at State option to contact the employer.

Response: Pursuant to section 454B(c) of the Act, the date of collection for amounts collected and distributed is the date of receipt by the SDU. However, States have the option of deeming the date of withholding to be the date of collection when the current support is withheld by an employer in the month when due and received by the SDU in a month other than the month when due. Therefore, States are not required to use the date of withholding as the date of collection for distribution purposes. If a IV–D agency opts to use the date of withholding and an employer fails to supply that date, § 302.51(a)(4)(iii) allows the State to reconstruct the date either by contacting the employer or comparing the actual amounts collected with the pay schedule in the order. Thus, the State may reconstruct the date of withholding without contacting the employer.

4. *Comment:* Two commenters indicated that the preamble language describing changes to paragraph (a)(4) which defines the date of collection for distribution purposes is not consistent with the change made in the regulation itself.

Response: We agree that there is a discrepancy between the preamble and the regulation in paragraphs (a)(4)(i) and (ii). The preamble omitted the effective date of the new definition of date of collection. The regulatory language is correct: ''Effective October 1, 1998 (or October 1, 1999 if applicable) except with respect to those collections addressed under paragraph (a)(3) of this section and except as specified under paragraph (a)(4)(ii) of this section, with respect to amounts collected and distributed under title IV–D of the Act, the date of collection for distribution purposes in all IV–D cases is the date of receipt in the State disbursement unit established under section 454B of the Act.''

5. *Comment:* One commenter indicated that former paragraph (b)(5) that read ''if the amount collected is in excess of the amounts required to be distributed under paragraph (b)(1) through (4) of this section, such excess shall be paid to the family'' should be retained. The commenter suggested that due to revisions to paragraphs (b)(1) and (b)(3), this paragraph needs rewording to retain its original intent.

Response: Section 302.51(b)(5) was deleted because it referred to paragraphs (b)(1) through (4) which were removed because of changes to the distribution rules pursuant to PRWORA. We deleted provisions inconsistent with the new section 457 of the Act and made a conscious decision not to repeat the statutory requirements in the regulations. However, the basic principle of ensuring that the State never retains more assigned support collections than the total amount of assistance paid to the custodial parent is still in effect. This provision is found in section 457(a)(1)(B) of the Act (see also two Action Transmittals on distribution, OCSE–AT–97–17 and OCSE–AT–98–24).

Notice of Collection of Assigned Support—§ 302.54

1. *Comment:* One commenter pointed out some inconsistencies in the interim final rule: paragraph (a)(1) refers to ''conditions in paragraph (c)'', but former paragraph (c) was deleted; paragraph (b)(1)(ii) refers to ''information required under paragraph (b)(2)'', but that information is now in paragraph (a); and paragraph (b)(2) refers to paragraphs (b)(1) and (b)(2), which are now paragraphs (a)(1) and (2).

Response: We agree with this commenter. A final rule which eliminated certain regulatory requirements was issued on December 20, 1996 in the **Federal Register** (61 FR 67235). That rule removed paragraph (a) and redesignated paragraphs (b) and (c) as (a) and (b). At that time, we neglected to make corresponding changes in later references to these redesignated paragraphs.

Therefore, we are now making the following technical corrections: in paragraph (a)(1), we are revising ''paragraph (c)'' to read ''paragraph (b)''; in paragraph (b)(1)(ii), we are revising ''paragraph (b)(2)'' to read ''paragraph (a)''; and in paragraph (b)(2), we are revising ''(b)(1)'' to read ''(a)(1)'' and ''(b)(2)'' to read ''(a)(2)''.

§ 302.65 Withholding of Unemployment Compensation.

In reviewing the regulations for corrections missed in the interim final rule, we found a typographical error in § 302.65. To correct this, we are making a technical change to correct the spelling of ''criteria'' in paragraph (c)(7).

Required State Laws—§ 302.70

1. *Comment:* Two commenters pointed out that since §§ 303.103 and 303.105 are eliminated, references to them in paragraphs (a)(4) and (7) should be eliminated.

Response: We agree and are deleting these references. In addition to the changes raised by commenters, we are making a similar technical correction to paragraph (c) by replacing ''§§ 303.100 through 303.105 of this chapter'' with ''§§ 303.100 through 303.102 and § 303.104 of this chapter''.

2. *Comment:* Two commenters noted that paragraph (a)(5)(ii) refers to obsolete ''§§ 232.40 through 232.49 of this title'' and should be changed to refer to section 454(29) of the Act.

Response: We have deleted the regulatory references in that clause and added the reference to section 454(29) of the Act.

3. *Comment:* One commenter recommended that we remove paragraphs (a)(1) through (a)(11) as they restate the provisions of the Act but retain introductory language in paragraph (a).

Response: Paragraphs (a)(1) through (11) not only restate provisions in section 466 of the Act, they also cross-reference related requirements in Part 303 of the regulations. We are looking at the best way to present these requirements and will address any needed changes during future revisions to this section.

4. *Comment:* One commenter noted that we should replace ''wages'' with ''income'' in paragraph (a)(8).

Response: We have made this technical revision for consistency with section 466(a)(1) and (b) of the Act.

Procedures for the Imposition of Late Payment Fees on Noncustodial Parents Who Owe Overdue Support—§ 302.75

1. *Comment:* A commenter noted that paragraph (b)(6) refers to § 305.50, which no longer exists.

Response: The reference to § 305.50 in the interim final regulation was a typographical error. In paragraph (b)(6),

we are correcting the citation by changing ''§ 305.50'' to ''§ 304.50''.

Mandatory Computerized Support Enforcement System—§ 302.85

1. *Comment:* A commenter suggested editing paragraph (b)(2), governing the conditions for waiver of certain automated systems requirements, because it refers to 45 CFR part 305 which was removed and reserved by the interim final rule.

Response: Since publication of the interim final rule, a new part 305 was added to the regulations. Section 305.63 of this part contains requirements for determining substantial compliance with title IV–D of the Act as a result of an audit conducted under § 305.60. Thus, we are not changing the reference to part 305 in this section.

Location of Noncustodial Parents—§ 303.3

1. *Comment:* With the expanded Federal Parent Locator Service (FPLS), States submit cases in their State Case Registries to the Federal Case Registry (FCR). When a new case is submitted to the FCR, it is matched proactively with other data in the FPLS and States receive locate information automatically. Now that this proactive matching occurs, the commenter asked if there is still a need for States to submit cases quarterly to the FPLS for locate? Also, is it still necessary to access all appropriate location sources, including the FPLS, within 75 calendar days of determining that location is necessary and to make repeated locate attempts, including transmitting cases to the FPLS, when new information becomes available on a case?

Response: Proactive matching between the FCR and the National Directory of New Hires (NDNH) occurs each time new information is added to an FCR or NDNH record on an individual. The proactive match information is sent electronically to State IV–D agencies daily when a match occurs to link a IV–D case with newly provided information. This is a major enhancement to program locate processes and leads to location of individuals sought in many child support cases. Further location attempts may remain necessary in cases where people are self-employed, employed but not reported, unemployed but not receiving unemployment compensation, or employed outside the United States by entities that do not report to the FPLS. In addition, location efforts are needed to find assets, debts, and other information that enables an agency to proceed with a case even though proactive match information is provided on new hires, quarterly wages and unemployment compensation. OCSE has issued PIQ–01–02, dated February 28, 2001, to address these changes. The PIQ indicates States are not required to submit cases to the FPLS for searches of other locate sources, but OCSE encourages this if the State has reason to believe that an FPLS query may be helpful. States are not required to submit cases to the FPLS quarterly, nor are they required to make repeated locate attempts to the FPLS, when new information becomes available, since constant updating of FCR and NDNH databases and ongoing proactive matching are in place.

Establishment of Paternity—§ 303.5

1. *Comment:* A commenter noted that this section is amended to include administrative orders for genetic testing. As amended, the language eliminates reference to certain paternity actions taken in court. The commenter asked if we intend to drop the requirement for the child support agency to obtain an order for repayment of costs for genetic tests if the tests were ordered as part of a court process.

Response: In § 303.5(d)(2) we deleted ''legal'' to indicate that a contested paternity case is any action in which the issue of paternity may be raised under State law and one party denies paternity. The action may occur through an administrative or judicial process. The amendment deleting ''legal'' did not eliminate court actions.

2. *Comment:* Two commenters asked whether the phrase in paragraph (c) which reads ''and use through competitive procurement laboratories'' is correct.

Response: This phrase is accurate. States must follow competitive procurement practices, consistent with requirements at 45 CFR part 74, and use accredited laboratories that perform legally and medically acceptable genetic tests at reasonable cost, consistent with requirements at section 466(a)(5)(F) of the Act.

3. *Comment:* One commenter noted that the use of the phrase ''alleged father who has denied paternity'' in paragraph (e)(3) is inconsistent with section 466(a)(5)(B)(ii)(I) of the Act which requires recoupment from the alleged father if paternity is established, whether or not he denies paternity.

Response: Section 466(a)(5)(B)(ii)(I) of the Act provides for recoupment at State option only in contested cases where the agency has to order genetic tests and paternity is established. The commenter raises issues that go beyond the scope of this technical rulemaking. We will consider this comment in future revisions to this section through proposed rulemaking.

Provision of Services in Interstate IV–D Cases—§ 303.7

1. *Comment:* Several commenters noted that the preamble to the interim final rule (64 FR 6241) indicates paragraph (b)(1) is amended to require States to use their long-arm statute to establish paternity, but there is no corresponding requirement in the regulation itself.

Response: We have corrected this error by revising paragraph (b)(1) to read: ''Use its long-arm statute to establish paternity, when appropriate.'' As indicated in the preamble to the interim final rule, all States have long-arm paternity establishment authority under UIFSA.

2. *Comment:* One commenter suggested changing ''wage withholding to ''income withholding'' in paragraph (b)(2).

Response: We agree and have made this change for consistency with section 466(a)(1) and (b) of the Act which refer to income withholding.

3. *Comment:* One commenter noted that the preamble indicated that regulatory references in paragraphs (c)(7)(ii) and (iii) were placed in the correct numerical order, but there was no corresponding change in the regulation itself.

Response: We have made these changes, as intended in the interim final rule. In paragraph (c)(7)(ii) we are correcting ''§§ 303.4 and 303.101 of this part and § 303.31 of this chapter'' to read ''§§ 303.4, 303.31 and 303.101 of this part''. Similarly, in paragraph (c)(7)(iii) we are correcting ''§§ 303.6 and 303.100 through 303.102 and 303.104 of this part and § 303.31 of this chapter'' to read ''§§ 303.6, 303.31, 303.100 through 303.102, and 303.104 of this part''.

4. *Comment:* Several commenters suggested that § 303.7(c)(7)(iv) be revised to require the IV–D agency to forward payments to the initiating State within 2 business days of the date of receipt in the State Disbursement Unit of the responding State.

Response: We agree that this suggestion is consistent with section 454B of the Act, which requires SDUs to disburse certain amounts within 2 business days of receipt, but it is not required by statute and therefore not included in this rulemaking. The 2-day time frame applies only to collections from employers and collections of other periodic income. Collections that do not result from periodic income, such as tax refund offsets, lottery winning intercept, or levies of assets, are not required to be

distributed within 2 days, as there may be appeals of these types of collections. We will consider changes to time frames applicable to interstate cases in the next revision to § 303.7 under a Notice of Proposed Rulemaking.

Review and Adjustment of Child Support Orders—§ 303.8

1. *Comment:* There were two comments concerning definitions for ''review'' and ''adjustment'' that were in the former § 303.8. One commenter suggested that we retain the former definitions of ''review'' and ''adjustment'', but rename them as ''guidelines review'' and ''guidelines adjustment''. The commenter made this suggestion because most States will continue with guideline reviews.

The second commenter believed that the language for this section might be construed to mandate administrative reviews. The commenter suggested that we amend the regulation by including a process for challenging a proposed adjustment or determination, apart from the review that takes place in the judicial setting. The commenter believes that if their State complies with the new provisions, there would be no proposed order or adjustment. In the commenter's State, a litigant files a motion with the court, the court rules on the motion; and either party can appeal the order.

Response: We agree with these comments. We have reinstated the terms ''review'' and ''adjustment'' from the former § 303.8(a)(1) and (3) as applicable to guidelines reviews only.

Reinstating the definition of ''review'' also clarifies that reviews are not mandated to be conducted only by administrative process. The definition for ''review'' includes ''proceeding before a court, quasi-judicial process, or administrative body''.

2. *Comment:* One commenter was concerned that the 15-day timeframe to determine whether to conduct a review was eliminated.

Response: The 15-day timeframe to determine whether or not to conduct a review was removed because it conflicts with the requirement that States review, at least once every 3 years, any case upon receipt of a request for review.

3. *Comment:* We received a few comments about notices. Two commenters questioned whether the requirement to provide the notice of the right to request a review is met by placing such notice in the order. Another commenter asked, in a case with multiple orders, which State sends the notice of the right to request a review and the notice of the results of the review. A fourth commenter asked when to send these notices and how to implement this requirement since each case has a different date of application, different date of review, and States vary in frequency permitted between reviews.

Response: Section 466(a)(10)(C) of the Act requires the State to provide notice to each parent subject to the order not less than once every 3 years informing them of their right to request the State to review and, if appropriate, adjust the order pursuant to this paragraph. The paragraph also states that the notice may be included in the order. Including the notice in the order merely takes care of the first year requirement; the triennial requirement must still be fulfilled.

With respect to cases with multiple orders, the State that is working the case should send the notice of the right to request a review, or if it issues an order, may include the notice in the order. Notice of the right to request a review must be sent every 3 years thereafter if the State continues to work the case. Any State that conducts a review must send the notice of the results of the review. A review conducted in a case with multiple orders would include a determination of the controlling order and reconciliation of all arrearages under the orders in accordance with the Uniform Interstate Family Support Act (UIFSA). Once a controlling order determination is made, UIFSA governs who has jurisdiction to adjust or modify the controlling order.

Since section 466(a)(10)(C) was effective October 1, 1996, States should have notice procedures in place. Each State has authority to meet this requirement in a manner that is most efficient for its system and resources. Notices can be sent all at one time or on a staggered basis according to the State's own procedures.

4. *Comment:* There were two comments regarding the use of thresholds and change of circumstances. One commenter noted that an Office of Inspector General report indicated that 40 States maintained the requirement to meet thresholds showing a substantial change in circumstances before a review is conducted or an adjustment is made, which they use regardless of the frequency of reviews. The commenter asked whether thresholds for the 3-year reviews upon request could be less prohibitive than the thresholds for reviews that are conducted more frequently that require a substantial change of circumstances. Another commenter thought that even the 3-year reviews should require a substantial change in circumstances since it is required by the more frequent reviews.

Response: States may not require proof or a showing of a change in circumstances in a 3-year review upon request. Under section 466(a)(10)(A)(iii) of the Act, and upon request, 3-year reviews, and adjustment, if appropriate, are automatic, without any proof of a change of circumstances. If a party desires a review sooner than once every 3 years, the party must show a substantial change of circumstances for an adjustment of the order, consistent with section 466(a)(10)(B) of the Act.

In reviewing § 303.8 and the comments received, we determined that the changes made by the interim final rule were not fully reflective of the statutory requirements in section 466(a)(10) of the Act and that this was leading to confusion about what States must do to meet the requirements. Therefore, in addition to reinstating the definitions for ''review'' and ''adjustment'' from the original regulation in response to comments, we have decided to replace the paragraph (b) language published in the interim final rule with the language in the statute at section 466(a)(10) of the Act. We are revising paragraph (c) to clarify that States may use a quantitative standard only in cases involving the use of automated methods in accordance with section 466(a)(10)(A)(i)(III) of the Act. That section alone refers to orders being ''eligible for adjustment,'' recognizing there might be some standard set to determine eligibility for adjustment. The other two methods of review (guidelines and cost-of-living) do not contain this language. Sections 303.8(a) and (d) through (f) remain as published in the interim final rule. A summary of the changes to this section follows.

We are revising paragraph (b)(1) by restating the requirements of section 466(a)(10)(A)(I)(i) of the Act that the State must have procedures under which reviews are performed every 3 years upon request of either parent or, in the case of an assignment under part A, upon the request of the State agency, taking into account the best interests of the child. For clarity, and consistency with section 466(a)(10) of the Act, paragraph (b)(1)(i) is added to the regulation to explain guideline reviews; paragraph (b)(1)(ii) is added to explain cost of living adjustment (COLA) reviews; and paragraph (b)(1)(iii) is added to explain the automated reviews. These three subparagraphs repeat the statutory requirements of section 466(a)(10)(A)(i)(I)–(III).

Current paragraph (b)(2) of the regulation is redesignated as paragraph (b)(6) and revised to be consistent with the statute, as discussed below.

We are adding a new paragraph (b)(2) which restates section 466(a)(10)(A)(ii)

of the Act, to specify that either party may contest an adjustment within 30 days after the date of the notice of the adjustment in the case of a COLA or automated review by making a request for a guideline review, and adjustment, if appropriate.

We are reinstating former definitions for ''adjustment'' and ''review'' in a new paragraph (b)(3) for use in guideline reviews only, in response to comments.

We are restating section 466(a)(10)(A)(iii) of the Act in a new paragraph (b)(4), which specifies that adjustments under guideline reviews do not require proof or showing of a change in circumstances.

We are adding new paragraph (b)(5) to restate section 466(a)(10)(B) of the Act regarding making a request for a review outside the 3-year cycle. If the requesting party demonstrates a substantial change in circumstances, the State must adjust the order in accordance with its guidelines.

We are redesignating former paragraph (b)(2) as new paragraph (b)(6) and revising it to restate section 466(a)(10)(C) of the Act regarding notice not less than once every 3 years informing parents of their right to request a review. We have retained the provision in the current regulation that the notice must specify the place and manner in which the request should be made.

Paragraph (c) is amended by adding a paragraph title and the words ''using automated methods under paragraph (b)(1)(iii)'' to indicate that the reasonable quantitative standard for determining adequate grounds for petitioning for adjustment of the order applies only when the review is done using automated methods, as required under section 466(a)(10)(A)(i)(III) of the Act.

Paragraphs (d) through (f) are unchanged with the exception of the technical changes of adding a title to paragraph (d), changing the words ''to petition for'' to ''initiate an'' in paragraph (d) and substituting ''must'' for ''will'' in paragraph (f).

Agreements To Use the Federal Parent Locator Service (FPLS) in Parental Kidnapping and Child Custody Cases—§ 303.15

1. *Comment:* One commenter thought that paragraph (a)(1) which defines authorized persons should be revised consistent with changes made by the Adoption and Safe Families Act of 1997 (ASFA).

Response: ASFA amended section 453 of the Act by adding title IV–B and title IV–E agencies to the list of authorized persons to whom FPLS information may be disclosed for the purpose of establishing parentage. Section 302.35(c) already includes these authorized persons, in accordance with ASFA amendments to section 453 of the Act. ASFA did not amend the list of authorized persons in section 463 of the Act, which governs the regulations at § 303.15.

We amended this section, but failed to amend the title. We are revising the section title to reflect the addition of ''visitation'' determinations as an authorized purpose of the agreements. We are also making technical changes in paragraph (a)(1)(i) by replacing the period at the end with a semicolon and in paragraph (a)(1)(ii) by replacing ''visistation'' with ''visitation'' and by adding ''or'' after the semi-colon.

Minimum Organizational and Staffing Requirements—§ 303.20

1. *Comment:* One commenter noted that paragraph (e)(3) refers to parts 220, 222 and 226 of 45 CFR chapter II, which no longer exist.

Response: We agree with the commenter and have removed the reference to the obsolete regulations.

2. *Comment:* One commenter noted that paragraph (g) remains although it refers to part 305, which was removed.

Response: Requirements governing audits to determine substantial compliance with title IV–D requirements under section 452(a)(4) of the Act were placed back in part 305 by final regulations governing incentives and penalties published December 27, 2000 (*see* OCSE–AT–01–01). Therefore, the reference to part 305 is accurate.

Safeguarding Information—§ 303.21

1. *Comment:* Commenters expressed varied opinions regarding removing, retaining or revising this regulation. One commenter recommended that we retain this regulation as the following will be lost: (1) Paragraphs (a)(1) and (3) limit the sharing of information; (2) paragraph (a)(4) clarifies that information may be shared with officials charged with investigating physical, mental, or sexual abuse; and (3) paragraph (b) prohibits disclosure of case specific identifying information to legislative bodies. The new language of section 454(26) of the Act is not as precise and does not clarify what would be unauthorized. Moreover, the commenter noted that § 307.13 deals only with information in the States' computerized databases. The commenter believes it is important to retain privacy rights of IV–D participants.

Another commenter agreed that the regulation was inconsistent with PRWORA and should be deleted or substantially revised. The commenter encourages the Secretary to issue an updated regulation to replace this regulation as soon as possible. States' access to information has been vastly expanded under PRWORA and States need guidance on use of data and disclosure of information, including dealing with the family violence indicator.

A third commenter indicated that eliminating paragraph (b) while OCSE works on its new regulation might result in broader disclosure to legislative bodies during this time of intensive study of TANF and child support enforcement programs.

Response: We are maintaining our decision to delete this regulation because it was not responsive to the post-welfare reform environment. It protected information only on applicants and recipients of IV–D services. It did not protect information that IV–D agencies have on noncustodial parents and children, nor did it protect information that IV–D agencies now have on persons who may not be involved in a IV–D case, such as new hires, wage earners and individuals receiving unemployment compensation. Section 454(26) of the Act requires States to have safeguards in effect to protect all confidential information handled by the State agency. It further prohibits release of information under certain circumstances such as when there is a protective order in place. The regulation allowed broader disclosure of some information that is no longer permitted under the Act. Release of personal information to legislative bodies is not permitted under section 454(26) of the Act, which requires States to protect confidential information in their possession.

A work group of State and Federal members met in 2001 to discuss the types of issues that need to be addressed in publication of a proposed replacement regulation, which is now under development. We recognize the importance of protecting the privacy of data handled by IV–D agencies. Despite the deletion of § 303.21, certain safeguarding requirements remain in effect that cover States' automated systems. For example, final rules issued August 3, 1998 (63 FR 44795) on Statewide automated systems address safeguarding of information contained in the States' child support databases.

Securing and Enforcing Medical Support Obligations—§ 303.31

1. *Comment:* Several commenters asked whether the IV–D agency is required to enforce an order which requires the noncustodial parent to

provide health insurance in instances where the custodial parent already provides such coverage and does not want the noncustodial parent's coverage. One of the commenters suggested allowing a waiver of the requirement to enforce the noncustodial parent's coverage. The commenter suggested that the waiver could include petitioning the court or administrative authority to include the custodial parent's coverage in the order, and pursuing coverage from the noncustodial parent only if the custodial parent does not have coverage other than Medicaid.

Response: If a support order requires a noncustodial parent to provide health insurance coverage, the only way for a IV–D agency to avoid enforcing that order is a change to the order. There is no authority under sections 466(a)(19) or 452(f) of the Act to waive the requirement to enforce noncustodial parents' health insurance coverage. Section 452(f) requires the Secretary of HHS to issue regulations requiring IV–D agencies to include medical support as part of any child support order and to enforce medical support whenever health care coverage is available to the noncustodial parent at a reasonable cost. Section 466(a)(19) of the Act requires the use of the National Medical Support Notice (NMSN) to enforce an order that contains a requirement for health care coverage. Unless the order allows for alternative coverage, a IV–D agency must send the NMSN to the noncustodial parent's employer, if known, as required in section 466(a)(19) of the Act and § 303.32, published December 27, 2000 and effective March 27, 2001 (*see* OCSE–AT–01–02).

2. *Comment:* Two commenters indicated that regulations should assure that all orders include health insurance, consistent with section 452(f) of the Act. Another commenter recommended that we revise paragraphs (b)(1), (2), and (4) to delete any references to ''petition'', just as CSPIA deleted the reference to ''petition'' in section 452(f) of the Act.

Response: We agree that CSPIA required the Secretary, in section 452(f), to issue regulations requiring IV–D agencies to include medical support as part of any child support order. Separate regulations will be issued that offer the public an opportunity for comment.

Requests by the State Parent Locator Service (SPLS) for Information From the Federal Parent Locator Service (FPLS)—§ 303.70

1. *Comment:* One commenter suggested we revise paragraph (d)(1) by replacing ''to obtain information or to facilitate the discovery of any individual'' with ''to obtain information on, or to facilitate the discovery of, the location of any individual''. The commenter noted that paragraph (d)(1) does not track section 453(a)(3) of the Act which states that the FPLS may be used for the purpose of enforcing any *Federal* or State law with respect to the unlawful taking or restraint of a child. The commenter expressed concern if the change to paragraph (e)(1)(i), which governs fees for use of the FPLS, means that IV–D agencies will be charged fees for cases other than just non-IV–A, locate only, and parental kidnapping/child custody cases. The commenter indicated that IV–D agencies should not have to pay fees for use of the FPLS in IV–A cases. Finally, the commenter proposed that the paragraph (e)(1)(iii) cite should be to section 453(k)(3) of the Act, not to section 453(k) of the Act.

Response: We did not make the revision described in the first comment. While the regulation language is not exact, we believe it generally covers the requirement. We agree with the commenter's second comment and have added ''Federal or'' before ''State'' for consistency with the statute. Regarding the commenter's third concern about being charged additional fees for use of the FPLS, PRWORA changed the requirements on FPLS fees and now States must pay for all information received from the FPLS pursuant to section 453(k)(3) of the Act. (See DCL–00–73, dated June 28, 2000, which explains OCSE's charges to States for using the FPLS.) We agree with the commenter's final point and have revised paragraph (e)(1)(iii) by citing section 453(k)(3) of the Act.

Requests for Collection of Past-Due Support by Federal Tax Refund Offset—§ 303.72

1. *Comment:* One commenter noted three instances of ''Secretary of the Treasury'' that should be replaced by ''Secretary of the U. S. Treasury''.

Response: We agree with the comment and made this change throughout the section. In addition, we are making a technical change by revising ''an title IV–A'' to ''a title IV–A'' in paragraph (a)(3)(iv). Finally, paragraph (h)(3) is amended to delete the language ''fSecretary of the U.S. Treasuryt'' which was included in the paragraph in error.

Procedures for Income Withholding—§ 303.100

1. *Comment:* Several commenters noted that some references to ''wages'' have not been replaced by ''income''.

Response: We will make these changes in paragraphs (e)(1)(i) and (g).

2. *Comment:* One commenter noted that the preamble does not explain that paragraphs (h)(5)(i) through (iii), (6) and (7) have been deleted or why.

Response: The interim final rule explained that former paragraph (h) was redesignated as paragraph (f) and revised to provide updated standards for program operations for both the traditional two-state interstate income withholding remedy and UIFSA's new one-state direct income withholding remedy. Former paragraphs (h)(5)(i)–(iii) were deleted because PRWORA revised section 466(b)(4) of the Act to remove the requirements for an advance notice in cases of initiated income withholding. We did not intend to delete former paragraphs (h)(6) and (7), which govern due process and which State law governs in interstate withholding situations. Since these paragraphs were inadvertently omitted in the interim final rule, they are reinstated in this regulation and redesignated as paragraphs (f)(4) and (5).

3. *Comment:* One commenter noted that throughout this section the term ''wages'' is replaced with the term ''income'', but the term ''employer'' was not similarly expanded upon. The continued use of the term ''employer'' seems to limit the impact of the requirements provided in this section to income derived only from employers.

Response: Use of the term ''employer'' is consistent with its use in section 466(b) of the Act.

4. *Comment:* One commenter asked whether the 14-day implementation time frame has been eliminated in paragraph (e)(1)(ix). If it has been eliminated, can State laws provide a time frame for employers to implement income withholding?

Response: The 14-day time frame was tied to the advance notice to the noncustodial parent that was eliminated by PRWORA. Section 466(b)(6)(A)(i) of the Act and § 303.100(e)(1)(ix) state that employers must pay the withheld amount to the SDU within 7 business days after the date the amount would have been paid or credited to the employee.

5. *Comment:* One commenter noted that Basic Housing Allowances/separate rations are not taxable and should not be included in income withholding; only basic pay should be included.

Response: Our regulations at § 302.56 say that a State shall have procedures for setting guidelines and that the guidelines must take into consideration all earnings and income of the noncustodial parent. Basic housing allowances and rations are not excluded from the definition of income subject to

withholding under section 466(b)(8) of the Act.

6. *Comment:* Two commenters pointed out a conflict between § 303.100(e)(2) and (3) that require income withholding notices to employers to be issued within 15 calendar days while Federal law at section 454A(g)(1)(A)(i) of the Act requires notices to be sent to employers within 2 business days. This commenter asked whether there are actually 2 different requirements.

Response: Sections 453A(g)(1) of the Act requires the State to transmit an income withholding notice to an employer within 2 business days after the date information regarding a newly hired employee is entered into the State Directory of New Hires. Section 454A(g)(1)(A)(i) of the Act and implementing regulations at § 307.11(c)(1)(i) require the statewide automated system to transmit income withholding orders and notices to employers and other debtors within 2 business days after receipt of notice of income and the income source subject to withholding from a court, another State, an employer, the Federal Parent Locator Service, or another source recognized by the State. Under these provisions, the 2-day time frame for sending a withholding order or notice applies only to situations in which the State Directory of New Hires or the statewide automated system receives notice of the new hire or income source subject to withholding. We have revised paragraphs (e)(2) and (3) to include reference to the 2-day timeframe for sending the withholding notice as described above and retained the 15-day time frame in the current regulation for other situations where notification is not received by the State Directory of New Hires or the automated system.

7. *Comment:* One commenter noted that the reference to ''paragraph (f)(1) of this section'' in paragraph (e)(4) is in error. The correct reference should be to ''paragraph (e)(1)''.

Response: We agree with the commenter and in response to this technical error have made the correction to paragraph (e)(4) by replacing the citation ''paragraph (f)(1) of this section'' with ''paragraph (e)(1) of this section''.

Expedited Processes—§ 303.101

1. *Comment:* A commenter recommended that paragraph (b)(2) be revised to reference review and adjustment timeframes at § 303.8(e).

Response: As currently written, § 303.101 provides for expedited processes for establishing and enforcing support orders. The commenter suggests a modification to this section to add expedited review and adjustment of orders. We consider this to be a substantive change that is not appropriate for this technical rulemaking. We will consider this comment in any future revision to this section.

We are making a technical correction in paragraph (a) of this section by inserting a period after ''Definition''.

Collection of Overdue Support by State Income Tax Refund Offset—§ 303.102

1. *Comment:* One commenter noted in § 303.102(a)(1) the word ''or'' needs to be inserted following ''section 408(a)(3) of the Act''.

Response: We agree with this comment. In § 303.102(a)(1), we are making a technical correction by inserting the word ''or'' following ''section 408(a)(3) of the Act''. In addition, we are making an editorial change to the language of paragraph (g)(1) because, as it currently reads, subparagraph (ii) is a sentence fragment with no subject.

Procedures for the Imposition of Liens against Real and Personal Property—§ 303.103

1. *Comment:* One commenter suggested that Federal guidance regarding implementing lien requirements is necessary.

Response: To clarify the issue of direct imposition of liens across State lines, we issued OCSE–PIQ–99–06 on August 16, 1999. We believe further guidance in this area is more appropriate through development of technical assistance publications and examples of model practices used by States. Current information on State lien and levy laws may be found on the OCSE Web site at *''www.acf.dhhs.gov/programs/cse''.* Click on ''Online Interstate Roster and Referral Guide (IRG)'', then click on a particular State, and then click on ''View State FIDM Information'' for a matrix of lien information specific to each State.

Availability and Rate of Federal Financial Participation—§ 304.20

1. *Comment:* One commenter suggested that paragraph (b)(1)(iii)(C) be revised to include ''Indian Tribes or Tribal Organizations'' as added in § 302.34. Section 304.20(b)(1)(iii)(C) cross-references § 302.34.

Response: We agree with the commenter. We have revised § 304.20(b)(1)(iii)(C) to read: ''Cooperation with courts, law enforcement officials, and Indian Tribes or Tribal organizations pursuant to § 302.34 of this chapter.''

2. *Comment:* One commenter indicated that paragraphs (b)(1)(viii)(C) and (ix)(C) were removed because the IV–A agency no longer determines cooperation. The commenter suggests that these paragraphs be reinstated and revised, as there is still an exchange of information between IV–D and IV–A about cooperation determinations made by the IV–D agency. Section 304.20(b)(1)(ix) prior paragraph (D) was removed for the same reasons and it should also be reinstated and revised.

Response: In § 304.20, paragraphs (b)(1)(viii)(C) and (b)(1)(ix)(C) were removed because of the transfer of responsibility for determining cooperation from the IV–A agency and the Medicaid agency to the IV–D agency. Therefore, agreements are no longer necessary. Any activity associated with the IV–D agency's determination of cooperation under section 454(29) of the Act is an allowable cost under the IV–D program.

Determination of Federal Share of Collections—§ 304.26

1. *Comment:* One commenter indicated that regulations for the determination of the Federal share of collections are confusing. The commenter recommends deleting ''to the extent of its participation in the financing of the title IV–A and title IV–E payments'' in paragraph (a) and indicating that the Federal share be determined pursuant to section 457(c)(2) of the Act.

Response: We agree and revised paragraph (a) by deleting the confusing language and adding that, in computing the Federal share of support collections for assistance made under titles IV–A and IV–E, the State must use the Federal medical assistance percentage (FMAP) in effect for the fiscal year in which the amount is distributed, as defined in section 457(c)(3) of the Act.

2. *Comment:* One commenter notes that the 4th, 5th and 6th sentences of the preamble description are inaccurate and should be replaced with: ''Section 457(c)(3)(A) defines the FMAP rate to be 75 percent in the case of Puerto Rico, the Virgin Islands, Guam and American Samoa. Section 457(c)(3)(B) specifies that the FMAP rates as defined at section 1905(b) of the Act be used for any other State.'' The commenter also suggests that we revise paragraph (a) by removing ''to the extent of its participation in the financing of the title IV–A and title IV–E payment'' and add ''the Federal share of the support collections'' in its place and revise the next sentence to read: ''In computing the Federal share of support collections for assistance made under titles IV–A

and IV–E, the State shall use the Federal medical assistance percentage (FMAP) in effect for the fiscal year in which the amount is distributed as defined in sections 457(c)(3) and 1905(b) of the Act.''

Response: We agree with the commenter and have included these changes with minor editorial modifications. We are revising paragraph (a) of this section to be consistent with the revised language of sections 457(c)(2) and (3) of the Act that specifies the use of the Federal Medical Assistance Percentage (FMAP) formula in calculating the Federal share of child support collections. Section 457(c)(2) specifies that the Federal share of collections is the portion of the amount collected resulting from the application of the FMAP in effect for the fiscal year in which the amount is distributed. Section 457(c)(3)(A) defines the FMAP rate to be 75 percent for Puerto Rico, the Virgin Islands, Guam, and America Samoa. Section 457(c)(3)(B) specifies that the FMAP rates for any other State are as defined in section 1905(b) of the Act, as in effect on September 30, 1995.

Repayment of Federal Funds by Installments—§ 304.40

1. *Comment:* One commenter suggests that in the last sentence of paragraph (b)(3), we delete ''Quarterly Statement of Expenditures (SRA–OA–41) reports'' and replace it with ''Quarterly Report of Expenditures and Estimates''.

Response: We agree with the commenter and are updating the reference to the form since the name of the form has changed. We are amending paragraph (b)(3) of this section by removing ''Quarterly Statement of Expenditures (SRA–OA–41) reports'' and replacing it with ''Quarterly Report of Expenditures and Estimates''.

Definitions—307.1

In paragraph (c) we are replacing ''non-AFDC'' with ''non-IV–A'' to eliminate the obsolete reference to the old AFDC program.

Functional Requirements for Computerized Support Enforcement Systems in Operation by October 1, 1997—§ 307.10

We have made technical corrections in paragraphs (b)(10) and (b)(14)(ii) and (iii) to correct two typographical errors and change ''AFDC'' to ''IV–A''.

Paperwork Reduction Act

Information collection requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 (d)) were fulfilled for this final rule. All required State plan preprints were approved by OMB on March 5, 2003 under OMB No. 0970–0017. Also new forms were approved as OMB Nos. 0970–0085 on December 5, 2000 (Standard Interstate Forms), 0970–0152 on March 27, 2001 (Lien and Subpoena Forms), and 0970–0154 on March 7, 2001 (Income Withholding Form). Technical corrections were made to the Lien Form, which was reissued in May 2002, but no new information collection was required by the change. An additional information collection burden consisted of updating the State plan by removing the State plan preprint page for Section 3.12, Payment of Support through the IV–D agency or Other Entity. This was required because 45 CFR 302.57, Procedures for payment of support through the IV–D agency or other entity, was removed by the interim final rule. OMB approved this information collection burden on September 13, 1999 under OMB No. 0970–0017. Otherwise, this rule does not require information collection activities, and, therefore, no additional approvals are necessary under the Paperwork Reduction Act.

Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this rule will not result in a significant impact on a substantial number of small entities. The primary impact is on State governments and individuals and results from restating the provisions of the statute. State governments are not considered small entities under the Act.

Regulatory Impact Analysis

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. No costs are associated with this rule as it merely ensures consistency between the statute and regulations.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any 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.

If a covered agency must prepare a budgetary impact statement, section 205 further requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with the statutory requirements. In addition, section 203 requires a plan for informing and advising any small governments that may be significantly or uniquely impacted by the final rule.

We have determined that the final rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year. Accordingly, we have not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely impacted small governments.

Congressional Review

This final rule is not a major rule as defined in 5 U.S.C. chapter 8.

Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a proposed policy or regulations may affect family well being. If the agency's determination is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. These regulations will not have an impact on family well being as defined in the legislation. This regulation merely aligns existing Federal regulations with Federal legislation and, like the Federal legislation, will positively impact families needing support.

Executive Order 13132

Executive Order 13132 on Federalism applies to policies that have Federalism implications, defined as ''regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, or on the distributions of power and responsibilities among the various levels of government''. This rule does not have Federalism implications for State or local governments as defined in the Executive Order.

List of Subjects

45 CFR Part 301

Child support, Grant programs/social programs.

45 CFR Part 302

Child support, Grant programs/social programs, Reporting and record keeping requirements.

45 CFR Parts 303 and 304

Child support, Grant programs/social programs, Reporting and record keeping requirements.

45 CFR Part 307

Child support, Computer technology, Grant programs/social programs, Reporting and record keeping requirements.

(Catalog of Federal Domestic Assistance Programs No. 93.563, Child Support Enforcement Program)

Dated: October 28, 2002.

Wade F. Horn,

Assistant Secretary for Children and Families.

Approved: January 30, 2003.

Tommy G. Thompson,

Secretary.

■ For the reasons discussed above, we are adopting the interim final rule published at 64 FR 6237, February 9, 1999, amending 45 CFR parts 301, 302, 303, 304, and 307 as a final rule with the following changes:

PART 301—STATE PLAN APPROVAL AND GRANT PROCEDURES

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

Authority: 42 U.S.C. 651 through 658, 660, 664, 666, 667, 1301, and 1302.

§ 301.1 [Amended]

■ 2. § 301.1 is amended as follows:

(a) In the definition ''Non-title IV–A Medicaid recipient'', the words ''Non-title IV–A'' in the heading are revised to read ''Non-IV–A'';

(b) The definition for ''Overdue support'' is amended by removing ''absent parent's'' and adding ''noncustodial parent's'' in its place; and

(c) The definition for ''State PLS'' is amended by removing ''absent'' before ''parents''.

PART 302—STATE PLAN REQUIREMENTS

■ 3. The authority citation for part 302 is revised to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), 1396(k).

§ 302.31 [Amended]

■ 4. In § 302.31, reserved paragraph (a)(3) is removed and paragraph (a)(4) is redesignated as paragraph (a)(3).

§ 302.32 [Amended]

■ 5. In § 302.32:

■ a. Paragraph (b)(1) is amended by revising ''initial point'' to read ''date'';

■ b. Paragraph (b)(2)(ii) is amended by revising ''initial receipt in the State'' to read ''receipt by the SDU'';

■ c. Paragraph (b)(2)(iii) is amended by revising ''initially received in the State'' to read ''received by the SDU''; and

■ d. Paragraph (b)(3)(i) is amended by revising ''initial receipt in the State'' to read ''receipt by the SDU''.

§ 302.35 [Amended]

■ 6. In § 302.35:

■ a. Paragraph (c)(2) is amended by revising ''an noncustodial parent'' to read ''a noncustodial parent and by revising ''agency'' to read ''agent''; and

■ b. Paragraph (c)(4) is amended by removing '', visitation'' and adding ''or visitation'' after ''custody''.

§ 302.50 Assignment of rights to support.

■ 7. In § 302.50:

■ a. The heading is revised;

■ b. Paragraph (b)(2) is amended by removing ''; or'' at the end of the paragraph and adding a ''.''.

§ 302.51 [Amended]

■ 8. In § 302.51, paragraph (a)(3) is amended by revising ''section 457(a)(2)(iv) of the Act'' to read ''section 457(a)(2)(B)(iv) of the Act''.

§ 302.54 [Amended]

■ 9. In § 302.54:

■ a. In paragraph (a)(1), the citation ''paragraph (c)'' is removed and ''paragraph (b)'' is added in its place;

■ b. In paragraph (b)(1)(ii), ''paragraph (b)(2)'' is removed and ''paragraph (a)'' is added in its place; and

■ c. In paragraph (b)(2), ''(b)(1)'' is removed and ''(a)(1)'' is added in its place and ''(b)(2)'' is removed and ''(a)(2)'' is added in its place.

§ 302.65 [Amended]

■ 10. In § 302.65, paragraph (c)(7) is amended by removing ''critieria'' and adding ''criteria'' in its place.

§ 302.70 [Amended]

■ 11. In § 302.70:

■ a. Paragraph (a)(4) is amended by removing ''§ 303.103 of this chapter'';

■ b. Paragraph (a)(5)(ii) is amended by removing ''under §§ 232.40 through 232.49 of this title'' or 42 CFR 433.147'' and adding ''under section 454(29) of the Act'';

■ c. Paragraph (a)(6) is amended by removing ''an noncustodial parent'' and adding ''a noncustodial parent'';

■ d. Paragraph (a)(7) is amended by removing ''an noncustodial parent'' and adding ''a noncustodial parent'' in its place, and by removing '', in accordance with § 303.105 of this chapter'';

■ e. Paragraph (a)(8) is amended by removing ''wages'' and adding ''income'' in its place;

■ f. Paragraph (c) is amended by removing ''§§ 303.100 through 303.105 of this chapter'' and adding ''§§ 303.100 through 303.102 and § 303.104 of this chapter'' in its place.

§ 302.75 [Amended]

■ 12. In § 302.75, paragraph (b)(6) is amended by removing ''§ 305.50'' and adding ''§ 304.50'' in its place.

PART 303—STANDARDS FOR PROGRAM OPERATIONS

■ 13. The authority citation for part 303 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

§ 303.7 [Amended]

■ 14. In § 303.7:

■ a. Paragraph (b)(1) is revised to read as follows:

* * * * *

(b) * * *

■ (1) Use its long arm statute to establish paternity, when appropriate.;

* * * * *

■ b. Paragraph (b)(2) is amended by revising ''wage'' to read ''income'';

■ c. Paragraph (c)(7)(ii) is amended by removing ''§§ 303.4 and 303.101 of this part and § 303.31 of this chapter'' and adding ''§§ 303.4, 303.31 and 303.101 of this part'' in its place;

■ d. Paragraph (c)(7)(iii) is amended by removing ''§§ 303.6 and 303.100 through 303.102 and 303.104 of this part and § 303.31 of this chapter'' and adding ''§§ 303.6, 303.31, 303.100 through 303.102, and 303.104 of this part'' in its place;

■ 15. Section 303.8 is revised to read as follows:

§ 303.8 Review and adjustment of child support orders.

(a) Definition. For purposes of this section, *Parent* includes any custodial parent or noncustodial parent (or for purposes of requesting a review, any other person or entity who may have standing to request an adjustment to the child support order).

(b) Required procedures. Pursuant to section 466(a)(10) of the Act, when providing services under this chapter:

(1) The State must have procedures under which, every 3 years (or such shorter cycle as the State may determine), upon the request of either parent, or, if there is an assignment under part A, upon the request of the State agency under the State plan or of either parent, the State shall with respect to a support order being enforced under this part, taking into account the best interests of the child involved:

(i) Review and, if appropriate, adjust the order in accordance with the guidelines established pursuant to section 467(a) of the Act if the amount of the child support award under the order differs from the amount that would be awarded in accordance with the guidelines;

(ii) Apply a cost-of-living adjustment to the order in accordance with a formula developed by the State; or

(iii) Use automated methods (including automated comparisons with wage or State income tax data) to identify orders eligible for review, conduct the review, identify orders eligible for adjustment, and apply the appropriate adjustment to the orders eligible for adjustment under any threshold that may be established by the State.

(2) If the State elects to conduct the review under paragraph (b)(1)(ii) or (iii) of this section, the State must have procedures which permit either party to contest the adjustment, within 30 days after the date of the notice of the adjustment, by making a request for review and, if appropriate, adjustment of the order in accordance with the child support guidelines established pursuant to section 467(a) of the Act.

(3) If the State conducts a guideline review under paragraph (b)(1)(i) of this section:

(i) *Review* means an objective evaluation, conducted through a proceeding before a court, quasi-judicial process, or administrative body or agency, of information necessary for application of the State's guidelines for support to determine:

(A) The appropriate support award amount; and

(B) The need to provide for the child's health care needs in the order through health insurance coverage or other means.

(ii) *Adjustment* applies only to the child support provisions of the order, and means:

(A) An upward or downward change in the amount of child support based upon an application of State guidelines for setting and adjusting child support awards; and/or

(B) Provision for the child's health care needs, through health insurance coverage or other means.

(4) The State must have procedures which provide that any adjustment under paragraph (b)(1)(i) of this section shall be made without a requirement for proof or showing of a change in circumstances.

(5) The State must have procedures under which, in the case of a request for a review, and if appropriate, an adjustment outside the 3-year cycle (or such shorter cycle as the State may determine) under paragraph (b)(1) of this section, the State shall review and, if the requesting party demonstrates a substantial change in circumstances, adjust the order in accordance with the guidelines established pursuant to section 467(a) of the Act.

(6) The State must provide notice not less than once every 3 years to the parents subject to the order informing the parents of their right to request the State to review and, if appropriate, adjust the order consistent with this section. The notice must specify the place and manner in which the request should be made. The initial notice may be included in the order.

(c) Standard for adequate grounds. The State may establish a reasonable quantitative standard based upon either a fixed dollar amount or percentage, or both, as a basis for determining whether an inconsistency between the existent child support award amount and the amount of support determined as a result of a review using automated methods under paragraph (b)(1)(iii) of this section is adequate grounds for petitioning for adjustment of the order.

(d) Health care needs must be adequate basis. The need to provide for the child's health care needs in the order, through health insurance or other means, must be an adequate basis under State law to initiate an adjustment of an order, regardless of whether an adjustment in the amount of child support is necessary. In no event shall the eligibility for or receipt of Medicaid be considered to meet the need to provide for the child's health care needs in the order.

(e) Timeframes for review and adjustment. Within 180 calendar days of receiving a request for a review or locating the non-requesting parent, whichever occurs later, a State must: Conduct a review of the order and adjust the order or determine that the order should not be adjusted, in accordance with this section.

(f) Interstate review and adjustment. (1) In interstate cases, the State with legal authority to adjust the order must conduct the review and adjust the order pursuant to this section.

(2) The applicable laws and procedures for review and adjustment of child support orders, including the State guidelines for setting child support awards, established in accordance with § 302.56 of this chapter, are those of the State in which the review and adjustment, or determination that there be no adjustment, takes place.

§ 303.15 [Amended]

■ 16. In § 303.15:

■ a. The section heading is amended by adding ''or visitation'' after ''custody''.

■ b. Paragraph (a)(1)(i) is amended by removing the period at the end and adding a semicolon.

■ c. Paragraph (a)(1)(ii) is amended by removing ''visistation'' and adding ''visitation'', and by adding ''or'' after '';''.

§ 303.20 [Amended]

■ 17. In § 303.20:

■ a. Paragraphs (c)(3), (4) and (5) are amended by removing ''an noncustodial parent'' and adding ''a noncustodial parent'' in its place; and

■ b. Paragraph (e)(3) is amended by removing ''pursuant to parts 220, 222 and 226 of this title or carried out''.

§ 303.31 [Amended]

■ 18. In § 303.31, paragraph (a)(2) is amended by removing ''an noncustodial parent'' and adding ''a noncustodial parent'' in its place.

§ 303.70 [Amended]

■ 19. In § 303.70:

■ a. Paragraph (d)(1) is amended by adding ''Federal or'' after ''in accordance with section 453(a)(3) of the Act for enforcing a''; and

■ b. Paragraph (e)(1)(iii) is amended by removing ''453(k)'' and adding ''453(k)(3)'' in its place.

§ 303.72 [Amended]

■ 20. In § 303.72:

■ a. Paragraph (a)(3)(iv) is amended by removing ''an title IV–A'' and adding ''a title IV–A'' in its place;

■ b. Paragraphs (a)(6), (c)(2), (c)(4), (h)(5) and (h)(6)(i) are amended by removing ''Secretary of the Treasury'' and adding ''Secretary of the U.S. Treasury'' in its place;

■ c. Paragraph (e)(1) and (f)(1) are amended by revising ''an noncustodial parent'' to read ''a noncustodial parent''; and

■ d. Paragraph (h)(3) is amended by removing ''fSecretary of the U.S. Treasuryt''.

§ 303.73 [Amended]

■ 21. In § 303.73, ''an noncustodial parent'' is revised to read ''a noncustodial parent'' and ''IV7–D'' is revised to read ''IV–D''.

■ 22. In § 303.100:

■ a. Paragraphs (b)(1) and (e)(1)(v) are amended by revising ''an noncustodial parent'' to read ''a noncustodial parent'';

■ b. Paragraph (b)(1)(i) is amended by revising ''absent'' to read ''noncustodial'' each time it appears;

■ c. Paragraphs (e)(1)(i) and (g) are amended by removing ''wages'' and adding ''income'' in its place;

■ d. Paragraph (e)(2) is amended by removing ''wage'';
■ e. Paragraphs (e)(2) and (e)(3) are amended by removing each occurrence of ''15 calendar days'' and adding ''2 business days of the date the State's computerized support enforcement system receives notice of income and income source from a court, another State, an employer, the Federal Parent Locator Service, or another source recognized by the State, or the date information regarding a newly hired employee is entered into the State Directory of New Hires, or if information is not received by the State's computerized support enforcement system or its State Directory of New Hires, within 15 calendar days'' in its place;
■ f. Paragraph (e)(4) is amended by removing ''paragraph (f)(1) of this section'' and adding ''paragraph (e)(1) of this section'' in its place; and
■ g. Adding new paragraphs (f)(4) and (5) to read as follows:

§ 303.100 Procedures for income withholding.

* * * * *

(f) * * *

(4) The withholding must be carried out in full compliance with all procedural due process requirements of the State in which the noncustodial parent is employed.

(5) Except with respect to when withholding must be implemented which is controlled by the State where the support order was entered, the law and procedures of the State in which the noncustodial parent is employed shall apply.

* * * * *

§ 303.101 [Amended]

■ 23. Section 303.101(a) is amended by adding a period after ''Definition''.

§ 303.102 [Amended]

■ 24. In § 303.102:
■ a. Paragraph (a)(1) is amended by adding ''or'' following ''section 408(a)(3) of the Act'';
■ b. Paragraph (c)(1) is amended by revising ''an noncustodial parent'' to read ''a noncustodial parent''; and
■ c. Paragraphs (g)(1), introductory text, and (g)(1)(i) are revised to read as follows:

§ 303.102 Collection of overdue support by State income tax refund offset.

* * * * *

(g) Distribution of collections. (1) The State must distribute collections received as a result of State income tax refund offset:

(i) In accordance with section 457 of the Act and §§ 302.51 and 302.52 of this chapter; and

* * * * *

PART 304—FEDERAL FINANCIAL PARTICIPATION

■ 25. The authority citation for part 304 continues to read as follows:

Authority: 42 U.S.C. 651 through 655, 657, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

§ 304.20 [Amended]

■ 26. In § 304.20:
■ a. Paragraph (b)(1)(iii)(C) is amended by adding '', and Indian Tribes or Tribal organizations'' after ''officials''; and
■ b. Paragraph (b)(5)(iv) is amended by revising ''an noncustodial parent'' to read ''a noncustodial parent''.

■ 27. Section 304.26(a) is revised to read as follows:

§ 304.26 Determination of Federal share of collections.

(a) From the amounts of support collected by the State and retained as reimbursement for title IV–A payments and foster care maintenance payments under title IV–E, the State shall reimburse the Federal government the Federal share of the support collections. In computing the Federal share of support collections for assistance payments made under titles IV–A and IV–E, the State shall use the Federal medical assistance percentage in effect for the fiscal year in which the amount is distributed. The Federal medical assistance percentage is:

(1) 75 percent for Puerto Rico, the Virgin Islands, Guam, and American Samoa; and

(2) As defined in section 1905(b) of the Act as in effect on September 30, 1995, for any other State.

* * * * *

§ 304.40 [Amended]

■ 28. In § 304.40, paragraph (b)(3) is amended by removing the phrase, ''Quarterly Statement of Expenditures (SRA–OA–41) reports'' from the last sentence and adding ''Quarterly Report of Expenditures and Estimates'' in its place.

PART 307—COMPUTERIZED SUPPORT ENFORCEMENT SYSTEMS

■ 29. The authority citation for part 307 continues to read as follows:

Authority: 42 U.S.C. 652 through 658, 664, 666 through 669A, and 1302.

§ 307.1 [Amended]

■ 30. Section 307.1 is amended in paragraph (c) by revising ''non-AFDC'' to read ''non-IV–A''.

§ 307.10 [Amended]

■ 31. In § 307.10:
■ a. In paragraph (b)(10), ''AFDC'' is revised to read ''IV–A'';
■ b. In paragraph (b)(14)(ii), ''ant'' is revised to read ''and''; and
■ c. In paragraph (b)(14)(iii), ''VI–D'' is revised to read ''IV–D''.

[FR Doc. 03–11223 Filed 5–9–03; 8:45 am]
BILLING CODE 4184–01–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 021223329–3112–02; I.D. 121302A]

RIN 0648–AQ26

Fisheries of the Northeastern United States; 2003 Specifications for the Atlantic Bluefish Fishery

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

ACTION: Final rule.

SUMMARY: NMFS issues 2003 specifications for the Atlantic bluefish fishery, including total allowable harvest levels (TAL), state-by-state commercial quotas, and a recreational harvest limit and possession limit for Atlantic bluefish off the east coast of the United States. The intent of the specifications is to conserve and manage the bluefish resource and provide for sustainable fisheries.

DATES: Effective June 11, 2003, through December 31, 2003.

ADDRESSES: Copies of supporting documents, including the Environmental Assessment (EA) and Regulatory Impact Review (RIR), Final Regulatory Flexibility Analysis (FRFA), and Essential Fish Habitat Assessment (EFHA) are available from: Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298. The EA/RIR/FRFA/EFHA are accessible via the Internet at *http://www.nero.nmfs.gov*.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 978–281–9273, fax 978–281–9135, e-mail paul.h.jones@noaa.gov.

SUPPLEMENTARY INFORMATION: Regulations implementing the FMP prepared by the Mid-Atlantic Fishery Management Council (Council) appear at 50 CFR part 648, subparts A and J. Regulations requiring annual specifications are found at § 648.160. The FMP requires that the Council recommend, on an annual basis, TAL,

which is comprised of a commercial quota and recreational harvest limit. Proposed 2003 initial bluefish specifications were published on January 6, 2003 (68 FR 533), with a comment period ending January 21, 2003. The final specifications are unchanged from those that were proposed.

Final Specifications

2003 TAL

For the 2003 fishery, the stock rebuilding program in the FMP would restrict the fishing mortality rate (F) to 0.41. However, the 2001 fishery (the most recent fishing year for which F can be calculated) produced an F of only 0.246. In accordance with the FMP, the TAL proposed for 2003 is set to achieve F=0.246. The resulting TAC is 39.5 million lb (17.9 million kg). The TAL is calculated by deducting discards, estimated at 2.2 million lb (0.99 million kg) for 2003, from the TAC. Therefore, the TAL for 2003 is 37.293 million lb (16.916 million kg).

2003 Commercial Quotas and Recreational Harvest Limits

If the TAL for the 2003 fishery were allocated based on the percentages specified in the FMP, the commercial quota would be 6.339 million lb (2.875 million kg), with a recreational harvest limit of 30.953 million lb (10.500 million kg). However, recreational landings from the last several years were much lower than the recreational allocation for 2003, ranging between 8.30 and 15.5 million lb (3.74 and 7.05 million kg). Based upon the last several years of landings, it is estimated that the recreational fishery will not land its 30.953 million-lb (12.153 million-kg) harvest limit in 2003 and, therefore, this allows a commercial quota of up to 10.5 million lb (4.76 million kg) to be specified. This action transfers 4.161 million lb (1.887 million kg) from the 2003 recreational allocation of 30.953 million lb (12.153 million kg), resulting in 26.793 million lb (12.153 million kg) for the 2003 recommended recreational harvest limit, and a proposed commercial quota of 10.5 million lb (4.744 million kg). The 2003 commercial quota would be the same amount as was allocated in 2002 and implemented by NMFS and the states under the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for Atlantic Bluefish. Also implemented is a recreational possession limit of 15 fish per person (same as in 2002) and a 141,900–lb (64,365–kg) research set-aside (RSA).

The 2003 state commercial quotas are listed in the table below, based on the percentages specified in the FMP less the RSA allocation.

State	Percent of Quota	2003 Commercial Quota (lb)	2003 Commercial Quota(kg)
ME	0.6685	69,925	31,718
NH	0.4145	43,357	19,667
MA	6.7167	702,570	318,684
RI	6.8081	712,131	323,021
CT	1.2663	132,456	60,082
NY	10.3851	1,086,286	492,736
NJ	14.8162	1,549,782	702,977
DE	1.8782	196,461	89,114
MD	3.0018	313,990	142,425
VA	11.8795	1,242,601	563,640
NC	32.0608	3,353,575	1,521,172
SC	0.0352	3,682	1,670
GA	0.0095	994	451
FL	10.0597	1,052,249	477,297
Total	100.0000	10,460,058	4,744,652

Comments and Responses

One comment was received from a U.S. Congressman from New Jersey on the proposed specifications.

Comment: The commenter opposes the transfer of allocation from the recreational sector to the commercial sector because he believes it is unfair to anglers who endure strict regulations. He believes it fails to reward recreational fishers who do not fully attain their allocation and negates the conservation benefits created by their underharvest of bluefish.

Response: The poundage transfer provision was included in Amendment 1 to the FMP (Amendment 1) to ensure that commercial landings would not be reduced unnecessarily if the recreational fishery is not expected to attain its harvest limit. The FMP stipulates that such a transfer may be made if the recreational fishery is not projected to land its harvest limit for the upcoming year. Recreational landings from the last several years were much lower than the recreational allocation for 2003, ranging between 8.30 and 15.5 million lb (3.74 and 7.05 million kg). Since the recreational fishery is not projected to land its harvest limit in 2003, this allows the specification of a commercial quota of up to 10.5 million lb (4.76 million kg). The TAL for 2003 is 37.293 million lb (16.916 million kg). This is consistent with an F of 0.246 which is actually less than the maximum level of F of 0.410, specified in the FMP as the rebuilding target for 2003. A commercial harvest of 10.5 million lb (4.76 million kg) does not result in overfishing based on the overfishing definition in the FMP. Overfishing occurs when F is greater than F_{msy} = 0.4 (the F that produces maximum sustainable yield). Since the stock condition is improving, and the overall TAL maintains a very low F, there is no reason to reduce allowed landings by the commercial sector. The transfer is not constraining to recreational fishermen, since the remaining recreational harvest limit is more than double the average recreational landings over the last several years.

Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared a FRFA for this action. The FRFA includes a summary of the analyses in support of these specifications. A copy of the FRFA is available from NMFS (see **ADDRESSES**). A summary of the FRFA, which includes the initial regulatory flexibility analysis (IRFA) and applicable sections of the 2003 specifications package, follows:

The reasons why this action is being taken by the agency, and the objectives of this final rule are explained in the preamble to the proposed rule and are not repeated here. This action does not

contain any reporting, recordkeeping, or other compliance requirements. This action is taken under authority of the Magnuson-Stevens Act and regulations at 50 CFR part 648.

One comment was submitted on the proposed rule, but it was not specific to the IRFA. NMFS has responded to the comment in the Comments and Responses section of the preamble to this final rule. No changes were made to the proposed rule as a result of the comment received.

Commercial landings for bluefish are reported from Maine through North Carolina through NMFS Northeast dealer reports, and from South Carolina through Florida through a state trip ticket commercial landings reporting program. An active participant in the commercial sector was defined as being any vessel that reported having landed one or more pounds of bluefish during calendar year 2001. All vessels are considered to be small entities. Of the active vessels in 2001, 846 landed bluefish from Maine to North Carolina. The dealer data do not cover vessel activity in the South Atlantic. State trip ticket report data indicate that 1,092 vessels landed bluefish in North Carolina. Bluefish landings in South Carolina and Georgia represented less than 1/10 of 1 percent of total landings. Therefore, the analysis assumed that no vessels from those states would be affected by this proposed action. In addition, 214 vessels landed bluefish to dealers on Florida's east coast in 2001. In recent years, approximately 2,063 party/charter vessels caught bluefish.

The Council analyzed three TAL alternatives. The preferred alternative examined the impacts on the industry that would result from a TAL of 37.293 million lb (16.916 million kg), allocated to the commercial sector (10.460 million lb (4.74 million kg)) and recreational sector (26.691 million lb (12.107 million kg)), with an RSA of 141,900 million lb (64,356 kg). Alternative 2 considered a TAL of 37.293 million lb (16.916 million kg), allocated to the commercial sector (6.315 million lb (2.864 million kg) and recreational sector (30.835 million lb (13.986 million kg)), with an RSA of 141,900 lb (64,365 kg). Alternative 3 provides for a lower commercial quota and higher recreational quota than Alternative 1. Starting from the same TAL of 37.293 million lb (16.916 million kg), the commercial quota in this alternative is 9.546 million lb (4.329 million kg), and the recreational quota is 27.604 million lb (12.521 million kg), with an RSA of 141,900 lb (64,365 kg).

On a coastwide basis, the preferred alternative would allow for less than a 1–percent decrease in total allowable commercial landings for bluefish in 2003 versus the 2002 commercial quota, due to the amount specified for the RSA. The 2003 recreational harvest limit would be 63 percent higher than the estimated recreational landings in 2002. According to dealer data, 650 federally permitted commercial vessels would be expected to incur revenue losses of less than 5 percent and 193 commercial vessels would incur revenue gains of 24 percent. The revenue increase expected in 2003 are primarily due to the fact that the New York quota was adjusted downward in 2002 due to overages in 2001. Thus, New York shows a positive proportional change in quota from 2002 to 2003 (see section 5.1.3 of the RIR/FRFA). In addition, economic analysis of South Atlantic Trip Ticket Report data indicated that changes in quota levels from 2002 to 2003 are expected to result in small reductions in revenue for fishermen that land bluefish in North Carolina (1.44 percent) and minimal reductions for fishermen that land bluefish in Florida (0.07 percent).

Alternative 2 would result in a 40–percent decrease in the total allowable commercial landings for bluefish in 2003 versus 2002. The 2003 recreational harvest limit would be 88 percent higher than the estimated recreational landings in 2002. Under this scenario, according to Northeast dealer data, a total of 103 commercial vessels would incur revenue losses of 5 to 39 percent, and 740 commercial vessels would incur revenue losses of less than 5 percent of their total ex-vessel revenue. Also, evaluation of South Atlantic Trip Ticket Reports indicate an average of 6.1 and 0.03–percent reductions in revenue for fishermen that land bluefish in North Carolina and Florida, respectively.

Alternative 3 would result in a 9–percent decrease in the total allowable commercial landings for bluefish in 2003 versus 2002. The 2003 recreational harvest limit would be 69 percent higher than the estimated recreational landings in 2002. Under this scenario, based on Northeast dealer data, a total of 28 commercial vessels would incur revenue losses from 5 to 10 percent, 626 commercial vessels would incur revenue losses of less than 5 percent and 189 commercial vessels would incur an increase in revenue of 14 percent. The revenue increase for these 189 vessels expected in 2003 is primarily due to the fact that the New York quota was adjusted downward in 2002 due to overages in 2001. Thus, New York shows a positive proportional change in quota from 2002 to 2003 (see section 5.3.3 of the RIR/FRFA). Also, evaluation of South Atlantic Trip Ticket Reports indicate reduction in revenues of 1.44 and 0.07–percent for fishermen that land bluefish in North Carolina and Florida, respectively.

The Council further analyzed the impacts on revenues of the proposed RSA amount for all three alternatives. The social and economic impacts of this proposed RSA are minimal. Assuming the full RSA is allocated for bluefish, the set-aside amount could be worth as much as $45,480 dockside, based on a 2001 price of $0.32 per pound. Assuming an equal reduction among all 834 active dealer reported vessels, this could mean a reduction of about $55 per individual vessel. Changes in the recreational harvest limit would be insignificant (less than 1 percent decrease), if 2 percent of the TAL is used for research. It is unlikely that there would be negative impacts. A copy of this analysis is available from the Regional Administrator (see **ADDRESSES**) and is also available at the following web site: *http://www.nero.noaa.gov*.

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

Dated: May 6, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 03–11739 Filed 5–9–03; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 91
Monday, May 12, 2003

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 130

[Docket No. 02–041–1]

Veterinary Services User Fees; Fee for Use of Animal Ramp at Miami International Airport

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to establish a user fee for a Government-owned ramp at Miami International Airport used to move animals off of and onto airplanes. Under the present user fee schedule we can recover the cost of labor in supervising and assisting importers and exporters in the ramp's use, but we currently must absorb all other costs associated with the ramp. The proposed new user fee would ensure that we recover costs incurred by the ramp's purchase and use and would shift the cost of the ramp to those who receive benefits from its use.

DATES: We will consider all comments that we receive on or before July 11, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–041–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–041–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 02–041–1'' on the subject line.

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

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

FOR FURTHER INFORMATION CONTACT: For information concerning program operations for Veterinary Services, contact Ms. Inez Hockaday, Director, Management Support Staff, VS, APHIS, 4700 River Road Unit 44, Riverdale, MD 20737–1231, (301) 734–7517. For information concerning rate development of the proposed user fee, contact Ms. Kris Caraher, Accountant, User Fees Section, Financial Management Division, APHIS, 4700 River Road Unit 54, Riverdale, MD 20737–1232, (301) 734–8351.

SUPPLEMENTARY INFORMATION:

Background

User fees to reimburse the Animal and Plant Health Inspection Service (APHIS) for the costs of providing veterinary diagnostic services and import- and export-related services for live animals and birds and animal products are contained in 9 CFR part 130 (referred to below as the regulations). APHIS receives no directly appropriated funds to provide these services; our ability to provide them depends on user fees.

APHIS has purchased a ramp that is used to move animals on and off airplanes at APHIS's Animal Import/Export and Plant Inspection Station at Miami International Airport. The ramp is used to move approximately 5,000 to 6,000 animals per year. Last year, approximately 117 users (brokers or livestock owners) required the aid of the ramp to either load or unload their animals. The animals moved using this ramp were cattle (75 percent), sheep (10 percent), goats (10 percent), and horses and other animals (5 percent).

Both the purchase and maintenance of this ramp are costly; however, because there is no specific user fee for the ramp's use under the current regulations, APHIS can only recover some of the labor costs incurred by its use through its current hourly rate user fee. We are, therefore, proposing to amend the regulations to establish a user fee of $151 per use to importers and exporters who use the animal ramp, so that APHIS may recover its costs. This would ensure that the importers and exporters who use the ramp pay for the benefits they receive.

Calculation of the User Fee

Costs excluded from this calculation. We began our calculation of the appropriate user fee for the APHIS animal ramp at Miami International Airport by identifying the services APHIS provides while the ramp is being used for which we already charge user fees. Under § 130.30, ''Hourly rate and minimum user fees,'' APHIS currently charges for services such as sweeping the ramp, fully cleaning and disinfecting the ramp, supervising the use of the ramp, driving the ramp to and from the service site, and assisting with the use of the ramp. We omitted fees for these services in the calculation of the proposed ramp fee. We are proposing to charge the proposed ramp fee in addition to the fees for the labor associated with the ramp's use that we currently charge. Such labor fees would be charged to the ramp user at the existing applicable hourly rate user fee, or premium hourly rate user fee if the service is provided outside the normal tour of duty of the employee(s), for these services.

Equipment costs. The ramp assembly consists of the ramp itself, a truck on which the ramp is moved, and piston equipment. This assembly costs $45,100 and has an expected useful life of 5 years before it will need to be replaced. The cost of purchasing the ramp was therefore spread over 5 years to arrive at an annual figure for the cost of its purchase. This figure is $9,020.

Labor costs not covered under § 130.30. We estimated that a mechanic at the GS 9, step 5, salary level would spend 7 percent of his or her time maintaining the ramp. The benefit (*e.g.*, health insurance, etc.) costs included in the total cost of this labor were set at 20.42 percent of salary. To arrive at our final figure for the labor cost of maintenance, we used the actual salary figure for fiscal year (FY) 2002 and

included cost-of-living salary increases in fiscal years 2003 and 2004, as described in the President's FY 2003 budget. Based on this approach, we estimate the direct labor cost of the maintenance on the ramp to be $3,926.17 per year.

Administrative support costs not covered under § 130.30. Administrative support costs include the cost of local clerical and administrative activities, indirect labor hours, travel and transportation for personnel, supplies, equipment, and other necessary items, training, general office supplies, rent, equipment capitalization, utilities, and contractual services. Indirect labor hours include supervision of personnel and time spent doing work that is not directly connected with use of the ramp but which is nonetheless necessary for its use, such as repairing other equipment. Rent is the cost of using the space required to perform this work. Billing costs are the costs of managing user fee accounts for our customers who wish to receive monthly invoices for the services they receive from APHIS. Collection expenses include the costs of managing customer payments and ensuring that those payments are accurately reflected in our accounting system. Utilities include water, telephone, electricity, gas, and heating oil. Contractual services include security service, maintenance, trash pickup, and other such services. To estimate these costs, we used the standard APHIS administrative support costs rate of 62.31 percent of direct labor costs. Thus, we estimate administrative support costs for this service to be $2,818.49 per year.

Agency overhead not covered under § 130.30. Agency overhead is the pro-rata share, attributable to this service, of the Agency's management and support costs. Management and support costs include the costs of providing budget and accounting services, regulatory services, investigative and enforcement services, debt-management services, personnel services, public information services, legal services, liaison with Congress, and other general program and agency management services provided above the local level. We estimate agency overhead to be $1,089.26 per year.

Departmental charges not covered under § 130.30. Departmental charges are APHIS's share, expressed as a percentage of the total cost, of services provided centrally by the United States Department of Agriculture. Services the Department provides centrally include the Federal Telephone Service, mail, National Finance Center processing of payroll and other money management, unemployment compensation, Office of Workers Compensation Programs, and central supply for storing and issuing commonly used supplies and department forms. The Department notifies APHIS of how much it owes for these services. We estimate the pro-rata share of these departmental charges attributable to these services to be $358.01 per year.

Reserve funds. We added an amount that would provide for a reasonable balance, or reserve, in the Veterinary Services user fee account. All user fees contribute to the reserve proportionately. A reserve ensures that we have sufficient operating funds in cases of bad debt, customer insolvency, and fluctuations in the volume of activity. We intend to monitor the balance of the reserve closely, and we will propose adjustments in our fees as necessary to ensure a reasonable balance. We have included $409.60 per year as this fee's proportional contribution to the reserve.

Conclusion

The sum of the above items, $17,621.53, represents our calculation of the annual cost for the purchase, use, and maintenance of the ramp. The number of importers and exporters expected to use the ramp each year is about 117. Thus, the expected cost per user of the ramp is $17,621.53 divided by 117, or $150.6114; rounded to the nearest whole dollar, this is $151. We are therefore proposing a fee of $151 for use of the animal ramp at Miami International Airport.

This fee would apply regardless of the length of time the ramp is used or the number of animals being transported across it. The fees charged for the hourly labor APHIS provides while the ramp is being used, of course, would vary with the length of time the ramp is used.

We believe that this fee would adequately cover the cost of providing the ramp to importers and exporters of animals. As is the case with all APHIS user fees, we intend to review the user fee proposed in this document on an annual basis. We will publish any necessary adjustments to the fee in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This proposed rule would establish a user fee of $151 for the animal ramp APHIS operates at Miami International Airport.

Though the fee is $151 per use regardless of the number of animals being moved across the ramp, in the past clients have moved, on average, approximately 50 animals per ramp use. Thus the average cost per animal for use of the ramp would be approximately $3. This is a negligible fee compared to the market value of the breeding animals and other upper-end livestock that are transported by air and that may be moved using the ramp. For example, the average import/export price per head of purebred cattle in 2001 was $1,186, while the price of purebred horses was $9,653. Our customers, usually brokers, are likely to pass this fee on to their clients.

This proposed user fee is also similar to the fees charged for the use of similar ramps elsewhere. For example, O'Hare International Airport in Chicago charges approximately $150 for use of its ramp, while one private horse-transporting entity charges approximately $800 for the use of the ramp it owns.

Impact on Small Entities

The Regulatory Flexibility Act requires that agencies consider the economic effects of their rules on small entities. The Small Business Administration (SBA) has published criteria for determining which economic entities meet the definition of a small business. The entities affected by this proposed fee are most likely to be brokers and livestock owners importing or exporting animals. The SBA considers an entity engaged in importing and exporting live animals, poultry, and birds to be small if its total sales are less than $5 million annually. The total revenue of livestock brokers who transport animals through Miami International Airport is not available, but we expect that a majority of these brokers can be classified as small entities. While the majority of entities affected by the proposed user fee may be small, this proposed rule is not expected to have a significant impact on them, due to the fact that the average fee per animal is quite small in comparison to the value of the livestock being transported.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to

Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V.)

Executive Order 12988

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

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 130

Animals, Birds, Diagnostic reagents, Exports, Imports, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Tests.

Accordingly, we propose to amend 9 CFR part 130 as follows:

PART 130—USER FEES

1. The authority citation for part 130 would continue to read as follows:

Authority: 5 U.S.C. 5542; 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 3701, 3716, 3717, 3719, and 3720A; 7 CFR 2.22, 2.80, and 371.4.

2. Section 130.8 would be amended by adding a new paragraph (b) to read as follows:

§ 130.8 User fees for other services.

* * * * *

(b) The user fee for the transport ramp used to move animals on or off aircraft at APHIS's Animal Import/Export and Plant Inspection Station at Miami International Airport is $151 per use. For labor services associated with the ramp, the hourly user fees in § 130.30 will apply.

* * * * *

Done in Washington, DC, this 6th day of May, 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–11707 Filed 5–9–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–142605–02]

RIN 1545–BB47

Administration Simplification of Section 481(a) Adjustment Periods in Various Regulations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed amendments to regulations under sections 263A and 448 of the Internal Revenue Code. The amendments apply to taxpayers changing a method of accounting under the regulations and are necessary to conform the rules governing those changes to the rules provided in general guidance issued by the IRS for changing a method of accounting. Specifically, the amendments will allow taxpayers changing their method of accounting under the regulations to take any adjustment under section 481(a) resulting from the change into account over the same number of taxable years that is provided in the general guidance.

DATES: Written or electronic comments must be received by July 11, 2003. Requests to speak (with outlines of oral comments to be discussed) at the public hearing scheduled for August 13, 2003, at 10 a.m. must be received by July 23, 2003.

ADDRESSES: Send submissions to: CC:PA:RU (REG–142605–02), room 5226, Internal Revenue Service, POB 7604 Ben Franklin Station, Washington, DC 20044. Submissions of comments may also be hand-delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:PA:RU (REG–142605–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet direct to the IRS Internet site at *http://www.irs.gov/regs.* The public hearing will be held in the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Christian Wood, 202–622–4930. Concerning the hearing, contact Sonya Cruse, 202–622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to 26 CFR part 1 under sections 263A and 448. These amendments pertain to the period for taking into account the adjustment required under section 481 to prevent duplications or omissions of amounts resulting from a change in method of accounting under section 263A or 448.

Section 263A (the uniform capitalization rules) generally requires the capitalization of direct costs and indirect costs properly allocable to real property and tangible personal property produced by a taxpayer. Section 263A also requires the capitalization of direct costs and indirect costs properly allocable to real property and personal property acquired by a taxpayer for resale.

Section 448(a) generally prohibits the use of the cash receipts and disbursements method of accounting by C corporations, partnerships with a C corporation partner, and tax shelters. Section 448(b), however, provides exceptions to this general rule in the case of farming businesses, qualified personal service corporations, and entities with gross receipts of not more than $ 5,000,000.

Section 446(e) generally provides that a taxpayer that changes the method of accounting on the basis of which it regularly computes its income in keeping its books must, before computing its taxable income under the new method, secure the consent of the Secretary.

Section 481(a) generally provides that a taxpayer must take into account those adjustments that are determined to be necessary solely by reason of a change in method of accounting in order to prevent amounts from being duplicated or omitted. Sections 481(c) and 1.446–1(e)(3)(ii) and 1.481–4 provide that the adjustment required by section 481(a) shall be taken into account in determining taxable income in the manner and subject to the conditions agreed to by the Commissioner and the taxpayer.

Rev. Proc. 97–27, 1997–1 C.B. 680 (as modified and amplified by Rev. Proc. 2002–19, 2002–13 I.R.B. 696, and modified by Rev. Proc. 2002–54, 2002–35 I.R.B. 432), provides procedures under which taxpayers may apply for the advance consent of the Commissioner to change a method of accounting. Rev. Proc. 2002–9, 2002–3 I.R.B. 327 (as modified and amplified by Rev. Proc. 2002–19, amplified, clarified, and modified by Rev. Proc. 2002–54, and modified and clarified by Announcement 2002–17, 2002–8 I.R.B.

561), provides procedures under which taxpayers may apply for automatic consent of the Commissioner to change a method of accounting. Under both revenue procedures, as modified, adjustments under section 481(a) are taken into account entirely in the year of change (in the case of a net negative adjustment) and over 4 taxable years (in the case of a net positive adjustment), subject to certain exceptions.

Explanation of Provisions

Regulations under sections 263A and 448 currently provide rules for certain changes in method of accounting under those sections, including the number of taxable years over which an adjustment required under section 481(a) to effect the change is to be taken into account. The adjustment periods provided in the regulations may differ from the general 4-year (net positive adjustment) and 1 year (net negative adjustment) adjustment period rule provided in Rev. Proc. 97–27 and Rev. Proc. 2002–9, as modified. In certain cases, the difference creates a disincentive for certain taxpayers to change their method of accounting in the taxable year required by the regulations under section 263A or 448, as applicable.

The IRS and Treasury Department believe it is appropriate to amend the regulations under sections 263A and 448 to provide that the section 481(a) adjustment period for accounting method changes under those regulations be determined under the applicable administrative procedures issued by the Commissioner (namely, Rev. Proc. 97–27 and Rev. Proc. 2002–9, as modified, or successors). As a result of the amendment, the section 481(a) adjustment period for these changes generally will be 4 years for a net positive adjustment and 1 year for a net negative adjustment, unless otherwise provided in the regulations (*see e.g.*, § 1.448–(g)(2)(ii) and (g)(3)(iii) (providing rules for extended or accelerated adjustment periods in certain cases)) or the applicable revenue procedure (*see e.g.*, section 7.03 of Rev. Proc. 97–27 and section 5.04(3) of Rev. Proc. 2002–9 (providing rules for accelerated adjustment periods in certain cases)). The IRS and Treasury Department believe that amending the regulations in this manner will eliminate the disincentive that currently exists and provide flexibility in the event that any future changes are made to the general section 481(a) adjustment periods.

The IRS and Treasury Department further believe it is appropriate to remove the special adjustment period rule for cooperatives in § 1.448–1(g)(3)(ii), thus directing cooperatives to the rules in Rev. Proc. 97–27 or Rev. Proc. 2002–9, as modified, or successors. Currently, Rev. Proc. 97–27 (section 7.03(2)) and Rev. Proc. 2002–9 (section 5.04(3)(b)) provide that the section 481(a) adjustment period in the case of a cooperative (within the meaning of section 1381(a)) generally is 1 year, whether the net adjustment is positive or negative. The IRS and Treasury Department continue to believe that a 1 year adjustment period is appropriate in the case of accounting method changes by cooperatives. *See* Rev. Rul. 79–45, 1979–1 C.B. 284.

The IRS and Treasury Department contemplate issuing separate guidance on accounting method changes under section 381. Comments are requested on issues to be addressed in such guidance, including (1) whether the section 481(a) adjustment should be taken into account by the acquired corporation immediately prior to the transaction or the acquiring corporation immediately after the transaction; (2) whether the general section 481(a) adjustment periods of Rev. Proc. 97–27 and Rev. Proc. 2002–9, as modified, or successors, should apply to accounting method changes under section 381; (3) the method for computing the section 481(a) adjustment; (4) whether accounting method changes under section 381 should be requested by filing a Form 3115 or by requesting a private letter ruling; and (5) any other procedural or technical issues (*e.g.*, filing deadlines, audit protection).

Proposed Effective Date

The proposed regulations are applicable to taxable years ending on or after the date these regulations are published as final regulations. However, taxpayers may rely on the proposed regulations for taxable years ending on or after May 12, 2003, by filing a Form 3115, *Application for Change of Accounting Method,* in the time and manner provided in the regulations (in the case of a change in method of accounting under section 448) or applicable administrative procedure (in the case of a change in method of accounting under section 263A) for such a taxable year that reflects a section 481(a) adjustment period that is consistent with the proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and because this proposed rule does not impose a collection of information on small entities, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for August 13, 2003 beginning at 10 a.m. in the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, *see* the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by July 11, 2003.

A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these proposed regulations are Christian T. Wood and Grant Anderson of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury

Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and record keeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. In § 1.263A–7, paragraph (b)(2)(ii) is revised to read as follows:

§ 1.263A–7 Changing a method of accounting under section 263A.

* * * * *

(b) * * *

(2) * * *

(ii) Adjustment required by section 481(a). In the case of any taxpayer required or permitted to change its method of accounting for any taxable year under section 263A and the regulations thereunder, the change will be treated as initiated by the taxpayer for purposes of the adjustment required by section 481(a). The taxpayer must take the net section 481(a) adjustment into account over the section 481(a) adjustment period as determined under the applicable administrative procedures issued under § 1.446–1(e)(3)(ii) for obtaining the Commissioner's consent to a change in accounting method (*e.g.*, Revenue Procedures 97–27 and 2002–9, or successors). This paragraph is effective for taxable years ending on or after the date these regulations are published as final regulations in the **Federal Register**. However, taxpayers may rely on this paragraph for taxable years ending on or after May 12, 2003, by filing, under the applicable administrative procedure, a Form 3115, *Application for Change in Accounting Method*, for such a taxable year that reflects a section 481(a) adjustment period that is consistent with this paragraph.

* * * * *

Par. 3. Section 1.448–1 is amended as follows:

1. Paragraph (g)(2)(i) is revised.

2. Paragraphs (g)(3)(i) and (ii), and (g)(6) are removed.

3. Paragraphs (g)(3)(iii) and (iv) are renumbered as (g)(3)(i) and (ii), respectively.

4. Paragraph (i)(1) is revised.

5. Paragraph (i)(5) is added.

The revisions and addition read as follows:

§ 1.448–1 Limitation on the use of the cash receipts and disbursements method of accounting.

* * * * *

(g) * * *

(2) * * *

(i) In general. Except as otherwise provided in paragraphs (g)(2)(ii) and (g)(3) of this section, a taxpayer required by this section to change from the cash method must take the net section 481(a) adjustment into account over the section 481(a) adjustment period as determined under the applicable administrative procedures issued under section 1.446–1(e)(3)(ii) for obtaining the Commissioner's consent to a change in accounting method (*e.g.*, Revenue Procedures 97–27 and 2002–9, or successors), provided the taxpayer complies with the provisions of paragraph (h)(2) or (h)(3) of this section for its first section 448 year.

* * * * *

(i) * * *

(1) In general. Except as provided in paragraphs (i)(2), (3), (4), and (5) of this section, this section applies to any taxable year beginning after December 31, 1986.

* * * * *

(5) *Effective date.* Paragraph (g)(2)(i) of this section is effective for taxable years ending on or after the date these regulations are published as final regulations in the **Federal Register**. However, taxpayers may rely on paragraph (g)(2)(i) of this section for taxable years ending on or after May 12, 2003, by filing, in the time and manner otherwise provided in this section, a Form 3115, Application for Change in Accounting Method, for such a taxable year that reflects a section 481(a) adjustment period that is consistent with paragraph (g)(2)(i).

David A. Mader,

Assistant Deputy Commissioner of Internal Revenue.

[FR Doc. 03–11765 Filed 5–9–03; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[FRL–7496–5]

Advisory Committee for Regulatory Negotiation Concerning All Appropriate Inquiry; Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice; Meeting of Negotiated Rulemaking Committee on All Appropriate Inquiry.

SUMMARY: The Environmental Protection Agency, as required by the Federal Advisory Committee Act (Pub. L. 92–463), is announcing the date and location of the next meeting of the Negotiated Rulemaking Committee on All Appropriate Inquiry.

DATES: The next meeting of the Advisory Committee on Regulatory Negotiation for All Appropriate Inquiry is scheduled for June 10 and June 11, 2003.

ADDRESSES: The meeting will take place in Room 1117A of the EPA East Building at 1201 Constitution Ave., NW., Washington, DC. The meeting is scheduled to begin at 8:30 and end at 4:30 both days. Dates and locations of subsequent meetings will be announced in later notices.

FOR FURTHER INFORMATION CONTACT: Persons needing further information should contact Patricia Overmeyer of EPA's Office of Brownfields Cleanup and Redevelopment, 1200 Pennsylvania Ave., NW., Mailcode 5105T, Washington, DC 20460, (202) 566–2774, or *overmeyer.patricia@epa.gov.*

SUPPLEMENTARY INFORMATION: The Federal Advisory Committee meeting is for the purpose of negotiating the contents of a proposed regulation setting federal standards and practices for conducting all appropriate inquiry. Under the Small Business Liability Relief and Brownfields Revitalization Act, EPA is required to develop standards and practices for carrying out all appropriate inquiry. The meeting will commence with a presentation on current public and privately-developed practices for conducting environmental site assessments. After the presentation, the Committee will begin substantive deliberations on the content of the proposed rule. Discussions and deliberations will center on the criteria established by Congress in the Small Business Liability Relief and Brownfields Revitalization Act and that are to be included in the proposed rulemaking.

All meetings of the Negotiated Rulemaking Committee are open to the public. There is no requirement for advance registration for members of the public who wish to attend and observe the meeting. Opportunity for the general public to address the Committee will be provided at the end of the Committee meeting agenda on each of the two days.

Dated: May 5, 2003.

Thomas P. Dunne,

Associate Assistant Administrator, EPA Office of Solid Waste and Emergency Response.

[FR Doc. 03–11755 Filed 5–9–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[MS–200326b; FRL–7497–2]

Approval and Promulgation of State Plan for Designated Facilities and Pollutants: Mississippi

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the section 111(d)/129 State Plan submitted by the Mississippi Department of Environmental Quality (MDEQ) for the State of Mississippi on August 29, 2002, for implementing and enforcing the Emissions Guidelines applicable to existing Commercial and Industrial Solid Waste Incinerators. The Plan was submitted by MDEQ to satisfy Federal Clean Air Act requirements. In the final rules section of this **Federal Register**, the EPA is approving the Mississippi State Plan as a direct final rule without prior proposal because the Agency views this as a noncontroversial plan and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to the direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time.

DATES: Comments must be received in writing by June 11, 2003.

ADDRESSES: All comments should be addressed to: Joydeb Majumder, EPA Region 4, Air Toxics and Monitoring Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104. Copies of materials submitted to EPA may be examined during normal business hours at the above listed Region 4 location. The interested person wanting to examine this document should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Joydeb Majumder at (404) 562–9121 or Heidi LeSane at (404) 562–9035.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: April 30, 2003.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

[FR Doc. 03–11752 Filed 5–9–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 94–129; FCC 03–42]

Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers; Correction

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects the **SUPPLEMENTARY INFORMATION** section to the proposed rule published in the **Federal Register** of April 18, 2003, regarding Unauthorized Changes of Consumers' Long Distance Carriers. This correction revises the figures initially given in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Nancy Stevenson, 202–418–7039.

Correction

In the proposed rule FR Doc. 03–9119, beginning on page 19176, in the issue of April 18, 2003, make the following corrections, in the **SUPPLEMENTARY INFORMATION** section. On page 19177 in the second column, the first full paragraph, correct the following:

Number of Respondents: 28,414.

Estimated Time Per Response: 3.9 hours.

Frequency of Response: On occasion and biennial reporting requirements.

Total annual Burden: 111,076 hours.

Total Annual Costs: None.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 03–11724 Filed 5–9–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Part 245

Defense Federal Acquisition Regulation Supplement; Government Property/Unique Identification/Item Marking

AGENCY: Department of Defense (DoD).

ACTION: Advance notice of proposed rulemaking and notice of public meeting.

SUMMARY: DoD is soliciting comments from both government and industry regarding potential changes to Defense Federal Acquisition Regulation Supplement (DFARS) policy on government property in the possession of contractors. These changes relate to item marking and valuing (providing cost information) for tangible items (*i.e.*, contractor acquired property and tangible item deliverables). DoD will hold a public meeting to discuss the potential changes and to hear the views of interested parties.

DATES: *Public Meeting:* The public meeting will be held at the address shown below on May 28, 2003, from 8:30 a.m. to 4 p.m., local time.

Submission of Names of Expected Attendees: The names of individuals expected to attend the public meeting should be provided to the point of contact shown below no later than May 21, 2003.

Submission of Comments: Written comments on the potential DFARS changes should be submitted to the address shown below no later than June 9, 2003.

ADDRESSES: *Public Meeting:* The public meeting will be held at Logistics Management Institute (LMI), 2000 Corporate Ridge, McClean, VA 22102–7805; telephone (703) 917–9800. Directions to LMI can be obtained at *http://www.lmi.org.*

Submission of Names of Expected Attendees: The names of individuals expected to attend the public meeting should be provided to Ms. Claudia Low, by telephone at (703) 917–7264; by FAX at (703) 917–7066; by e-mail at *clow@lmi.org;* or by mail at Logistics Management Institute, 2000 Corporate Ridge, McClean, VA 22102–7805. Walk-in attendance will be accommodated. However, pre-registration is preferred. The LMI general phone number is (703) 917–7800.

Submission of Comments: Interested parties should submit written comments to Mr. Michael Canales, by mail at OUSD(AT&L)DPAP(P), 3060 Defense Pentagon, Washington, DC 20301–3060;

by e-mail at *Michael.Canales@osd.mil;* or by FAX at (703) 614–1254.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Canales, telephone (703) 695–8571.

SUPPLEMENTARY INFORMATION:

A. Draft Materials

The potential DFARS changes will be made available in draft form in Microsoft Word 6.0 text format at *http://www.acq.osd.mil/dpap.* The draft changes do not reflect a proposed rule, but are provided for discussion purposes only.

B. Background

During the past 6 months, DoD has issued a series of policy memorandums (available at *http://www.acq.osd.mil/dpap*) and held numerous meetings with government and industry personnel on this particular subject. In addition, DoD continues with its effort to transform the DFARS. As part of this effort, DoD is considering significant changes to DFARS part 245, Government Property. The purpose of this notice is to provide the public with a preliminary indication of changes under consideration, and to solicit public comments on those changes. After consideration of comments received in response to this notice and during the public meeting, DoD plans to publish two proposed DFARS rules, one on item marking and one on item value, for additional public comment.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 03–11726 Filed 5–9–03; 8:45 am]

BILLING CODE 5001–08–P

Notices

Federal Register
Vol. 68, No. 91
Monday, May 12, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. TB–03–01]

Burley Tobacco Advisory Committee—Notice of Reestablishment of Committee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of reestablishment of committee.

SUMMARY: Notice is hereby given that the Secretary of Agriculture has reestablished the Burley Tobacco Advisory Committee for an additional period of 2 years.

FOR FURTHER INFORMATION CONTACT: John P. Duncan III, Deputy Administrator, Tobacco Programs, Agricultural Marketing Service (AMS), U.S. Department of Agriculture (USDA), STOP 0280, 1400 Independence Avenue, SW., Washington, DC 20250–0280; telephone number (202) 205–0567.

SUPPLEMENTARY INFORMATION: The Committee, which reports to the Secretary through the Under Secretary for Marketing and Regulatory Programs, recommends opening dates and selling schedules for the burley tobacco marketing areas which aid the Secretary in making an equitable apportionment and assignment of tobacco inspectors. The Committee consists of 39 members; 21 producer representatives, 10 receiving station/auction warehouse representatives, and 8 buyer representatives, representing all segments of the burley tobacco industry and meets at the call of the Secretary. The Secretary has determined that reestablishment of this Committee is in the public interest.

To ensure that recommendations of the Committee take into account the needs of diverse groups served by USDA, membership should include, to the extent practicable, persons with demonstrated ability to represent minorities, women, and persons with disabilities.

This notice is given in compliance with the Federal Advisory Committee Act (5 U.S.C. App.).

Dated: May 6, 2003.

Bill Hawks,

Under Secretary, Marketing and Regulatory Program.

[FR Doc. 03–11705 Filed 5–9–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. TB–03–05]

Flue-Cured Tobacco Advisory Committee—Notice of Reestablishment of Committee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of reestablishment of committee.

SUMMARY: Notice is hereby given that the Secretary of Agriculture has reestablished the Flue-Cured Tobacco Advisory Committee for an additional period of 2 years.

FOR FURTHER INFORMATION CONTACT: John P. Duncan III, Deputy Administrator, Tobacco Programs, Agricultural Marketing Service (AMS), U.S. Department of Agriculture (USDA), STOP 0280, 1400 Independence Avenue, SW., Washington, DC 20250–0280; telephone number (202) 205–0567.

SUPPLEMENTARY INFORMATION: The Committee, which reports to the Secretary through the Under Secretary for Marketing and Regulatory Programs, recommends opening dates and selling schedules for the flue-cured tobacco marketing areas which aid the Secretary in making an equitable apportionment and assignment of tobacco inspectors. The Committee consists of 12 producer representatives, 7 buyer representatives, 1 auction warehouse representative, and 1 marketing center representative, representing all segments of the flue-cured tobacco industry and meets at the call of the Secretary. The Secretary has determined that reestablishment of this Committee is in the public interest.

To ensure that recommendations of the Committee take into account the needs of diverse groups served by USDA, membership should include, to the extent practicable, persons with demonstrated ability to represent minorities, women, and persons with disabilities.

This notice is given in compliance with the Federal Advisory Committee Act (5 U.S.C. App.).

Dated: May 6, 2003.

Bill Hawks,

Under Secretary, Marketing and Regulatory Programs.

[FR Doc. 03–11706 Filed 5–9–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–012–1]

Animal Welfare; Animal Fighting Venture Prohibition

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Farm Security and Rural Investment Act of 2002 amended section 26 of the Animal Welfare Act (AWA) by adding specific provisions regarding the sale, purchase, transportation, delivery, or receipt of live birds in commerce for participation in animal fighting ventures in States where the practice is permitted by law. The Animal and Plant Health Inspection Service is publishing this notice in order to increase the public visibility of these additional AWA provisions regarding animal fighting venture prohibitions.

FOR FURTHER INFORMATION CONTACT: Dr. Jerry DePoyster, Senior Veterinary Medical Officer, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234; (301) 734–7586.

SUPPLEMENTARY INFORMATION:

Background

The Animal Welfare Act (7 U.S.C. 2131 *et seq.*, referred to below as the AWA) authorizes the Secretary of Agriculture to promulgate standards and other requirements governing the humane handling, care, treatment, and transportation of certain animals by

dealers, research facilities, exhibitors, carriers and intermediate handlers. The Secretary has delegated responsibility for administering the AWA to the Administrator of the Animal and Plant Health Inspection Service (APHIS). Within APHIS, the responsibility for administration of the AWA has been delegated to Animal Care. Regulations established under the AWA are contained in 9 CFR chapter 1, subchapter A, parts 1, 2, 3, and 4. Part 1 contains definitions for terms used in parts 2, 3, and 4; part 2 contains general requirements for regulated parties; part 3 contains specific requirements for the care and handling of certain animals; and part 4 contains rules of practice for the enforcement of the AWA.

Section 26 of the AWA (7 U.S.C. 2156) concerns animal fighting ventures. Paragraph (a) of that section has provided that ''[i]t shall be unlawful for any person to knowingly sponsor or exhibit an animal in any animal fighting venture to which any animal was moved in interstate or foreign commerce.'' However, the Farm and Security Rural Investment Act of 2002 (Pub. L. 107–171, signed into law on May 13, 2002), revised paragraph (a) to read:

(a) SPONSORING OR EXHIBITING AN ANIMAL IN AN ANIMAL FIGHTING VENTURE.—

(1) IN GENERAL.—Except as provided in paragraph (2), it shall be unlawful for any person to knowingly sponsor or exhibit an animal in an animal fighting venture, if any animal in the venture was moved in interstate or foreign commerce.

(2) SPECIAL RULE FOR CERTAIN STATES.—With respect to fighting ventures involving live birds in a State where it would not be in violation of the law, it shall be unlawful under this subsection for a person to sponsor or exhibit a bird in the fighting venture only if the person knew that any bird in the fighting venture was knowingly bought, sold, delivered, transported, or received in interstate or foreign commerce for the purpose of participation in the fighting venture.

To increase the public visibility of these new AWA provisions, which are to become effective on May 13, 2003, APHIS is publishing this notice pursuant to its authority under the AWA.

Done in Washington, DC, this 6th day of May, 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–11708 Filed 5–9–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Commodity Credit Corporation

Information Collection; Noninsured Crop Disaster Assistance Program

AGENCY: Farm Service Agency, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency and the Commodity Credit Corporation are seeking comments from all interested individuals and organizations on the extension of a currently approved information collection in support of the Noninsured Crop Disaster Assistance Program (NAP). The information collected is needed to determine eligibility to obtain NAP assistance.

DATES: Comments must be received on or before July 11, 2003 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to John Newcomer, Program Specialist, Production, Emergencies and Compliance Division, Noninsured Assistance Program Branch, Farm Service Agency, USDA, Mail Stop 0517, 1400 Independence Avenue, SW., Washington, DC 20250–0522 and to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Comments also may be submitted by e-mail to: *John_Newcomer@usda.gov*.

FOR FURTHER INFORMATION CONTACT: John Newcomer, Program Specialist, Noninsured Assistance Program Branch, (202) 720–5172.

SUPPLEMENTARY INFORMATION:

Description of Information Collection

Title: Noninsured Crop Disaster Assistance Program.

OMB Number: 0560–0175.

Expiration Date of Approval: September 30, 2003.

Type of Request: Extension with revision.

Abstract: The Noninsured Crop Assistance Program is authorized under 7 U.S.C. 7333 and implemented under regulations issued at 7 CFR part 1437. The NAP is administered under the general supervision of the Executive Vice-President of CCC (who also serves as Administrator, FSA), and is carried out by FSA State and County committees. The information collected allows CCC to provide assistance under NAP for losses of commercial crops or other agricultural commodities (except livestock) for which catastrophic risk protection under 7 U.S.C. 1508 is not available, and that is produced for food or fiber. Additionally, NAP provides assistance for losses of floriculture, ornamental nursery, Christmas tree crops, turfgrass sod, seed crops, aquaculture (including ornamental fish), sea oats and sea grass, and industrial crops. The information collected is necessary to determine whether a producer and crop or commodity meet applicable conditions for assistance and to determine compliance with existing rules. Producers must annually: (1) Request NAP coverage by completing an application for coverage and paying a service fee by the CCC-established application closing date; (2) file a current crop-year report of acreage for the covered crop or commodity; and (3) certify production of each covered crop or commodity. When damage to a covered crop or commodity occurs, producers must file a notice of loss with the local FSA administrative county office within 15 calendar days of occurrence or 15 calendar days of the date damage to the crop or commodity becomes apparent. Producers must also file an application for payment and certification of income with the local FSA administrative county office.

Estimate of Burden: Public reporting burden for this information collection is estimated to average 0.6 hours per response.

Type of Respondents: Producers of commercial crops or other agricultural commodities (except livestock).

Estimated Annual Number of Respondents: 497,000.

Estimated Annual Number of Responses per Respondent: 3.

Estimated Total Annual Burden on Respondents: 3,521,258.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

Signed at Washington, DC, on May 5, 2003.

James R. Little,

Administrator, Farm Service Agency, and Executive Vice-President, Commodity Credit Corporation.

[FR Doc. 03–11692 Filed 5–9–03; 8:45 am]

BILLING CODE 3410–05–P

COMMODITY CREDIT CORPORATION

Sunshine Act Meeting

TIME AND DATE: 3 p.m., May 15, 2003.

PLACE: Room 104–A, Jamie Whitten Building, U.S. Department of Agriculture, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the Minutes of the Special Open meeting of May 17, 1999.

2. Memorandum re: Update of Commodity Credit Corporation (CCC)—Owned Inventory.

3. Memorandum re: Commodity Credit Corporation Financial Condition Report.

4. Memorandum re: Commodity Credit Corporation Stocks Available for Donation Overseas Under Section 416(b) of the Agricultural Act of 1949, as Amended, for Fiscal Years 1998 through 2003.

5. Docket A–POL–98–007, Revision. 1, re: Commodity Credit Corporation Claims Policy.

6. Briefing re: Status of the Specialty Crop Grant Program, Agricultural Economic Assistance Act (Pub. L. 107–25), which involves authorized Commodity Credit Corporation funding of $169 million to states.

FOR FURTHER INFORMATION CONTACT: Monique B. Randolph, Assistant Secretary, Commodity Credit Corporation, Stop 0571, U.S. Department of Agriculture, 1400 Independence Avenue SW., Washington, DC 20250–0571.

Dated: May 8, 2003.

Thomas B. Hofeller,

Secretary, Commodity Credit Corporation.

[FR Doc. 03–11949 Filed 5–8–03; 3:55 pm]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Request for Extension of a Currently Approved Information Collection

AGENCY: Farm Service Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces that the Farm Service Agency (FSA) intends to request an extension for a currently approved information collection in support of the Agricultural Foreign Investment Disclosure Act of 1978 (AFIDA).

DATES: Comments on this notice must be received on or before July 11, 2003 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Patricia A. Blevins, Agricultural Foreign Investment Specialist, Natural Resources Analysis Group, Economic and Policy Analysis Staff, USDA, FSA, STOP 0531, 1400 Independence Avenue, SW., Washington, DC 20250–0531, (202) 720–0604.

SUPPLEMENTARY INFORMATION:

Title: Agricultural Foreign Investment Disclosure Act Report.

OMB Control Number: 0560–0097.

Expiration Date of Approval: October 31, 2003.

Type of Request: Extension of a currently approved information collection.

Abstract: AFIDA requires foreign persons who hold, acquire, or dispose of any interest in U.S. agricultural land to report the transactions to the FSA on an 2 AFIDA report. The information so collected is made available to States. Also, although not required by law, the information collected from the AFIDA reports is used to prepare annual report to Congress and the President concerning the effect of foreign investment upon family farms and rural communities so that Congress may review the annual report and decide if further regulatory action is required.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .5 hours per response.

Respondents: Foreign investors, corporate employees, attorneys or farm managers.

Estimate Number of Respondents: 4,375.

Estimate Number of Responses per Respondent: 1.

Estimated Number of Responses: 4,375.

Estimated Total Annual Burden on Respondents: 2,108 hours.

Proposed topics for comment include: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information collected; or (d) way to minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Patricia A. Blevins, Agricultural Foreign Investment Specialist, Natural Resources Analysis Group, Economic and Policy Analysis Group, USDA, FSA, STOP 0531, 1400 Independence Avenue, SW., Washington, DC 20250–0531, (202) 720–0604.

All comments to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC, on May 5, 2003.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 03–11691 Filed 5–9–03; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Advertised Timber for Sale

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension of the currently approved collection for from FS–2400–14, Bid for Advertised Timber, and form, FS–2400–42a, National Forest Timber for Sale (Advertisement and Short-Form Bid). The agency uses the collected information to ensure that National Forest System timber is sold at not less than appraised value; that bidders meet specific criteria when submitting a bid; and that anti-trust violations do not occur during the bidding process.

DATES: Comments must be received in writing on or before July 11, 2003 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to the Director, Forest and Rangeland Management Staff, Mail Stop 1105, Forest Service, USDA, 1400 Independence Avenue, SW., Washington, DC 20090–1105. Comments also may be submitted via facsimile to (202) 205–1045 or by e-mail to: *fm/wo@fs.fed.us.*

The public may inspect comments received at the Office of the Director of Forest and Rangelands Management, 201 14th Street, SW., Washington, DC. Callers are urged to call ahead to facilitate entrance into the buildings to (202) 205–0893.

FOR FURTHER INFORMATION CONTACT: Rex Baumback, Forest and Rangelands Management Staff, at (202) 205–0855.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to statutory requirements at 16 U.S.C. 472a, the Secretary of Agriculture must advertise sales of all National Forest System timber or forest products exceeding $10,000 in appraised value, unless (1) extraordinary conditions exist as defined by regulation; (2) select bidding methods ensure open and fair competition; (3) select bidding methods ensure that the Federal Government receives not less than appraised value of the timber or forest product; and (4) bidding patterns are monitored for evidence of unlawful bidding practices.

Pursuant to the Forest Service Small Business Timber Sale Set-Aside Program, development in cooperation with the Small Business Administration, Forest Service regulations at 36 CFR 223.84 require that the Forest Service bid form used by potential timber sale bidders include provisions for small business concerns, such as (1) electing road construction by the Forest Service; (2) certifying as to their small business status; and (3) being informed of other road construction requirements in the bid and/or contract.

FS–2400–14–Bid for Advertised Timber and FS–2400–42a–National Forest Timber Sale implement the same statues, policies, and regulations and collect similar information from the same applicant. The data gathered in this information collection is not available from other sources.

Description of Information Collection

1. *Title:* FS–2400–42a, National Forest Timber for Sale (Advertisement and Short-Form Bid).

OMB Number: 0596–0066.

Expiration Date of Approval: May 31, 2003.

Type of Request: Extension.

Abstract: The data collected are used by the agency to ensure that National Forest System timber is sold at not less than appraised value, that bidders meet specific criteria when submitting a bid, and that anti-trust violations do not occur during the bidding process.

Form FS–2400–42a–National Forest Timber for Sale is used to solicit and receive bids on short-notice timber sales advertised for less than 30 days and for less than $10,000 in advertised value. Respondents are bidders on National Forest System timber sales. Forest Service sale officers mail bid forms to potential bidders, and bidders return the completed forms, dated and signed, to the Forest Service sale officer.

Before submitting a bid, bidders usually, but are not required to, inspect the sale area, review the requirements of the sample contract, and take other steps as may be reasonably necessary to asscertain the location, estimated volumes, and operating costs of the offered timber or forest product. Each bidder must include the following information: The price bid for the timber; the bidder's name, address, and signature; the bidder's tax identification number, certification that the bidder is not debarred, suspended, proposed for debarment, or voluntarily excluded from bidding on Government contracts; and that the bidder has not defaulted on any contracts within the last 3 years.

The tax identification number of each bidder is entered into an automated bid monitoring system, which is used to determine if speculative bidding or unlawful bidding practices are occurring. The tax identification number also is used to facilitate electronic payments to the purchaser. The data gathered in this information collection is not available from other sources.

Estimate of Burden: 130 minutes.

Type of Respondents: Individuals, large and small businesses, and corporations bidding on National Forest timber sales.

Estimated Number of Respondents: 5,000.

Estimated Number of Responses per Respondent: 3.

Estimated Total Annual Burden on Respondents: 32,505 hours.

2. Title: FS–2400–14, Bid For Advertised Timber.

OMB Number: 0596–0066.

Expiration Date of Approval: May 31, 2003.

Type of Request: Extension.

Abstract: The data collected will be used by the agency to ensure that National Forest System timber will be sold at not less than appraised value, that bidders will meet specific criteria when submitting a bid, and that anti-trust violations will not occur during the bidding process. This form will be used for soliciting and receiving bids on sales advertised for 30 days or longer and on sales greater than $10,000 in advertised value.

Respondents will be bidders on National Forest System timber sales. Forest Service sale officers will mail bid forms to potential bidders, and bidders will return the completed forms, dated and signed, to the Forest Service sale officer. Before submitting the bid, the bidder usually will inspect the sale area, review the requirements of the sample contract, and take other steps as may be reasonably necessary to ascertain the location, estimated volumes, and operating costs of the offered timber or forest product.

Each bidder will have to include the following information: (1) The price bid for the timber; (2) the bidder's name, address, and signature; (3) the bidder's tax identification number; (4) the amount and type of the bid guarantee; (5) certification that the bidder has not paid a contingent fee to someone to obtain the contract for him or her, or retained any person or company to secure the contract; (6) certification that the bidder will meet the responsibility requirements at Title 36 of the Code of Federal Regulations (CFR), § 223.101; (7) certification that the bidder will complete the consideration requirements of the contract; (8) certification that the bidder has not been debarred, suspended, proposed for debarment, or voluntarily excluded from conducting business with the government; (9) certification that the bidder has not been indicted or has not had a criminal or civil conviction within a 3-year period; (10) certification that the bidder has not defaulted on a public contract or agreement in the last 3 years; (11) information on whether the bidder has participated in a previous contract covered by section 202 of Executive Order 11246, Non-discrimination in Employment; (12) certification that the bidder has independently determined the bid price; (13) selection of the road construction option; (14) certification of a firm offer; (15) certification that the bidder has expressly adopted the terms of the bid and sample contract; (16) certification

that the bidder has inspected the sale area and certifies that he or she understands that the Forest Service does not guarantee the amount or quality of the timber or forest product; (17) certification that the bidder will comply with the Forest Resources Conservation and Shortage Relief Act of 1990 as required by 36 CFR 223.87; (18) certification that the bidder has not been or will not be affiliated with the original purchaser of a contract on a timber sale that is being re-offered, when the original contract was terminated for breach or failure to cut; and (19) a list provided by the bidder of affiliates that control or have the power to control the bidder's company.

The tax identification number of each bidder will be entered into a computerized bid monitoring system. This system will be used to determine if speculative bidding or if unlawful bidding practices are occurring. The tax identification number also will be used to facilitate electronic payments to the purchaser. The data gathered in this information collection are not available from other sources.

Estimate of Burden: 370 minutes.

Type of Respondents: Individuals, large and small businesses, and corporations bidding on National Forest timber sales.

Estimated Number of Respondents: 500.

Estimated Number of Responses per Respondent: 2.0.

Estimated Total Annual Burden on Respondents: 6,167 hours.

Comment Is Invited

The agency invites comments on the following: (a) Whether the proposed collection of information is necessary for the stated purposes or the proper performance of the functions of the agency, including whether the information shall have practical or scientific utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comments

All comments received in response to this notice, including name and address when provided, will be summarized and included in the request for Office of Management and Budget approval. All comments also will become a matter of public record.

Dated: April 23, 2003.

Abigail R. Kimbell,

Associate Chief, National Forest System.

[FR Doc. 03–11682 Filed 5–9–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Caribou-Targhee National Forest, Idaho; Aspen Range Timber Sale/ Vegetation Treatment

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Soda Springs Ranger District, Caribou-Targhee National Forest will be preparing an Environmental Impact Statement (EIS) to analyze the effects of commercial harvest of conifer trees, prescribed fire, realignment or surface improvement of old roads, and construction of fuel breaks in the Aspen Range analysis area. The legal description for this proposal is T. 8 S., R. 43 E., sections 27, 28, 29, 30, 31, 32, 33 and 34. T. 9 S., R. 43 E., sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 17 and 18 of the Boise Meridian, Caribou County.

DATES: Written comments concerning the scope of the analysis must be received within 30 days of the date of publication of this notice in the **Federal Register**. The draft environmental impact statement is expected October 2003 and the final environmental impact statement is expected February 2004.

ADDRESSES: Send written comments to Soda Springs Ranger District, Attn: David Whittekiend, 421 W. 2nd S., Soda Springs, ID 83276.

FOR FURTHER INFORMATION CONTACT: Questions concerning the proposed action and EIS should be directed to Doug Heyrend, Forester, (208) 547–4356.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The primary purpose of the project is to:

- Provide sawtimber on a sustained-yield basis.
- Release aspen from competing conifer and convert back to early seral species.
- Reduce conifer stand densities to improve vigor.
- Reduce fuel loads in the project area and stands bordering residential homes/cabins along the northwest forest boundary of the Trail Canyon area.
- Reduce sediment and maintenance on roads in project area.

Proposed Action

The proposal is to tractor harvest 881 acres of Douglas-fir, aspen/Douglas-fir and lodgepole pine stands using a variety of silviculture prescriptions. The harvest would be followed by 1,350 acres of prescribed fire to increase aspen cover types and reduce fuel loads in the 12,000 acre analysis area. The harvest volume is anticipated to be about 4.5 million board feet from two timber sales.

Irregular shelterwood/aspen regeneration silvicultural treatments proposed for 590 acres would be the dominant harvest prescription. The prescription would provide flexibility for aspen regeneration, snag preservation, remnant old growth retention and old growth replacement in situations of Douglas-fir bark beetle mortality. The objective for aspen regeneration is to incorporate the majority of the aspen clone for treatment. All aspen treatment areas would use prescribed fire for fuels treatment and site preparation to simulate the natural disturbance for aspen vegetative reproduction by suckers. Larger units that utilize coarse woody debris as barriers increase the success of aspen regeneration by having better dispersion of wild and domestic browsing/grazing animals across treated areas. Temporarily fencing portions of treated areas may be required to ensure regeneration.

Stand improving commercial thinnings and shelterwoods are planned for 196 acres. The focus of harvest activity would be on removing suppressed and intermediate trees to provide crown spacing and growing room (15–30 foot spacing) for residual dominant trees. Natural regeneration will occur over time but would not be immediately necessary to meet stocking standards. Machine fuels treatment (piling) would take place in the 55 acres of shelterwood prescription stands closest to the archery range and a 39 acre stand in North Sulfur Canyon. Prescribed broadcast fire would be used for site preparation of early seral vegetation and fuel treatment on the remaining 102 acres.

The only lodgepole stand planned for harvest is behind the archery range (this area is under special use permit to the Caribou Archers).

A seedtree/improvement cut is proposed for the 39 acre stand.

Seedtrees would provide natural regeneration in areas of stand decline and the improvement cut to ensure visual protection along the archery range corridor. Site preparation and fuels treatment (piling) for the stand would be mechanical.

Prescribed broadcast fire would be used in most mechanical treatments as well as some naturally occurring stands to reduce fuels and convert vegetation to early seral species. Standing dead and cull green material is expected to replace down dead woody debris consumed by broadcast burning. Generally the window for burning in this area is late spring and early fall depending on weather patterns. Firelines would be mechanically constructed using as many natural openings, ridge tops, roads and terrain barriers as possible. The stands adjacent to the archery range and residential area would be mechanically treated without a broadcast fire.

A constructed quarter mile fuelbreak along the northwest forest boundary of the analysis area would meander across the north edge of the 56 acre stand using as many natural openings and barriers as possible. The proposal is to remove standing dead, down dead, small diameter trees, dense brush and provide crown spacing between mature trees. Pockets of small-diameter conifer encountered within the fuelbreak would be thinned to 14 to 20 foot spacing, and pruned to remove ladder fuels.

Heavy equipment will only be used on ground less than 40 percent slope. Merchantable logs within the fuelbreak on feasible tractor ground would be skidded up hill to a landing. All unmerchantable material would be hand or machine piled and burned in the fall following substantial snow accumulation. Work in the riparian area would be completed by hand with chainsaws. The stand is not proposed for broadcast burning.

Two miles of existing old system roads (20574, 20126 & 20297) are proposed for realignment to decrease ongoing erosion damage, maintenance costs and to facilitate harvest equipment. Up to 6.2 miles of existing and constructed temporary road would be required for harvest activities. All constructed temporary roads and old road segments that have been replaced with new alignment would be fully obliterated. Road segments that are currently managed as a multiple use trails will be retained. A thumb bucket excavator will be used to obliterate unnecessary roads. Road obliteration would consist of recontouring slopes, channels and incorporating debris across the prism followed by seeding with the appropriate native mix.

Short sections of gravel surface replacement would be needed throughout the sale area.

Responsible Official

The responsible official for this decision is Jerry Reese, Caribou-Targhee National Forest Supervisor.

Nature of Decision To Be Made

Should timber harvest, road construction, road obliteration, fuel treatments, vegetation treatments and road management activities be implemented in the project area at this time, and if so, under what conditions?

From a variety of site-specific alternatives, based on the silvicultural needs for portions of stands or entire stands, one alternative will be selected.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement. The Forest Service invites written comments and suggestions on the issues related to the proposal and the area being analyzed. Information received will be used in preparation of the draft EIS and Final EIS. For most effective use, comments should be submitted to the Forest Service within 30 days from the date of publication of this Notice in the **Federal Register**.

Agency Representatives and other interested people are invited to visit with Forest Service officials at any time during the EIS process. Two specific time periods are identified for the receipt of formal comments on the analysis. The two comments periods are, (1) during the scoping process, the next 30 days following publication of this Notice in the **Federal Register**, and (2) during the formal review of the Draft EIS.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: March 11, 2003.

Jerry B. Reese,

Caribou-Targhee Forest Supervisor.

[FR Doc. 03–11731 Filed 5–9–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Request for Proposals; Fiscal Year 2003 Funding Opportunity for 1890 Land Grant Institutions Rural Entrepreneurial Program Outreach Initiative

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service (RBS) announces the availability of approximately $1.5 million in competitive cooperative agreement funds allocated from fiscal year (FY) 2003 budget. RBS hereby requests proposals from the 1890 Land Grant Universities and Tuskegee University (1890 Institutions) interested in applying for competitively awarded cooperative agreements for support of RBS' mission goals and objectives of outreach to small rural communities and to develop programs that will develop future entrepreneurs and businesses in rural America in those communities that have the most economic need. These programs must provide sustainable development that is in keeping with the needs of the community and designed to help overcome current identified economic problems. Proposals in both traditional and nontraditional business enterprises are encouraged. The initiative seeks to create a working partnership between the 1890 Institutions and RBS through cooperative agreements.

Grants will be made for proposals found to be meritorious by a peer review panel to the extent that funds are available. However, there is no commitment by RBS to fund any particular proposal or to make a specific number of awards.

Eligible applicants must provide matching funds in support of this project. Matching funds must equal at least 25 percent of the amount provided by RBS in the cooperative agreement. This notice lists the information needed to submit on application for these funds.

DATES: Cooperative agreement applications must be received by 4 p.m. July 11, 2003. Proposals received after July 11, 2003, will not be considered for funding.

ADDRESSES: Send proposals and other required materials to Mr. Edgar L. Lewis, Program Manager, Rural Business-Cooperative Service, USDA, Stop 3252, Room 4221, 1400 Independence Avenue, SW., Washington, DC 20250–3252. Telephone: (202) 690–3407. e-mail: *edgar.lewis@usda.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Edgar L. Lewis, Program Manager, Rural Business-Cooperative Service, USDA, Stop 3252, Room 4221, 1400 Independence Avenue, SW., Washington, DC 20250–3252. Telephone: (202) 690–3407. e-mail: *edgar.lewis@usda.gov.*

SUPPLEMENTARY INFORMATION:

General Information

This solicitation is issued pursuant to section 607(b)(4) of the Rural Development Act of 1972, as amended by section 759A of the Federal Agriculture Improvement and Reform Act of 1996. Also, this solicitation is issued pursuant to Executive Order 13256 (February 12, 2002),— ''President's Board of Advisors on Historically Black Colleges and Universities.''

RBS was established by the Department of Agriculture Reorganization Act of 1994. The mission of RBS is to enhance the quality of life for rural Americans by providing leadership in building competitive businesses including sustainable cooperatives that can prosper in the global marketplace. RBS meets these goals by: investing financial resources and providing technical assistance to businesses and cooperatives located in rural communities and establishing strategic alliances and partnerships that leverage public, private, and cooperative resources to create jobs and stimulate rural economic activity.

The primary purpose of the 1890 Land Grant Institutions Rural Entrepreneurial Program Outreach Initiative is to promote Rural Development programs, provide outreach and technical assistance, and encourage and assist underserved rural community residents to participate in the USDA-Rural Development programs, especially those administered by RBS. This outreach initiative is also designed to develop programs that will develop future entrepreneurs and businesses in rural America in those communities that have the most economic need. These programs must provide sustainable development that is in keeping with the needs of the community and are designed to help overcome current identified economic problems. Proposals in both traditional and nontraditional business enterprises are encouraged. The initiative seeks to create a working partnership through cooperative agreements between 1890 Institutions and RBS, to develop programs to assist future entrepreneurs and businesses.

RBS plans to use cooperative agreements with the 1890 Institutions to strengthen the capacity of these communities to undertake innovative, comprehensive, citizen led, long-term strategies for community and economic development. The cooperative agreements will be for an outreach effort to promote RBS programs in targeted underserved rural communities and shall include, but are not limited to:

(a) Developing a program of business startup and technical assistance for assisting with new business development, business planning, franchise startup and consulting, business expansion studies, marketing analysis, cashflow management, and seminars and workshops for small businesses;

(b) Developing management and technical assistance plans that will:

(1) Assess small business alternatives to traditional agricultural and other natural resource based industries;

(2) Assist in the development of business plans or loan packages, marketing, or bookkeeping;

(3) Assist and train small businesses in customer relations, product development, or business planning and development.

(c) Assessing and conducting feasibility studies of local community weaknesses and strength, feasible alternatives to agricultural production, and the necessary infrastructure to expand or develop new or existing businesses;

(d) Providing community leaders with advice and recommendations regarding best practices in community economic development stimulus programs for their communities;

(e) Conducting seminars to disseminate information to stimulate business and economic development in selected rural communities; and

(f) Developing computer technology outreach and establishing and maintaining a computer network system, linking community leaders and residents to available economic development information.

To obtain application instructions and all required forms, please contact the Cooperative Services Program at (202) 690–3407 or FAX (202) 690–2723. The application forms and instructions may also be requested via e-mail by sending a message with your name, mailing address, and phone number to *edgar.lewis@usda.gov.* The application forms and instructions will be mailed to you (not e-mailed or faxed) as quickly as possible. When calling or e-mailing the Cooperative Services Program,

please indicate that you are requesting application forms and instructions for the FY 2003 1890 Land Grant Institutions Rural Entrepreneurial Program Outreach Initiative. The application forms may also be located on the Rural Business-Cooperative Service website: *http://www.rurdev.usda.gov/rbs/oa/1890.htm.*

Applicants are encouraged to closely examine the evaluation criteria noted in the ''Evaluation Criteria and Weights'' section of this notice as proposals are prepared.

Use of Funds

Funds may be used to pay up to 75 percent of the costs for carrying out relevant projects. Applicants' contributions may be in cash or in-kind contributions and must be from non-Federal funds. Funds may not be used to: (a) Pay more than 75 percent of relevant project or administrative costs; (b) pay costs of preparing the application package; (c) fund political activities; (d) pay costs prior to the effective date of the cooperative agreement; (e) provide for revolving funds; (f) do construction; (g) conduct any activities where there is or may appear to be a conflict of interest; or (h) purchase real estate.

Based on the Consolidated Appropriations Resolution, 2003, (Pub. L. 108–7, Feb. 20, 2003), ''No funds appropriated by this Act may be used to pay indirect cost rates on cooperative agreements or similar arrangements between the United States Department of Agriculture and nonprofit institutions in excess of 10 percent of the total cost of the agreement when the purpose of such cooperative arrangement is to carry out programs of mutual interest between the two parties.''

Available Funds and Award Limitations

The total amount of funds available in FY 2003 for support of this program is approximately $1.5 million. Applicants should request a budget commensurate with the project proposed. Total funds to be awarded will be distributed to the 1890 Institutions, competitively, for the purpose of conducting outreach and providing technical assistance to targeted small rural communities. This outreach initiative includes, but is not limited to, technical assistance in economic and community development, feasibility studies, research, market development, loan packaging, conducting workshops and seminars in the area of business and economic development, and developing and providing access to computer technology and website development to the targeted population and communities. The actual number of cooperative agreements funded will depend on the quality of proposals received and the amount of funding requested. Maximum amount of Federal funds awarded for any one proposal will be $150,000. It is anticipated that a typical award would range from $75,000 to $150,000. A larger award may be granted at the RBS Administrator's discretion.

Eligible Applicants and Beneficiaries

Eligible applicants are 1890 Institutions. Eligible applicants must provide matching funds equal to at least 25 percent of the amount provided by RBS in the cooperative agreement. Matching funds must be spend in proportion to the spending of funds received from the cooperative agreement. The applicant and assigned personnel must also have expertise and experience in providing the recommended assistance. Applicants should also have a previous record of successful implementation of similar projects and must have the expertise in the use of electronic network technologies and/or a business information system network website.

Eligible beneficiaries must be located in a rural area as defined in 7 U.S.C. 1991(a)(b) with economic need. Economic need can be demonstrated by the methods delineated in the ''Evaluation Criteria and Weights'' section of this Notice. Location in an Empowerment Zone, Enterprise Community, Champion Community, Federally-recognized Tribal Indian groups or other Federally declared economic depressed or disaster area is sufficient evidence of economic need. Eligible beneficiaries must also be located in communities that show significant community support for the proposal. Preference will be given for projects that operate in a multi-county service area.

Award recipients may subcontract to organizations not eligible to apply provided such organizations are necessary for the conduct of the project; however, the subcontracted amount may not exceed one-third of the total Federal award.

Methods for Evaluating and Ranking Applications

Each application will be evaluated in a two-part process. First, each application will be screened to ensure that it meets the administrative requirements as set forth in this Notice of Request for Proposals. Second, a number of expert reviewers will conduct a merit review based on the ''Evaluation Criteria and Weights'' section of this notice. The review of the individual reviewers will be used by RBS to determine which application will be recommended to the RBS Administrator for funding. Evaluated applications will be ranked based on merit. The RBS Administrator will make final approval for those applications recommended for an award. If there is a tie score after the proposals have been rated and ranked, the tie will be resolved by the proposal with the largest matching funds as a percent of the Federal amount of the award.

Evaluation Criteria and Weights

Proposals will be evaluated using the following seven criteria. Each criterion is given the weight value shown with total points equal to 100. The points assigned provide an indication of the relative importance of each section and will be used by the reviewers in evaluating the proposals. Points do not have to be awarded by RBS for each criterion. After all proposals have been evaluated, the Administrator may award an additional 10 discretionary points to any proposal to obtain the broadest geographic dispersion of the funds, insure a broad diversity of project proposals, or insure a broad diversity in the size of the awards.

(a) *Support of Local Community (Up to 10 points)*—Proposals should have the support of local government, educational, community, and business groups. Higher points will be awarded for proposals demonstrating broad support from all components of the communities served. Broad support is demonstrated by tangible contribution, such as volunteering human capital, computers, transportation, and/or co-sponsoring workshops and conferences. Points will be awarded based on the level of tangible contribution in comparison to the size of the award. Tangible support must be stated in letters from supporting entities.

(b) *Matching Funds/Leveraging (Up to 15 points)*—This criteria relates to the extent to which the institution has the capacity to support the project with matching funds and leveraging additional funds and resources to carry out this outreach initiative.

A maximum of 10 points will be awarded based upon the amount the proposal exceeds the minimum 25 percent matching requirement. Applicants will be required to provide matching funds or equivalent in-kind in support of this project. Evidence of matching funds availability must be provided. Funds or equivalent in-kind must be available at the time the cooperative agreement is entered into.

Matching funds points will be awarded as listed below.

25 percent to 35 percent match—2 points
35 percent to 50 percent match—5 points
50 percent to 75 percent match—7 points
75 percent match—10 points

Up to 5 additional points may be awarded based on the applicant's capacity to leverage additional funds and resources from other private and nonprivate sources to support this outreach initiative. Applicants must provide sufficient information on the amount and sources of leveraging activities for the evaluation panel to properly rate this criterion.

(c) *Economic Need of Community (Up to 20 points)*—This criterion will be evaluated based on the economic need of the targeted communities.

A maximum of 7 points will automatically be awarded to proposals with one or more of the following entities in a targeted community(s): Empowerment Zones, Enterprise Communities, Champion Communities, Federally-recognized Indian Tribal groups, and other Federally declared economic depressed or disaster areas. Applicants must provide sufficient information for the panel to properly rate this part of the above criterion. The proposals must state the name and location of the declared economic depressed area.

Rural underserved targeted counties/communities should be the same as the RBS definition for rural eligibility, which is any area other than a city or town that has a population of greater than 50,000 inhabitants and the urbanized area contiguous and adjacent to such a city or town, as defined by the U.S. Bureau of the Census using the latest decennial census of the United States.

Also, for this criterion, a maximum of 8 points will be awarded for demonstrated economic need based on the currently available poverty rate of the targeted local community(s). Applicants may use targeted county/or community poverty rates if available. When multi-communities proposals are submitted, the overall weighted average for all counties or communities will be used. Applicants must use current (2000 Census) poverty data for each targeted county/or community and for their respective State. Points will be awarded based on the differences in the targeted county/or community average poverty from the respective State poverty rate (average targeted county or community poverty rate-State poverty rate) as following. Percents will be rounded to the next whole number.

Less than 3 percent—0 points
3–6 percent—1 point
7–10 percent—2 points
11–15 percent—5 points
Greater than 15 percent—8 points

Up to five additional points may be awarded for this criterion based on the applicant's ability to demonstrate or identify other economic needs of the targeted communities, such as, but not limited to, unemployment rates, education levels, and job availability. The applicant must provide sufficient information for the panel to properly rate this part of the above criterion.

(d) *Previous Accomplishments (Up to 10 points)*—This criterion will be evaluated based on the applicant's previous accomplishments with this outreach initiative and/or demonstrative capacity to conduct similar outreach work.

A point will be awarded to those institutions for each year they have been awarded a cooperative agreement under this program up to 5 years. Applicants must provide evidence of satisfactorily completing the agreement for each year that they claim for credit.

Up to five additional points may be awarded based on the applicant's ability to document the impact of their project upon the targeted underserved rural communities. It is incumbent upon the applicant to provide information as to the type of services delivered, the names of rural communities, and the number of targeted audiences served the last year awarded.

Applicants with zero or less than 5 recent years of awards in this program may receive up to the maximum 10 points by highlighting the institution's commitment and previous performance on this project or projects with similar outreach objectives. The applicant should discuss the potential impact of their project upon the targeted underserved rural communities, as well as describing previous similar outreach work.

(e) *Statement of Work (up to 20 Points)*—This criterion relates to the degree to which the proposed project addresses the major purposes for the ''1890 Land Grant Institutions Rural Entrepreneurial Program Outreach Initiative.'' Points will be awarded according to the degree to which the statement of work reflects innovative strategies for providing outreach and assistance to the targeted underserved rural entrepreneurs, businesses and communities, and the potential for achieving project objectives. To receive the maximum points, proposals must have a clearly and concisely stated work plan showing objectives, goals, timetables, expected results, measurable outcomes, and who will be performing various activities, including RBS involvement.

(f) *Digital Technology Outreach (Up to 10 points)*—This criterion is meant to evaluate the applicant's level of outreach and capacity to provide innovative and effective computer technology outreach to the underserved targeted rural communities.

A maximum of 5 points will be awarded based on the applicant's demonstrated capacity to promote innovations and improvements in the delivery of computer technology benefits to underserved rural communities whose share in these benefits is disproportionably low. Examples of innovations and improvements in this needed area include, but are not limited to, computer-base, decision support systems to assist entrepreneurs and rural community governments in taking advantage of relevant technologies or efficacious delivery systems for business information or resource management assistance for rural underserved entrepreneurs and local governments and providing business information systems network.

Up to five additional points may be awarded based on the qualification and subject skill level of the individuals directly conducting the technology outreach activities. Applicants must provide sufficient information for the evaluation panel to properly rate this technology criterion.

(g) *Coordination and Management of the Project (Up to 15 points)—This criterion will be evaluated based on the applicant's demonstrated capacity to coordinate and manage this type of outreach initiative among the various stakeholders.*

A maximum of 8 points will be awarded for the coordination plan. Applicants will need to describe the role and coordination mechanisms among various participants, including communities, the applicant, and RBS. The nature of the collaborations and benefits to participants must also be described.

By definition, a cooperative agreement requires sufficient involvement by the funding agent in carrying out the project objectives in the project. Therefore, up to 7 additional points may be awarded for this criterion based on demonstration of broad involvement and collaboration with each applicant's respective RBS State Office as related to the outreach project. This involvement and collaboration

should include, but is not limited to: (1) RBS State Office input and review of institution's proposal, (2) invitations to attend and participate in workshops and conferences when needed, (3) on-going monitoring of the outreach project, and (4) directing applicants to the RBS State Office when applicable.

Deliverables

During the term of the negotiated agreements, the recipients will deliver quarterly reports of progress of the work to RBS and prepare and deliver a final report detailing all work done and results accomplished. In addition, all reports forwarded to RBS must be forwarded to the Rural Development State Office. Also, upon request by RBS, the recipient will deliver manuscripts, videotapes, software, or other media, as may be identified in approved proposals. RBS retains those rights delineated in 7 CFR 3019.36. Also, the recipients will deliver project outreach success stories and other project related information requested by RBS for use on the website (*http://bisnet.sus.edu*), or other websites designated by RBS.

Award Amount

In the event that the applicant is to receive an award that is less than the amount requested, the applicant will be required to modify the application to conform to the reduced amount before execution of the cooperative agreement. RBS reserves the right to reduce or de-obligate any award if acceptable modifications are not submitted by the awardees within 10 working days from the date the application is returned to the applicant. Any modification must be within the scope of the original application.

Recipient Requirements

Institutions that are awarded a cooperative agreement will be responsible for the following:

(a) Completing the objectives as defined in the approved proposal.

(b) During the term of the agreement, keep up-to-date records on the project, and on or prior to October 6, January 5, April 5, and July 5, make quarterly reports of the progress of the work to RBS, and prepare a final report detailing all work done and results accomplished. All reports will be forwarded to the RBS National Office and to the final report detailing all work done and results accomplished. All reports will be forwarded to the RBS National Office and to the Rural Development State Office.

(c) Submit to RBS, on a quarterly basis, Form SF–270, ''Request for Advance or Reimbursement.''

(d) Keep an account of expenditures of the Federal dollars and matching fund dollars and provide to RBS, Form SF–269, ''Financial Status Report,'' with each Form SF–270 submitted, and a final SF–269 within 90 days of the project's completion.

(e) Immediately refund to RBS, at the end of the agreement, any balance of unobligated funds received from RBS.

(f) Provide matching funds or equivalent in-kind in support of the project, at least to the level agreed to in the accepted proposal.

(g) Conduct seminars to disseminate Rural Development program information to stimulate business and economic development in selected rural communities.

(h) Participate in the RBS Entrepreneurship Conferences when planned.

(i) In cooperation with local businesses, develop a program of business startup and technical assistance that will assist with new company development, business planning, new enterprise, franchise startup and consulting, business expansion studies, marketing analysis, cashflow management, and seminars and workshops for small businesses.

(j) Provide office space, equipment, and supplies for all personnel assigned to the project.

(k) Develop management and technical assistance plans in cooperation with RBS State Office that will:

(1) Assess small business alternatives to agricultural and other natural resources-based industries;

(2) Assist in the development of business plans and loan packages, marketing, bookkeeping assistance, and organizational sustainability; and

(3) In cooperation with the RBS State Office, provide technical assistance and training in customer relations, product development, and business planning and development.

(l) Assess the need for and, if necessary, conduct a feasibility study of local community weaknesses and strengths, feasible alternatives to agriculture production, and the needed infrastructure to expand or develop new or existing businesses. The plans for any such studies must be submitted for approval prior to the study being conducted.

(m) In cooperation with the RBS State Office, provide community leaders with advice and recommendations regarding best practices in community economic development stimulus programs for their communities.

(n) Develop technology outreach and establish and maintain a Business Information Network System website, linking community leaders and residents to available economic development information.

(o) Assure and certify 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 set out in 7 CFR 3015.205(b) and 7 CFR part 3019.

(p) Federal funds can only be used to pay meeting related travel expenses, if the employees are performing a service of direct benefit to the government directly in furtherance of the objectives of the proposed agreement. Therefore, Federal funds cannot be used to pay non-Federal employees to attend meetings.

(q) Not commingle or use program funds for administrative expenses to operate an Intermediary Relending Program (IRP).

(r) As a cooperative agreement and not a grant, the 1890 Institution will collaborate with the RBS National and State Offices in performing the tasks in the agreement as needed and will provide the RBS National Office with the necessary information for RBS to do the following:

(1) Monitor the program as it is being implemented and operated, including monitoring of financial information to ensure that there is no commingling or use of program funds for administrative expenses to operate an IRP or other unapproved items.

(2) Halt activity, after written notice, if tasks are not met.

(3) Review and approve changes to key personnel.

(4) Provide guidance in the evaluation process and other technical assistance as needed.

(5) Approve the final plans for the community business workshops, business and economic development sessions, and training workshops to be conducted by the Institution.

(6) Provide reference assistance as needed to the Institution for technical assistance given on a one-on-one basis to entrepreneurs and startup businesses.

(7) Review and comment upon strategic plans developed by the Institution for targeted areas.

(8) Review economic assessments made by the Institution for targeted counties so that RBS can indicate which of its programs may be beneficial.

(9) Carefully screen the project to prevent First Amendment violations.

(10) Monitor the program to ensure that a Business Information System Network website link is established and maintained.

(11) Provide technical assistance and training to the Business Information System Network Hub-sites and Wide Area Network (WAN) Team Members at the universities in preparing economic development information for posting on the Internet.

(12) Allow the RBS State Office to conduct a semi-annual on-site review and submit written reports to the National Office.

Content of a Proposal

A proposal should contain an original and two copies of each of the following:

(a) *Completed Forms.*

(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) Form AD–1047, ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions.''

(5) Form AD–1049, ''Certification Regarding Drug-Free Workplace Requirements.''

(6) Form SF–LLL, ''Disclosure of Lobbying Activities.''

(b) *Table of Contents.* For ease of locating information, each proposal must contain a detailed Table of Contents immediately following the required forms. The Table of Contents should include page numbers for each component of the proposal. Pagination should begin immediately following the Table of Contents.

(c) *Project Executive Summary.* A summary of the Project, not to exceed one page.

(d) *Project Proposal.* The application must contain a narrative statement describing the nature of the proposed outreach initiative. The proposal must include at least the following:

(1) Project Title Page. Should include the following: Title of the project, names of principal investigators, and applicant organization.

(2) Introduction. A concisely worded justification or rationale for the outreach initiative must be presented. Included should be a summarization of social and economical statistical data (income population, employment rate, poverty rate, education attainment, *etc.*), of the target area which substantiates the need for the outreach initiative. Note in this section if the target area includes an Employment Zone/Enterprise Community, Champion Community, Federally-recognized Indian Tribal group or other Federally declared economic disaster area.

(3) Workplan. Discuss the approach (strategy) to be used in carrying out the proposed outreach initiative and accomplishing the objectives. A description of any subcontracting arrangements to be used in carrying out the project must be included. Also, the workplan must include:

(i) Overview of the project objectives and goals: Identify and discuss the specific goals and objectives of the project and the impact of the outreach initiative on end-users;

(ii) Timeframe: Develop a tentative schedule for conducting the major steps of the outreach initiative;

(iii) Milestones: Describe and quantify the expected outcome of the specific outreach objective, including jobs created or assisted, conferences and seminars conducted and number of participants, loans packaged, etc.;

(iv) Recipient involvement: Identify the person(s) who will be performing the activities; and

(v) RBS involvement: Identify RBS staff responsible for assisting and monitoring the activities.

(4) Estimated Budget. Detail budget justification including matching funds.

(5) Leveraging Funds. Other institutional support of this outreach initiative project.

(6) Coordination and Management Plan. Describe how the project will be coordinated among various participants, nature of the collaborations and benefits to participants, the communities, the applicant, and RBS. Describe plans for management of the project to ensure its proper and efficient administration. Describe scope of RBS involvement in the project.

(7) Technology Outreach. The proposal should address the applicant's ability to deliver computer technology to the targeted rural communities and implement and maintain a computer network system linking community leaders and residents to available economic development information.

(8) Key Personnel Support. The proposal should include curriculum vitae for the principal investigator and other key personnel used to carry out the goals and objectives of the proposal.

(9) Facilities or Equipment. Where the project will be located (housed) and what other equipment is needed or already available to carry out the specific objectives of the project.

(10) Previous Accomplishments. Summarize previous accomplishments of outreach work funded by RBS or similar outreach experiences, especially for first-time applicants.

(11) Local Support. Letters of support from the local community such as businesses, educational institutions, local governments, community-based organizations, etc. Letters of support should show support with commitment for tangible resources and or assistance.

(12) Any other information necessary for RBS to approve and rank your proposal.

Additionally, you are encouraged to provide any strategic plan that has been developed to assist business development or entrepreneurship for the targeted communities.

What To Submit

All applicants for the cooperative agreement must submit a completed original, plus two copies of the proposal for this competitive program. Do not bind the original copy.

Other Federal Statutes and Regulations That Apply

Several other Federal statutes and regulations apply to proposals considered for review and to cooperative agreements awarded. These include, but are not limited to:

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.

7 CFR part 3052—Audits of States, Local Governments and Non-Profit Organizations.

Paperwork Reduction Act

The paperwork burden associated with this initiative has been cleared by the Office of Management and Budget under OMB Control Number 0570–0041.

Dated: May 6, 2003

John Rosso,

Administrator, Rural Businesses-Cooperative Service.

[FR Doc. 03–11760 Filed 5–9–03; 8:45 am]

BILLING CODE 341–XY–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the West Virginia Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and

regulations of the U.S. Commission on Civil Rights, that a meeting of the West Virginia Advisory Committee to the Commission will convene at 12:30 p.m. and adjourn at 4:45 p.m. on Thursday, May 8, 2003, at the West Virginia University College of Law, Lugar Courtroom, 100A Law Center, Morgantown, West Virginia,26506–6130. The purpose of this meeting is so that the Committee can release its report, Civil Rights Issues in West Virginia. To obtain update information, the Committee will also hold a briefing session with government officials, community leaders, and the public.

Persons desiring additional information, or planning a presentation to the Committee, should contact Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116) or Ranjit Majumder, chair, (304) 367–4244. Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 28, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–11689 Filed 5–9–03; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Proposal To Collect Information on the Initial Report on a Foreign Person's Direct or Indirect Acquisition, Establishment, or Purchase of the Operating Assets of a U.S. Business Enterprise

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 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 July 11, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Office of the Chief Information Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230, or via the Internet at *dHynek@doc.gov,* ((202) 482–0266).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instruments and instructions should be directed to: David H. Galler, U.S. Department of Commerce, Bureau of Economic Analysis, BE–49(NI), Washington, DC 20230, or via the Internet at *David.Galler@bea.gov,* ((202) 606–9835).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Initial Report on a Foreign Person's Direct or Indirect Acquisition, Establishment, or Purchase of the Operating Assets, of a U.S. Business Enterprise, Including Real Estate (Form BE–13) and the Report by a U.S. Person Who Assists or Intervenes in the Acquisition of a U.S. Business Enterprise by, or Who Enters Into a Joint Venture with, a Foreign Person (Form BE–14) obtain initial data on new foreign direct investment in the United States. The surveys collect identification information on the U.S. business being established or acquired and on the new foreign owner, information on the cost of the investment and source of funding, and limited financial and operating data for the newly established or acquired entity. The data are needed to measure the amount of new foreign direct investment in the United States, assess its impact on the U.S. economy, and, based upon this assessment, make informed policy decisions regarding foreign direct investment in the United States.

The BE–13 survey is being revised, to add an item on the number of U.S. affiliates included in the consolidated report that will assist in verifying the accuracy of the reported data. No changes are proposed for Form BE–14.

II. Method of Collection

Form BE–13 must be filed by every U.S. business with over $3 million of assets or cost of investment, or 200 or more acres of U.S. land, that is acquired to the extent of 10 percent or more, or is established, by a foreign investor. It is a one-time report that must be filed within 45 days of the acquisition or establishment. A BE–13 Supplement C—Exemption Claim—must be filed for transactions that do not meet either of the reporting thresholds. Form BE–14 is filed by a person who assists in an investment transaction, such as a real estate broker or attorney, or who enters into a U.S. joint venture with a foreign person. Its purpose is to provide BEA with the name and address of the newly established or acquired U.S. company, so that a BE–13 form can be mailed to it for completion. A BE–14 is not filed, however, if a U.S. person files a BE–13 relating to the establishment or acquisition of the U.S. business enterprise by a foreign person.

III. Data

OMB Number: 0608–0035.

Form Numbers: BE–13/BE–14

Type of Review: Regular submission.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 600 annually.

Estimated Time Per Response: 1½ hours.

Estimated Total Annual Burden: 900 hours.

Estimated Total Annual Cost: $27,000 (based on an estimated reporting burden of 900 hours and an estimated hourly cost of $30).

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 has 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: May 6, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–11688 Filed 5–9–03; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-475–703]

Granular Polytetrafluoroethylene Resin from Italy: Final Results of Changed Circumstances Review

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

ACTION: Notice of Final Results of Antidumping Duty Changed Circumstances Review.

SUMMARY: On March 20, 2003, the Department of Commerce published a notice of initiation and preliminary results of its changed circumstances review of the antidumping duty order on granular polytetrafluoroethylene resin from Italy (PTFE) (*see Antidumping Duty Order; Granular Polytetrafluoroethylene Resin from Italy*, 53 FR 33163 (August 30, 1988)) in which we preliminarily determined that Solvay Solexis SpA and Solvay Solexis, Inc. were the successors-in-interest to Ausimont SpA and Ausimont USA, Inc. We gave interested parties an opportunity to comment on the preliminary results of review, but received no comments. Therefore, the final results do not differ from the preliminary results of review.

EFFECTIVE DATE: May 12, 2003.

FOR FURTHER INFORMATION CONTACT: Vicki Schepker, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1756.

SUPPLEMENTARY INFORMATION:

Background:

On March 20, 2003, in accordance with Section 751(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216 and 351.221(c)(3), the Department initiated a changed circumstances review and published its preliminary results in the **Federal Register**, preliminarily finding Solvay Solexis SpA and Solvay Solexis, Inc. (collectively, Solvay Solexis) to be the successors-in-interest to Ausimont SpA and Ausimont USA, Inc. (collectively, Ausimont). *See Granular Polytetrafluoroethylene Resin from Italy; Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review*, 68 FR 13672 (March 20, 2003) (Preliminary Results). We invited interested parties to comment on these findings. No comments were received.

Scope of the Review

The product covered by this review is granular PTFE resin, filled or unfilled. This order also covers PTFE wet raw polymer exported from Italy to the United States. *See Final Affirmative Determination; Granular Polytetrafluoroethylene Resin from Italy*, 58 FR 26100 (April 30, 1993). This order excludes PTFE dispersions in water and fine powders. Such merchandise is classified under item number 3904.61.00 of the Harmonized Tariff Schedule of the United States (HTSUS). We are providing this HTSUS number for convenience and customs purposes only. The written description of the scope remains dispositive.

Final Results of Changed Circumstances Review

Because we received no comments on the Preliminary Results and for the reasons stated in the Preliminary Results, we find Solvay Solexis to be the successor-in-interest to Ausimont for antidumping duty cash deposit purposes. In order to make this determination, we examined Ausimont's personnel, operations, supplier/customer relationships, and facilities by reviewing an amended certificate of incorporation, investor presentations, an application for amended certificate of authority, shareholder meeting minutes, press releases discussing the Solvay Group's purchase of Ausimont, management charts, a letter to customers, and product labels. Based on all the evidence reviewed, we find that Solvay Solexis is the successor-in-interest to Ausimont. Solvay Solexis will receive the same antidumping duty cash-deposit rate (*i.e.*, 12.08 percent) with respect to the subject merchandise as Ausimont, its predecessor company. This cash deposit requirement will be effective upon publication of this notice for all shipments of the subject merchandise by Solvay Solexis entered, or withdrawn from warehouse, for consumption, on or after the publication date of this notice. This cash deposit rate shall remain in effect until publication of the final results of the next administrative review in which Solvay Solexis participates.

We are issuing and publishing this finding and notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and section 351.216 of the Department's regulations.

Dated: May 5, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–11744 Filed 5–9–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-201–802]

Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review: Gray Portland Cement and Clinker From Mexico

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

ACTION: Notice of preliminary results and rescission in part of antidumping duty administrative review.

EFFECTIVE DATE: May 12, 2003.

SUMMARY: In response to requests from interested parties, the Department of Commerce is conducting an administrative review of the antidumping duty order on gray portland cement and clinker from Mexico. The review covers exports of subject merchandise to the United States during the period August 1, 2001, through July 31, 2002, and one firm, CEMEX, S.A. de C.V., and its affiliate, GCC Cemento, S.A. de C.V. We have preliminarily determined that sales were made below normal value during the period of review. With respect to Apasco, S.A. de C.V., we are rescinding the antidumping duty administrative review of this company.

We invite interested parties to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with the argument (1) a statement of the issues, and (2) a brief summary of the argument.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Brian Ellman, Office of AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–3477, (202) 482–4852, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 6, 2002, the Department published in the **Federal Register** the *Notice of Opportunity to Request Administrative Review concerning the antidumping duty order on gray*

portland cement and clinker from Mexico (67 FR 50856). In accordance with 19 CFR 351.213, the petitioner, the Southern Tier Cement Committee (STCC), requested a review of CEMEX, S.A. de C.V. (CEMEX), CEMEX's affiliate, GCC Cemento, S.A. de C.V. (GCCC), and Apasco, S.A. de C.V. (Apasco). In addition, CEMEX and GCCC requested reviews of their own sales during the period of review. On September 25, 2002, we published in the **Federal Register** the *Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews* (67 FR 60210). The period of review is August 1, 2001, through July 31, 2002. Our review of Customs Service import data indicates that there were no entries of subject merchandise produced by Apasco during the period of review. See Memorandum from Analyst to the File, dated March 4, 2003. Therefore, in accordance with 19 CFR 351.213(d)(3), we are rescinding the review with respect to this manufacturer/exporter. We are conducting a review of CEMEX and GCCC pursuant to section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Review

The products covered by this review include gray portland cement and clinker. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material product produced when manufacturing cement, has no use other than of being ground into finished cement. Gray portland cement is currently classifiable under *Harmonized Tariff Schedule* (HTS) item number 2523.29 and cement clinker is currently classifiable under HTS item number 2523.10. Gray portland cement has also been entered under HTS item number 2523.90 as ''other hydraulic cements.'' The HTS subheadings are provided for convenience and customs purposes only. Our written description of the scope of the proceeding is dispositive.

Verification

As provided in section 782(i) of the Act, we verified U.S. sales information submitted by CEMEX and GCCC using standard verification procedures, including an examination of relevant sales and financial record and selection of original documentation containing relevant information. Our verification results are outlined in public versions of the verification reports.

Collapsing

Section 771(33) of the Act defines when two or more parties will be considered affiliated for purposes of an antidumping analysis. Moreover, the regulations describe when the Department will treat two or more affiliated producers as a single entity (*i.e.*, ''collapse'' the firms) for purposes of calculating a dumping margin (see 19 CFR 357.401(f)). In previous administrative reviews of this order, we analyzed the record evidence and collapsed CEMEX and GCCC in accordance with the regulations.[1]

The regulations state that we will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and we conclude that there is a significant potential for the manipulation of price or production. In identifying a significant potential for the manipulation of price or production, the factors we may consider include the following: (i) the level of common ownership; (ii) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (iii) whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers. See 19 CFR 351.401(f).

Having reviewed the current record, we find that the factual information underlying our decision to collapse these two entities has not changed from previous administrative reviews. CEMEX's indirect ownership of GCCC exceeds five percent; therefore, these two companies are affiliated pursuant to section 771(33)(E) of the Act. In addition, both CEMEX and GCCC satisfy the criteria for treatment of affiliated parties as a single entity described at 19 CFR 351.401(f)(1): both producers have production facilities for similar and identical products such that substantial retooling of their production facilities would not be necessary to restructure manufacturing priorities. Consequently, any minor retooling required could be accomplished swiftly and with relative ease.

We also find that a significant potential for manipulation of prices and production exists as outlined under 19 CFR 351.401(f)(2). CEMEX indirectly owns a substantial percentage of GCCC. Also, CEMEX's managers or directors sit on the board of directors of GCCC and its affiliated companies. Accordingly, CEMEX's percentage ownership of GCCC and the interlocking boards of directors give rise to a significant potential for affecting GCCC's pricing and production decisions. See the Department's memorandum from Analyst to File, Collapsing CEMEX, S.A. de C.V. and GCC Cemento, S.A. de C.V. for the Current Administrative Review, dated January 14, 2003. Therefore, we have collapsed CEMEX and GCCC into one entity and calculated a single weighted-average margin using the information the firms provided in this review.

Constructed Export Price

Both CEMEX and GCCC reported constructed export price (CEP) sales. We calculated CEP based on delivered prices to unaffiliated customers in accordance with section 772(b) of the Act. Where appropriate, we made adjustments to the starting price for discounts, rebates, and billing adjustments. In accordance with section 772(d) of the Act and 19 CFR 351.402(b), we deducted those selling expenses, including inventory carrying costs, that were associated with commercial activities in the United States and related to the sale to an unaffiliated purchaser. We also made deductions for foreign brokerage and handling, foreign inland freight, U.S. inland freight and insurance, U.S. warehousing expenses, U.S. brokerage and handling, and U.S. duties, pursuant to section 772(c)(2)(A) of the Act. Finally, we made an adjustment for CEP profit in accordance with section 772(d)(3) of the Act. No other adjustments to CEP were claimed or allowed.

With respect to subject merchandise to which value was added in the United States prior to sale to unaffiliated U.S. customers (*i.e.*, cement that was imported and further-processed into finished concrete by U.S. affiliates of foreign exporters), we preliminarily determine that the special rule under section 772(e) of the Act for merchandise with value added after importation is applicable.

Section 772(e) of the Act provides that, where the subject merchandise is imported by a person affiliated with the exporter or producer and the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise, we will determine the CEP for such merchandise using the price of identical or other subject

[1] See, *e.g.*, *Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review: Gray Portland Cement and Clinker From Mexico*, 67 FR 57379, 57380 (September 10, 2002). No changes were made in the final results of review (see *Gray Portland Cement and Clinker From Mexico; Final Results of Antidumping Duty Review*, 68 FR 1816 (January 14, 2003)).

merchandise if there is a sufficient quantity of sales to provide a reasonable basis for comparison and we determine that the use of such sales is appropriate. The regulations at 19 CFR 351.402(c)(2) provide that normally we will determine that the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise if we estimate the value added to be at least 65 percent of the price charged to the first unaffiliated purchaser for the merchandise as sold in the United States. Normally we will estimate the value added based on the difference between the price charged to the first unaffiliated purchaser for the merchandise as sold in the United States and the price paid for the subject merchandise by the affiliated person. We will base this determination normally on averages of the prices and the value added to the subject merchandise. If there is not a sufficient quantity of such sales or if we determine that using the price of identical or other subject merchandise is not appropriate, we may use any other reasonable basis to determine the CEP. See section 772(e) of the Act.

During the course of this administrative review, the respondent submitted information which allowed us to determine whether, in accordance with section 772(e) of the Act, the value added in the United States by its U.S. affiliates is likely to exceed substantially the value of the subject merchandise. To determine whether the value added is likely to exceed substantially the value of the subject merchandise, we estimated the value added based on the difference between the averages of the prices charged to the first unaffiliated purchaser for the merchandise as sold in the United States and the averages of the prices paid for subject merchandise by the affiliate. Based on this analysis, we estimate that the value added was at least 65 percent of the price the respondent charged to the first unaffiliated purchaser for the merchandise as sold in the United States. Therefore, we preliminarily determine that the value added is likely to exceed substantially the value of the subject merchandise. Also, the record indicates that there is a sufficient quantity of subject merchandise to provide a reasonable and appropriate basis for comparison. Accordingly, for purposes of determining dumping margins for the further-manufactured sales, we have applied the preliminary weighted-average margin reflecting the rate calculated for sales of identical or other subject merchandise sold to unaffiliated purchasers.

Normal Value

A. Comparisons

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating normal value, we compared the respondent's volume of home-market sales of the foreign like product to the volume of U.S. sales of the subject merchandise in accordance with section 773(a)(1)(C) of the Act. Since the respondent's aggregate volume of home-market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable. Therefore, we have based normal value on home-market sales.

During the period of review, the respondent sold Type II LA and Type V LA cement in the United States. The statute expresses a preference for matching U.S. sales to identical merchandise in the home market. The respondent sold cement produced as CPC 30 R, CPC 40, and CPO 40 cement in the home market. We have attempted to match the subject merchandise to identical merchandise sold in the home market. In situations where identical product types cannot be matched, we have attempted to match the subject merchandise to sales of similar merchandise in the home market. See sections 773(a)(1)(B) and 771(16) of the Act.

We were able to find home-market sales of identical and similar merchandise to which we could match sales of Type II LA and Type V LA cement sold in the U.S. market. In the two most recent administrative reviews of this proceeding, we determined that CPO 40 cement produced and sold in the home market is the identical match to Type V LA cement sold in the United States. See, *e.g., Gray Portland Cement and Clinker From Mexico; Final Results of Antidumping Duty Administrative Review*, 67 FR 12518 (March 19, 2002), and the accompanying Issues and Decision Memorandum at comment 7. We have reviewed the information on the record and have determined that CPO 40 cement produced and sold in the home market is the identical match to Type V LA cement sold in the United States during this review period.

If we could not find an identical match to the cement types sold in the United States in the same month in which the U.S. sale was made or during the contemporaneous period, we based normal value on similar merchandise. During the review period, GCCC had sales of Type II LA in the United States but did not have any sales of this type in the home market. In the 2000/2001 administrative review of this proceeding, we determined that the chemical and physical characteristics of type CPO 40 cement produced and sold in Mexico are most similar to Type II LA cement sold in the United States. We have reviewed the information on the record and have determined that it is appropriate to match sales of CPO 40 cement produced and sold in Mexico to all sales of Type II LA sold in the United States.

Furthermore, in accordance with section 771(16)(B) of the Act, we find that both bulk and bagged cement are produced in the same country and by the same producer as the types sold

in the United States, both bulk and bagged cement are like the types sold in the United States in component materials and in the purposes for which used, and both bulk and bagged cement are approximately equal in commercial value to the types sold in the United States. The questionnaire responses submitted by the respondent indicate that, with the exception of packaging, sales of cement in bulk and sales of cement in bags are physically identical and both are used in the production of concrete. Also, since there is no difference in the cost of production between cement sold in bulk or in bagged form, both are approximately equal in commercial value. See CEMEX's and GCCC's responses to the Department's original and supplemental questionnaires. Therefore, we find that matching the U.S. merchandise which is sold in both bulk and bag to the foreign like product sold in bulk is appropriate.

B. Arm's-Length Sales

To test whether sales to affiliated customers were made at arm's length, we compared the prices of sales to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, discounts, and packing. Where the price to the affiliated party was on average 99.5 percent or more of the price to the unaffiliated parties, we determined that the sales made to the affiliated party were at arm's length. Consistent with 19 CFR 351.403, we included these sales in our analysis.

C. Cost of Production

The petitioner alleged on December 12, 2002, that the respondent sold gray portland cement and clinker in the home market at prices below the cost of production (COP). Because CPO 40 cement sold in the home market is the identical and similar match to sales of

Type V LA and Type II LA cement sold in the United States, sales of CPO 40 cement provide the basis for determining normal value and, as such, we determined that there is no reasonable grounds to initiate a sales-below-cost investigation on other cement models produced during this review. Upon examining the allegation, we determined that the petitioner had provided a reasonable basis to believe or suspect that CEMEX was selling CPO 40 cement in Mexico at prices below the COP. Therefore, pursuant to section 773(b)(1) of the Act, we initiated a model-specific COP investigation to determine whether the respondent made home-market sales of CPO 40 cement during the period of review at below-cost prices. See the memorandum from Laurie Parkhill to Susan Kuhbach entitled Gray Portland Cement and Clinker from Mexico: Request to Initiate Cost Investigation in the 2001/2002 Review (February 3, 2003).

In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of the costs of materials and fabrication employed in producing CPO 40 cement, plus amounts for home-market selling, general, and administrative (SG&A) expenses. We used the home-market sales data and COP information pertaining to CPO 40 cement provided by CEMEX in its questionnaire response.

After calculating a weighted-average COP, in accordance with section 773(b)(3) of the Act, we tested whether CEMEX's home-market sales of CPO 40 were made at prices below COP within an extended period of time in substantial quantities and whether such prices permitted recovery of all costs within a reasonable period of time. We compared the COP of CPO 40 cement to the reported home-market prices less any applicable direct selling expenses, movement charges, discounts and rebates, indirect selling expenses, and commissions.

Pursuant to section 773(b)(2)(C) of the Act, if less than 20 percent of the respondent's sales of a certain type were at prices less than the COP, we do not disregard any below-cost sales of that product because the below-cost sales were not made in substantial quantities within an extended period of time. If 20 percent or more of the respondent's sales of a certain type during the period of review were at prices less than the COP, such below-cost sales were made in substantial quantities within an extended period of time pursuant to sections 773(b)(2)(B) and (C) of the Act. Based on comparisons of home-market prices of CPO 40 cement to weighted-average COP for the period of review, we determined that below-cost sales of CPO 40 cement were not made in substantial quantities within an extended period of time, and, therefore, we did not disregard any below-cost sales.

D. Adjustments to Normal Value

Where appropriate, we adjusted home-market prices for discounts, rebates, packing, handling, interest revenue, and billing adjustments to the invoice price. In addition, we adjusted the starting price for inland freight, inland insurance, and warehousing expenses. We also deducted home-market direct selling expenses from the home-market price and home-market indirect selling expenses as a CEP-offset adjustment (see Level of Trade/CEP Offset section below). In addition, in accordance with section 773(a)(6) of the Act, we deducted home-market packing costs and added U.S. packing costs.

Section 773(a)(6)(C)(ii) of the Act directs us to make an adjustment to normal value to account for differences in the physical characteristics of merchandise where similar products are compared. The regulations at 19 CFR 351.411(b) direct us to consider differences in variable costs associated with the physical differences in the merchandise. Where we matched U.S. sales of subject merchandise to similar models in the home market, we adjusted for differences in merchandise.

E. Level of Trade/CEP Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine normal value based on sales in the home market at the same level of trade as the CEP. The home-market level of trade is that of the starting-price sales in the home market or, when normal value is based on constructed value (CV), that of sales from which we derive SG&A expenses and profit. For CEP, it is the level of the constructed sale from the exporter to an affiliated importer after the deductions required under section 772(d) of the Act.

To determine whether home-market sales are at a different level of trade than CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which normal value is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the normal value level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between normal value and CEP affects price comparability, we adjust normal value under section 773(a)(7)(B) of the Act (the CEP-offset provision). See *Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732–33 (November 19, 1997).

With respect to U.S. sales, we conclude that CEMEX's and GCCC's sales constituted two separate levels of trade, one CEMEX U.S. level of trade and one GCCC U.S. level of trade. We based our conclusion on our analysis of each company's reported selling functions and sales channels after making deductions for selling expenses under section 772(d) of the Act. We found that CEMEX and GCCC performed different sales functions for sales to their respective U.S. affiliates. For instance, CEMEX reported that it performed technical advice, solicitation of orders/customer visits, account receivable management, warehousing, and communication activities whereas GCCC reported that it did not perform any of these activities.

Based on our analysis of the respondent's reported selling functions and sales channels, we conclude that the respondent's home-market sales to various classes of customers which purchase both bulk and bagged cement constitute one level of trade. We found that, with some minor exceptions, CEMEX and GCCC performed the same selling functions to varying degrees in similar channels of distribution. We also concluded that the variations in the intensities of selling functions performed were not substantial when all selling expenses were considered as a whole. See the memorandum entitled Gray Portland Cement and Clinker from Mexico: Level-of-Trade Analysis for the 01/02 Administrative Review, dated April 11, 2003 (Level-of-Trade Analysis memorandum).

Furthermore, the respondent's home-market sales occur at a different and more advanced stage of distribution than its sales to the United States. For example, the CEMEX U.S. level of trade does not include activities such as market research, after-sales service/warranties, advertising, and packing, whereas the home-market level of trade includes these activities. Similarly, the GCCC U.S. level of trade does not include activities such as market research, technical advice, advertising,

customer approval, solicitation of orders, computer/legal/accounting/ business systems, sales promotion, sales forecasting, strategic and economic planning, personnel training/exchange, and procurement and sourcing services whereas the home-market level of trade includes these activities.

As a result of our level-of-trade analysis, we could not match U.S. sales at either of the two U.S. levels of trade to sales at the same level of trade in the home market because there are no home-market sales at the same level of trade. In addition, because we found only one home-market level of trade, there is no basis for the calculation of a level-of-trade adjustment based on the collapsed entity's home-market sales of merchandise under review. Therefore, we have determined that the data available do not provide an appropriate basis on which to calculate a level-of-trade adjustment. We determined, however, that the level of trade of the home-market sales is more advanced than the levels of the U.S. sales. Thus, we made a CEP-offset adjustment to normal value in accordance with section 773(a)(7)(B) of the Act. In accordance with section 773(a)(7) of the Act, we calculated the CEP offset as the smaller of the following: (1) the indirect selling expenses on the home-market sale, or (2) the indirect selling expenses deducted from the starting price in calculating CEP. See the Level-of-Trade Analysis memorandum.

Adverse Facts Available

Section 776(a)(2) of the Act, provides that, if, in the course of an antidumping review, an interested party (A) withholds information that has been requested by the Department, (B) fails to provide such information in a timely manner or in the form or manner requested, (C) significantly impedes a proceeding under the antidumping statute, or (D) provides such information but the information cannot be verified, then the Department shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination.

Section 782(e) of the Act provides that the Department ''shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority'' if (1) the information is submitted by the deadline established for its submission, (2) the information can be verified, (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination, (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the Department with respect to the information, and (5) the information can be used without undue difficulties. Where these conditions are met, the statute requires the Department to use the information.

The Department determines that, in accordance with section 776(a)(2)(D) of the Act, the use of facts available is an appropriate basis for the calculation of a dumping margin on sales made by GCCC's U.S. affiliate, Rio Grande Materials (RGM).

On March 24, 2003, through March 26, 2003, the Department conducted a verification of the U.S. sales information submitted by GCCC. As discussed in detail in the verification report dated April 24, 2003, the Department was unable to obtain detailed source documentation supporting the quantity and value (Q&V) of RGM's reported sales and expenses. Furthermore, at the onset of the Department's verification, GCCC submitted numerous pre-verification corrections that, among other things, made substantial changes to the expenses GCCC had reported on sales by RGM.

As detailed in the verification report, without the necessary supporting documentation, the Department was unable to verify the information that was reported and/or corrected concerning RGM's sales of subject merchandise during the POR, as required under section 782(i) of the Act. This information is essential to the Department's dumping analysis. Thus, the sales information submitted on behalf of RGM does not comply with section 782(e) of the Act. Therefore, because we could not verify this information, we must resort to facts available.

Use of an Adverse Inference

Section 776(b) of the Act provides that, if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability in complying with a request for information, the Department may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available. In addition, the *Statement of Administrative Action* accompanying the *Uruguay Round Agreements Act*, H. Doc. 103–316 (1994) (SAA), establishes that the Department may employ an adverse inference ''* * * to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' See SAA at 870. It also instructs the Department, in employing adverse inferences, to consider ''* * * the extent to which a party may benefit from its own lack of cooperation.'' *Id.*

The Department determines that, in accordance with section 776(b) of the Act, an adverse inference is appropriate in selecting from among the facts otherwise available for RGM sales. With respect to sales made by RGM, the main difficulty encountered by the Department at verification was the lack of availability of and access to the original source documentation supporting the information supplied to the Department. The other difficulty stemmed from RGM's unpreparedness to meet the specific requirements that were described in the Department's verification outline.

First, GCCC has been involved in numerous prior reviews of this order which indicates that it has experience with an antidumping proceeding. Second, pursuant to section 782(i)(3)(B) of the Act, the Department was required to verify the information provided by GCCC in this POR, as GCCC had not been verified during the two immediately preceding reviews. Thus, GCCC was aware that all documentation supporting the information it reported for this POR was subject to Departmental verification. Finally, although RGM was sold subsequent to the instant POR, GCCC was in control of the source documentation because it was stored in one of its facilities. Therefore, we have concluded that GCCC did not cooperate to the best of its ability.

In accordance with section 776(b) of the Act, we are making an adverse inference in our application of the facts available. As adverse facts available we have applied the highest published rate we have calculated for companies under review for any segment of this proceeding. Consequently, we preliminarily determine to apply the 73.74 percent rate that we calculated in the final results of the 2000/2001 administrative review to RGM's sales of subject merchandise in the United States during the POR. See *Gray Portland Cement and Clinker From Mexico; Final Results of Antidumping Duty Administrative Review*, 68 FR 1816–1817 (January 14, 2003). We discuss the corroboration of this rate below.

Corroboration of Secondary Information

An adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the

record. See section 776(b) of the Act. Section 776(c) provides, however, that, when the Department relies on secondary information rather than on information obtained in the course of a review, the Department shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The SAA states that the independent sources may include published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation or review. See SAA at 870. The SAA clarifies that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. *Id.* As discussed in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. In the preliminary margin calculation, numerous sales by CEMEX had margins greater than 73.74 percent. Therefore, we find that the adverse facts-available rate is relevant to this POR. Unlike other types of information, such as input costs or selling expenses, there are no independent sources from which the Department can calculate dumping margins. The only source for margins is administrative determinations. Thus, with respect to an administrative review, if the Department chooses as facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. Thus, the Department finds that the information is reliable. See *Freshwater Crawfish Tail Meat from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 68 FR 19504 (April 21, 2003).

Currency Conversion

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

Preliminary Results of Review

As a result of our review, we preliminarily determine the dumping margin for the collapsed parties, CEMEX and GCCC, for the period August 1, 2001, through July 31, 2002, to be 71.77 percent.

We will disclose calculations performed in connection with these preliminary results to parties within five days of the date of publication of this notice. See 19 CFR 351.224(b). Interested parties may request a hearing within 30 days of publication of this notice. A hearing, if requested, will be held at the main Commerce Department building three business days after submission of rebuttal briefs.

Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. Case briefs from interested parties may be filed no later than 30 days after publication of this notice. Rebuttal briefs, limited to the issues raised in case briefs, may be submitted no later than five days after the deadline for filing case briefs.

Parties who submit case or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument with an electronic version included.

Upon completion of this review, the Department will determine, and the U.S. Bureau of Customs and Border Protection (BCBP) shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an importer-specific assessment rate for merchandise subject to this review. If these preliminary results are adopted in the final results of review, we will direct the BCBP to assess the resulting assessment rates against the entered customs values for the subject merchandise on each of the importer's entries during the review period.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of review, as provided by section 751(a)(1) of the Act:

(1) The cash-deposit rate for the respondent will be the rate determined in the final results of review; (2) for previously reviewed or investigated companies not mentioned above, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or in the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash-deposit rate for all other manufacturers or exporters will be 61.35 percent, the all-others rate from the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

In conducting recent reviews of CEMEX/GCCC, the Department has observed a pattern of significant differences between the weighted-average margins and the assessment rates it has determined for this respondent in those reviews. This pattern of differences suggests that the collection of a cash deposit for estimating antidumping duty based on net U.S. price may result in the undercollection of estimated antidumping duties at the time of entry. We are considering whether it would be appropriate in this case to establish a per-unit cash-deposit requirement for CEMEX/GCCC. See preliminary analysis memo dated May 5, 2003. The Department invites interested parties to comment on this issue.

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

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

Dated: May 5, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–11743 Filed 5–9–02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-791–817]

Initiation of Antidumping Duty Investigation: Hydraulic Magnetic Circuit Breakers from South Africa

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

EFFECTIVE DATE: May 12, 2003.

FOR FURTHER INFORMATION CONTACT: Fred W. Aziz, Thomas Schauer, or Richard Rimlinger, Import Administration, International Trade Administration,

U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4023, (202) 482–0410 or (202) 482–4477, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On April 14, 2003, the Department of Commerce (''the Department'') received a petition on imports of hydraulic magnetic circuit breakers (''HMCBs'') from South Africa filed in proper form by Airpax Corporation, LLC (referred to hereafter as ''the petitioner''). On April 22, 2003, the Department requested additional information and clarification of certain areas of the petition. The petitioner filed a supplement to the petition on April 25, 2003.

In accordance with section 732(b) of the Tariff Act of 1930, as amended (''the Act''), the petitioner alleges that imports of HMCBs from South Africa are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring and threaten to injure an industry in the United States.

The Department finds that the petitioner filed this petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(c) of the Act. Furthermore, with respect to the antidumping duty investigation the petitioner is requesting the Department to initiate, it has demonstrated sufficient industry support (see ''Determination of Industry Support for the Petition'' below).

Scope of Investigation

This investigation covers all hydraulic magnetic circuit breakers (sometimes referred to as magnetic hydraulic) circuit breakers (''HMCBs''), incorporating a tripping means of a magnetic coil surrounding a tube and plunger, restrained by air, liquid or spring, whether or not sealed, whether or not of molded case, of any voltage less than 72.5 kilovolts, of any amperage rating, with single or multiple poles, of any mounting or connection means and of any terminal type, whether or not having a magnetic latch, and excluding thermal and thermal magnetic circuit breakers. The subject merchandise is classified under Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings 8535.21.00 and 8536.20.00. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

During our review of the petition, we discussed the scope with the petitioner to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (62 FR 27296, 27323), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments within 20 calendar days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition must be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the administering agency shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (''the ITC''), which is responsible for determining whether ''the domestic industry'' has been materially injured, must also determine what constitutes a domestic like product in order to define the industry. While the Department and the ITC must apply the same statutory definition regarding the domestic like product, they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to time and information limitations. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to law.[1]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic-like-product analysis begins is ''the article subject to an investigation,'' *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

In its April 14th petition, petitioner claims it has industry support. The petitioner states that it compromises virtually all U.S. production of HMCBs. However, the petition identifies three additional U.S. entities engaged in the sale of HMCBs in the domestic market. According to the petition, none of the three maintain commercial production in the United States. The petitioner asserts that virtually all of those firms' manufacturing is done in other countries and that any domestic manufacturing is limited to samples in non-commercial quantities. Based on all available information, we agree that the petitioner compromises virtually all domestic commercial production of HMCBs.

Our review of the data provided in the petition and other information readily available to the Department indicates that the petitioner has established industry support representing over 50 percent of total production of the domestic like product, requiring no further action by the Department pursuant to section 732(c)(4)(D) of the Act. In addition, the Department received no opposition to the petition from domestic producers of the like product. Therefore, the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product, and the requirements of section 732(c)(4)(A)(i) are met. Furthermore, the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product

[1] See *Algoma Steel Corp. Ltd., v. United States*, 688 F. Supp. 639, 642-44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380-81 (July 16, 1991).

produced by that portion of the industry expressing support for or opposition to the petition. Thus, the requirements of section 732(c)(4)(A)(ii) of the Act also are met. Accordingly, the Department determines that the petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

With regard to the definition of domestic like product, the petitioner does not offer a definition of domestic like product distinct from the scope of the investigation. On April 30, 2003, Circuit Breaker Industries, Ltd. (''CBI''), a South African producer of the subject merchandise, challenged industry support for the petition pursuant to sections 732(b)(3) and 732(c)(4)(D) of the Act. On May 1, 2003, the petitioner filed its reply to CBI's challenge.

Based on our analysis of the information presented by the petitioner, we have determined that there is a single domestic like product, hydraulic magnetic circuit breakers, which is defined in the ''Scope of Investigation'' section above, and we have analyzed industry support in terms of this domestic like product. For more information on our analysis and the data upon which we relied, see Import Administration Antidumping Investigation Initiation Checklist (''Initiation Checklist''), Industry Support section and Appendix 1, dated May 5, 2003, on file in the CRU of the main Department of Commerce building.

Period of Investigation

The anticipated period of investigation is April 1, 2002, through March 31, 2003.

Constructed Export Price and Normal Value

The following is a description of the allegation of sales at less than fair value upon which the Department based its decision to initiate this investigation. The sources of data for the deductions and adjustments relating to U.S. price and normal value are discussed in greater detail in the Initiation Checklist dated May 5, 2003. Should the need arise to use any of this information as facts available under section 776 of the Act, we may reexamine the information and revise the margin calculations, if appropriate.

Constructed Export Price

The petitioner identified CBI and its affiliate CBI, Inc. (hereinafter ''CBI USA'') as the primary producer and importer, respectively, of the subject merchandise. As the sole South African producer of HMCBs, CBI accounts for all exports of HMCBs to the United States from South Africa. Therefore, the petitioner established U.S. price based on constructed exported price (''CEP''). According to the petitioner, CBI's sales in the United States are sold by CBI's subsidiary, CBI USA, which holds inventory in its U.S. warehouse prior to shipment to unaffiliated buyers. In order to obtain ex-factory prices, the petitioner deducted international transportation (by sea) and estimated profit and expense mark-up. Because the petitioner did not provide adequate support for its profit and expense figure, we recalculated the CEPs to not deduct this expense. With this exception, we reviewed the information provided regarding CEP and have determined that it is adequate and accurate and represents information reasonably available to the petitioner (see Initiation Checklist, Re: Less-Than-Fair-Value Allegation).

Because the petitioner provided price quotes for actual products and we determine that these price quotes are sufficient for initiation purposes, we did not use the ITC Dataweb values that petitioner provided to estimate dumping margins. To the extent necessary, we will consider the appropriateness of the petitioner's alternative during the course of this proceeding.

Normal Value

With respect to normal value, the petitioner provided home-market prices at which the foreign like product is offered for sale for consumption in the exporting country, adjusted as required by the statute. These home market prices were obtained directly from CBI, the sole South African producer of the subject merchandise.

In calculating its estimated margins, the petitioner compared prices for single pole B, C, D, and E frame HMCBs sold in the home market with similar products offered for sale in the United States by CBI USA. For purposes of initiation, however, we made an adjustment to the estimated margin calculated for D frame HMCBs. Specifically, the petitioner, in its April 14th petition, compared a home market price for D-frame HMCBs with an amperage rating between 61 and 100 amperes to a U.S. price for D frame HMCBs with an amperage rating between 10 and 50 amperes. Because the petitioner presented the Department with several different home market prices for D frame HMCBs, we have recalculated the estimated margin using the home-market price for D-frame HMCBs with a comparable amperage rating (i.e., between 5 and 60 amperes). See Initiation Checklist, Re: Normal Value.

With this exception, we determined that the information the petitioner used for the calculation of home-market price is adequate and accurate and represents information reasonably available to it.

Fair-Value Comparison

Based on the data provided by the petitioner, there is reason to believe that imports of HMCBs from South Africa are being, or are likely to be, sold in the United States at less than fair value. As a result of the comparison of CEP to normal value, we recalculated estimated dumping margins for imports of HMCBs from South Africa that range from 129.43 percent to 721.95 percent.

Allegations and Evidence of Material Injury and Causation

The petition alleges that the U.S. industry producing the domestic like product is being materially injured and is threatened with material injury by reason of the imports of the subject merchandise sold at less than normal value. The petitioner contends that its injured condition is evidenced by declining trends in market share, pricing, production levels, profits, sales, and utilization of capacity. Furthermore, the petitioner contends that injury and threat of injury is evidenced by negative effects on its cash flow, ability to raise capital, and growth. These allegations are supported by relevant evidence including import data, lost sales, and pricing information. The Department assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are supported by accurate and adequate evidence and meet the statutory requirements for initiation (see Initiation Checklist dated May 5, 2003, Re: Material Injury).

Initiation of Antidumping Investigation

Based upon our examination of the petition on HMCBs from South Africa and other information reasonably available to the Department, we find that the petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of HMCBs from South Africa are being, or are likely to be, sold in the United States at less than fair value. Unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been

provided to the representatives of the government of South Africa. We will attempt to provide a copy of the public version of the petition to each producer named in the petition, as appropriate.

International Trade Commission Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, no later than May 29, 2003, whether there is a reasonable indication that imports of HMCBs are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in this investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 777(i) of the Act.

Dated: May 5, 2003.

Joseph A. Spetrini,

Acting Assistant Secretaryfor Import Administration.

[FR Doc. 03–11745 Filed 5–9–03; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-485–805]

Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Romania: Preliminary Results of Antidumping Duty Administrative Review

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

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

SUMMARY: In response to a request by S.C. Silcotub S.A. (Silcotub), a producer/exporter of subject merchandise, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain small diameter carbon and alloy seamless standard, line and pressure pipe (seamless pipe) from Romania. The period of review (POR) is August 1, 2001, through July 31, 2002.

We preliminarily find that sales have not been made below normal value (NV). If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Bureau of Customs and Border Protection (BCBP) to assess no antidumping duties on the subject merchandise that was exported by Silcotub and entered during the POR.

EFFECTIVE DATE: May 12, 2003.

FOR FURTHER INFORMATION CONTACT: Martin Claessens or Monica Gallardo, Group II, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5451 or (202) 482–3147, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 10, 2000, the Department published an antidumping duty order on certain small diameter carbon and alloy seamless standard, line and pressure pipe from Romania. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Romania*, 65 FR 48963 (August 10, 2000) (*Amended Final Determination*). On August 29, 2002, Silcotub requested an administrative review. On August 30, 2002, United States Steel Corporation (U.S. Steel), a domestic producer of seamless pipe and an interested party to this proceeding, also requested an administrative review. On September 20, 2002, the Department initiated the current administrative review. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews, Requests for Revocation in Part and Deferral of Administrative Review*, 67 FR 60210 (September 25, 2002). Since the initiation of this administrative review, the following events have occurred:

On October 21, 2002, we issued an antidumping questionnaire to Silcotub. We received questionnaire responses from Silcotub on November 22 and December 13, 2002. We issued a supplemental questionnaire on January 22, 2003, to which we received responses on February 25 and February 28, 2003. On April 4, 2003, U.S. Steel requested that the Department extend the deadline for the preliminary results. The deadline was not extended.

Scope of the Order

The products covered by the order are seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipes and redraw hollows produced, or equivalent, to the ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-335, ASTM A-589, ASTM A-795, and the API 5L specifications and meeting the physical parameters described below, regardless of application. The scope of the order also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters described below, regardless of specification. Specifically included within the scope of the order are seamless pipes and redraw hollows, less than or equal to 4.5 inches (114.3 mm) in outside diameter, regardless of wall-thickness, manufacturing process (hot finished or cold-drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish.

The seamless pipes subject to the order are currently classifiable under the subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.30.00, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States (HTSUS).

Specifications, Characteristics, and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the ASTM A-106 standard may be used in temperatures of up to 1000 degrees Fahrenheit, at various ASME code stress levels. Alloy pipes made to ASTM A-335 standard must be used if temperatures and stress levels exceed those allowed for ASTM A-106. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A-106 standard.

Seamless standard pipes are most commonly produced to the ASTM A-53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements. If exceptionally low temperature uses or conditions are anticipated, standard pipe may be manufactured to ASTM A-333 or ASTM A-334 specifications.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless water well pipe (ASTM A-589) and seamless galvanized pipe for fire protection uses (ASTM A-795) are used for the conveyance of water.

Seamless pipes are commonly produced and certified to meet ASTM A-106, ASTM A-53, API 5L-B, and API 5L-X42 specifications. To avoid maintaining separate production runs and separate inventories, manufacturers typically triple or quadruple certify the pipes by meeting the metallurgical requirements and performing the required tests pursuant to the respective specifications. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A-106 pressure pipes and triple or quadruple certified pipes is use in pressure piping systems by refineries, petrochemical plants, and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, ASTM A-106 pipes may be used in some boiler applications.

Redraw hollows are any unfinished pipe or ''hollow profiles'' of carbon or alloy steel transformed by hot rolling or cold drawing/hydrostatic testing or other methods to enable the material to be sold under ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-335, ASTM A-589, ASTM A-795, and API 5L specifications.

The scope of the order includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, with the exception of the specific exclusions discussed below, and whether or not also certified to a non-covered specification. Standard, line, and pressure applications and the above-listed specifications are defining characteristics of the scope of the order. Therefore, seamless pipes meeting the physical description above, but not produced to the ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-335, ASTM A-589, ASTM A-795, and API 5L specifications shall be covered if used in a standard, line, or pressure application, with the exception of the specific exclusions discussed below.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in ASTM A-106 applications. These specifications generally include ASTM A-161, ASTM A-192, ASTM A-210, ASTM A-252, ASTM A-501, ASTM A-523, ASTM A-524, and ASTM A-618. When such pipes are used in a standard, line, or pressure pipe application, with the exception of the specific exclusions discussed below, such products are covered by the scope of the order.

Specifically excluded from the scope of the order is boiler tubing and mechanical tubing, if such products are not produced to ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-335, ASTM A-589, ASTM A-795, and API 5L specifications and are not used in standard, line, or pressure pipe applications. In addition, finished and unfinished OCTG are excluded from the scope of the order, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications.

With regard to the excluded products listed above, the Department will not instruct BCBP to require end-use certification until such time as petitioner or other interested parties provide to the Department a reasonable basis to believe or suspect that the products are being used in a covered application. If such information is provided, we will require end-use certification only for the product(s) (or specification(s)) for which evidence is provided that such products are being used in covered applications as described above. For example, if, based on evidence provided by petitioner, the Department finds a reasonable basis to believe or suspect that seamless pipe produced to the A-161 specification is being used in a standard, line or pressure application, we will require end-use certifications for imports of that specification. Normally we will require only the importer of record to certify to the end use of the imported merchandise. If it later proves necessary for adequate implementation, we may also require producers who export such products to the United States to provide such certification on invoices accompanying shipments to the United States.

Although the HTSUS subheadings are provided for convenience and BCBP purposes, our written description of the merchandise subject to this scope is dispositive.

Duty Absorption

On October 25, 2002, U.S. Steel requested that the Department determine whether or not antidumping duties had been absorbed during the POR. Section 751(a)(4) of the Tariff Act of 1930, as amended, (the Act) provides for the Department, if requested, to determine during an administrative review initiated two or four years after the publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer. In this case, Silcotub sold to the United States through an importer that is affiliated with Silcotub within the meaning of section 771(33) of the Act.

Because this review was initiated two years after the publication of the antidumping duty order, we will make a duty absorption determination in this segment of the proceeding. Because we preliminarily find an absence of dumping in this review, there is no basis under the statute for a finding that any antidumping duties have been absorbed by Silcotub or its affiliated U.S. importer.[1] If these results remain unchanged in the final results of this review, we will continue to find that no duties were absorbed by Silcotub or its affiliated U.S. importer during the POR.

Separate Rates

Romania's designation as a NME country remained in effect until January 1, 2003.[2] We are therefore treating

[1] *See Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany: Preliminary Results of Antidumping Duty Administrative Review*, 66 FR 51375 (October 9, 2001).

[2] In *Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Romania: Final Results of Antidumping Duty Administrative Review*, 68 FR 12672, 12673 (March 17, 2003), the Department reviewed the non-market economy status of Romania and determined to reclassify Romania as a market economy for purposes of antidumping and countervailing duty proceedings, pursuant to section 771(18)(A) of the Act, effective January 1, 2003. *See* Memorandum from Lawrence Norton, Import Policy Analyst, to Joseph Spetrini, Acting Assistant Secretary for Import Administration: Antidumping Duty Administrative Review of Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Romania--Non-Market Economy Status Review (March 10, 2003), placed on the record of this administrative review. The March 10, 2003 decision with respect to Romania's NME status provided that:

This finding will apply to all future administrative proceedings covering periods of investigation or review that fall after January 1, 2003. Where a proceeding's period of investigation or review begins before January 1, 2003, but ends after that date, the Department will use the standard

Romania as an NME country for purposes of this review.

It is the Department's standard policy to assign all exporters of subject merchandise subject to review in a non-market economy (NME) country a single rate unless an exporter can demonstrate an absence of government control, both in law and in fact, with respect to exports. To establish whether an exporter is sufficiently independent of government control to be entitled to a separate rate, the Department analyzes the exporter in light of the criteria established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*), as amplified in *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). Under this test, exporters in NME countries are entitled to separate, company-specific margins when they can demonstrate an absence of government control over exports, both in law (*de jure*) and in fact (*de facto*).

Absence of De Jure Control

Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) Any legislative enactments decentralizing control of companies; and (3) Any other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20589.

Absence of De Facto Control

A *de facto* analysis of absence of government control over exports is based on four factors -- whether the respondent: 1) sets its own export prices independently of the government and other exporters; 2) retains the proceeds from its export sales and makes independent decisions regarding the disposition of profits or financing of losses; 3) has the authority to negotiate and sign contracts and other agreements; and 4) has autonomy from the government regarding the selection of management. *See Silicon Carbide*, 59 FR at 22587; *see also Sparklers*, 56 FR at 20589.

We have determined, according to the criteria identified in *Sparklers* and *Silicon Carbide*, that evidence on the record demonstrates an absence of government control, both in law and in fact, with respect to exports by Silcotub. Silcotub is a private joint stock commercial company organized under the Romanian Commercial Companies Law, Law No. 31/1990, as amended. Silcotub is limited only by its articles of incorporation and bylaws. Specifically, the information on the record shows that Silcotub is autonomous in selecting its management, negotiating and signing contracts, setting its own export prices and retaining its own profits. For a complete discussion of the Department's analysis regarding Silcotub's entitlement to a separate rate, *see* the May 5, 2003 memorandum, Assignment of Separate Rates for S.C. Silcotub S.A., which is on file in the Central Record Unit (CRU), Room B-099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW, Washington, DC 20230.

Constructed Export Price

For all sales made by Silcotub to the United States, we used constructed export price (CEP) in accordance with section 772(b) of the Act because the first sale to an unaffiliated purchaser occurred after importation of the merchandise into the United States. We calculated CEP based on the packed, ex-warehouse or delivered prices from Silcotub's U.S. affiliate to unaffiliated customers. In accordance with section 772(c) of the Act, we made deductions, where appropriate, from the starting price for CEP for foreign inland freight, foreign brokerage and handling, international freight, marine insurance, BCBP duties, U.S. brokerage and handling, and other U.S. transportation expenses such as wharfage, stevedoring, and surveying. For the deductions of foreign inland freight and foreign brokerage and handling, we used Egyptian surrogate values because these services were provided by Romanian companies and paid for in Romanian lei. In accordance with section 772(d)(1) of the Act, we made further deductions for the following selling expenses that related to economic activity in the United States: credit expenses, direct selling expenses (*i.e.*, bank charges), and indirect selling expenses (including inventory carrying costs). In accordance with section 772(d)(3) of the Act, we have deducted from the starting price an amount for profit.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a factors-of-production methodology if: (1) the merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value (CV) under section 773(a) of the Act.

As noted above, the Department is treating Romania as an NME country for purposes of this review. Furthermore, information available on the record of this review does not permit the calculation of NV using home market prices, third country prices, or CV under section 773(a) of the Act. Thus, the Department calculated NV in this review by valuing the factors of production in a surrogate country.

Surrogate Country

Section 773(c)(4) of the Act requires the Department to value the NME producer's factors of production, to the extent possible, in one or more market economy countries that: (1) are at a level of economic development comparable to that of the NME, and (2) are significant producers of comparable merchandise. We chose Egypt as the surrogate country on the basis of the criteria set out in 19 CFR 351.408(b). For a further discussion of our surrogate selection, see the May 5, 2003, memorandum Selection of Surrogate Country. (This memorandum is on file in the Department's CRU.)

Factors of Production

We used publicly available information from Egypt to value the various factors of production. Because some of the Egyptian data were not contemporaneous with the POR, we adjusted the data, expressed in U.S. dollars, to the POR using the U.S. producer price index published by the International Monetary Fund.

In accordance with section 773(c) of the Act, we valued Silcotub's reported factors of production by multiplying them by publicly available Egyptian values. In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices to make them delivered prices. We added to Egyptian surrogate values a surrogate freight cost using the reported distance from each supplier to the factory because this distance was shorter than the distance from the nearest seaport to the factory. This adjustment is in accordance with the decision of the Court of Appeals for the Federal Circuit in *Sigma Corp. v. United States*, 117 F.3d 1401 (Fed. Cir. 1997).

We valued material inputs and packing material (*i.e.*, where applicable, plastic caps, lacquer, and ink) by

market economy methodology if it determines that a sufficient period of time has passed so that adequate market economy data is available. In addition, the U.S. countervailing duty law will apply now to Romania where the proceeding at issue involves an adequate period of investigation after this effective date.

Harmonized Tariff Schedule (HTS) number, using imports statistics from the Egyptian Central Agency for Public Mobilization and Statistics, National Information Center. Where a material input was purchased in a market economy currency from a market economy supplier (*i.e.*, billet, strap, clips, and tags), we valued the input at the actual purchase price in accordance with section 351.408(c)(1) of the Department's regulations. We note that, although billets were purchased from both a market-economy supplier and non-market-economy supplier, we are valuing all billets based on the price for the market-economy purchase. This methodology is consistent with section 351.408(c)(1) of the Department's regulations in that the Department will normally value the factor using the price paid to the market economy supplier, where a portion of a factor is purchased from a market economy and the remainder is purchased from an NME supplier.

For the cold-drawn products, we have adjusted the amount of billet inputs toaccount more accurately for combined yield loss of the producer. We have adjusted the scrap offset accordingly.[3]

We valued labor using the method described in 19 CFR 351.408(c)(3) of the Department's regulations. For a complete analysis of surrogate values, *see* the May 5, 2003, memorandum, Factors of Production Valuation for Preliminary Results (Valuation Memorandum), on file in the CRU.

To value electricity, we used the 2001 electricity rates for Egypt reported on the website of the International Trade Administration under ''Trade Information Center.'' *See www.web.ita.doc.gov/ticwebsite/neweb.nsf/.* We based the value of natural gas in Egypt on a published article that shows the price at which the Government of Egypt purchased natural gas, also used in the final results of the previous administrative review and placed on the record of this review.[4]

We based our calculation of factory overhead and selling, general and administrative (SG&A) expenses, as well as profit, on 1998/99 financial statements of El-Naser Steel Pipes & Fittings Co., an Egyptian producer of comparable merchandise.

To value truck freight rates, we used a 1999 rate (adjusted for inflation) provided by a trucking company located in Egypt. For rail transportation, we valued rail rates in Egypt using information used in *Titanium Sponge from the Republic of Kazakhstan: Notice of Final Results of Antidumping Duty Administrative Review*, 64 FR 66169 (November 24, 1999), which were initially obtained from a 1999 letter from the Egyptian International House, and have been placed on the record of this review.

For brokerage and handling, we used a 1999 rate (adjusted for inflation) provided by a trucking and shipping company located in Alexandria, Egypt. For further details, see Valuation Memorandum.

Currency Conversion

We made currency conversions in accordance with Section 773(A)(a) of the Act. For currency conversions involving the Egyptian pound, we used exchange rates published by the International Monetary Fund in *International Financial Statistics*. For all other conversions, we used daily exchange rates published by the Federal Reserve Bank.

Preliminary Results of the Review

We preliminarily determine that the following dumping margin exists for the period August 1, 2001, through July 31, 2002.

Exporter/manufacturer	Weighted-average margin percentage
Silcotub	0.00

Within five days of the date of publication of this notice, in accordance with 19 CFR 351.224, the Department will disclose its calculations. Any interested party may request a hearing within 30 days of the date of publication of this notice. Any hearing, if requested, will be held approximately 42 days after the publication of this notice, or the first workday thereafter. Issues raised in hearings will be limited to those raised in the case and rebuttal briefs. Interested parties may submit case briefs within 30 days of the date of publication of this notice, or the first workday thereafter. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice, or the first workday thereafter. Parties who submit case briefs or rebuttal briefs in this review are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also requested to submit such arguments, and public versions thereof, with an electronic version on a diskette.

Assessment

Upon completion of this administrative review, the Department will determine, and the BCBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an exporter/importer (or customer)-specific assessment rate for merchandise subject to this review. The Department will issue appropriate assessment instructions to the BCBP within 15 days of publication of the final results of review. If these preliminary results are adopted in the final results of review, we will direct the BCBP to assess no antidumping duties on the merchandise subject to review pursuant to 19 CFR 351.106(c)(2). For the final results, if any importer-specific assessment rate is above *de minimis*, we will instruct BCBP to assess duties accordingly. This rate will be assessed uniformly on all entries of that particular importer made during the POR.

Cash Deposit Requirements

The following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of seamless pipe from Romania entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(c) of the Act: (1) For subject merchandise exported by Silcotub, which has a separate rate, the cash deposit rate will be zero if Silcotub's rate in the final results of review continues to be less than 0.5 percent and, therefore, *de minimis*; (2) for merchandise exported by companies not covered in this review but covered in

[3] *See* Memorandum From Martin Claessens to the File, Analysis Memorandum for Preliminary Results (May 5, 2003).

[4] *See Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Romania: Final Results of Antidumping Administrative Review*, 68 FR 12672 (March 17, 2003) and corresponding Issues and Decisions Memorandum at Comment 3. *See also* Valuation Memorandum.

the original less than fair value (LTFV) investigation, the cash deposit will continue to be the most recent rate published in the final determination for which the exporter received a company-specific rate; and (3) if the exporter is not a firm covered in this review or the LTFV investigation, the cash deposit rate will be 13.06 percent, the ''Romania-Wide'' rate established in the LTFV investigation. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Romania*, 65 FR 48963 (August 10, 2000). These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

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

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

Dated: May 5, 2003.

Joseph Spetrini,

Acting Assistant Secretaryfor Import Administration.

[FR Doc. 03–11746 Filed 5–9–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C-122–815]

Pure Magnesium and Alloy Magnesium from Canada: Preliminary Results of Countervailing Duty Administrative Reviews

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

ACTION: Notice of Preliminary Results of Countervailing Duty Administrative Reviews.

SUMMARY: The Department of Commerce is conducting administrative reviews of the countervailing duty orders on pure magnesium and alloy magnesium from Canada for the period January 1, 2001 through December 31, 2001. We preliminarily find that certain producers/exporters have received countervailable subsidies during the period of review. If the final results remain the same as these preliminary results, we will instruct the Customs Service to assess countervailing duties as detailed in the ''Preliminary Results of Review'' section of this notice. Interested Parties are invited to comment on these preliminary results (*see* the Public Comment section of this notice).

EFFECTIVE DATE: May 12, 2003.

FOR FURTHER INFORMATION CONTACT: Melanie Brown, AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–4987

SUPPLEMENTARY INFORMATION:

Case History

On August 31, 1992, the Department of Commerce (''the Department'') published in the Federal Register the countervailing duty orders on pure magnesium and alloy magnesium from Canada (57 FR 39392). On August 6, 2002, the Department published a notice of ''Opportunity to Request Administrative Review'' of these countervailing duty orders (67 FR 50856). We received a timely request for review of Norsk Hydro Canada, Inc. (''NHCI'') and Magnola Metallurgy, Inc. (''Magnola'') from the petitioner, U.S. Magnesium, LLC. On September 25, 2002, we initiated this review covering shipments of subject merchandise from NHCI and Magnola (67 FR 60210).

On December 3, 2002, we published *Pure and Alloy Magnesium from Canada: Correction of Notice of Initiation and Partial Rescission of Countervailing Duty Administrative Review* (67 FR 71936). In that notice, we stated that the correct POR for these administrative reviews is January 1, 2001 through December 31, 2001, and rescinded the reviews with respect to Magnola, because Magnola is currently a party in a new shipper administrative review covering the same POR and the same subject merchandise. Therefore, in accordance with 19 CFR 351.213(b), these reviews cover NHCI, a producer/exporter of the subject merchandise. These reviews cover 16 subsidy programs.

On December 5, 2002, we issued countervailing duty questionnaires to NHCI, the Government of Québec (''GOQ''), and the Government of Canada (''GOC''). We received questionnaire responses from the GOQ and the GOC on January 13, 2003, and from NHCI on January 27, 2003.

Scope of the Reviews

The products covered by these reviews are shipments of pure and alloy magnesium from Canada. Pure magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Magnesium alloys contain less than 99.8 percent magnesium by weight with magnesium being the largest metallic element in the alloy by weight, and are sold in various ingot and billet forms and sizes.

The pure and alloy magnesium subject to review is currently classifiable under items 8104.11.0000 and 8104.19.0000, respectively, of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written descriptions of the merchandise subject to the orders are dispositive.

Secondary and granular magnesium are not included in the scope of these orders. Our reasons for excluding granular magnesium are summarized in *Preliminary Determination of Sales at Less Than Fair Value: Pure and Alloy Magnesium From Canada*, 57 FR 6094 (February 20, 1992).

Period of Review

The period of review (''POR'') for which we are measuring subsidies is from January 1, 2001 through December 31, 2001.

Subsidies Valuation Information

Discount rate: As noted below, the Department preliminarily finds that NHCI benefitted from one countervailable subsidy program during the POR: Article 7 grants from the Québec Industrial Development Corporation. As in the investigations and previous administrative reviews of these cases, we have used the company's cost of long-term, fixed-rate debt in the year in which this grant was approved as the discount rate for purposes of calculating the benefit pertaining to the POR.

Allocation period: In the investigations and previous administrative reviews of these cases, the Department used as the allocation period for non-recurring subsidies, the average useful life (''AUL'') of renewable physical assets in the magnesium industry as recorded in the Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (''the IRS tables''), *i.e.*, 14 years. Pursuant to section 351.524(d)(2) of the countervailing duty regulations, the Department will use the AUL in the IRS tables as the allocation period unless a

party can show that the IRS tables do not reasonably reflect the company-specific AUL or the country-wide AUL for the industry. If a party can show that either of these time periods differs from the AUL in the IRS tables by one year or more, the Department will use the company-specific AUL or the country-wide AUL for the industry as the allocation period.

Neither NHCI nor the petitioner has contested using the AUL reported for the magnesium industry in the IRS tables. Therefore, we continue to allocate non-recurring benefits over 14 years.

Analysis of Programs

I. *Program Preliminarily Determined to Confer Countervailable Subsidies*

A. *Article 7 Grant from the Québec Industrial Development Corporation (''SDI'')*

SDI (*Société de Développement Industriel du Québec*) administers development programs on behalf of the GOQ. SDI provides assistance under Article 7 of the SDI Act in the form of loans, loan guarantees, grants, assumptions of costs associated with loans, and equity investments. This assistance is provided for projects that are capable of having a major impact upon the economy of Québec. Article 7 assistance greater than 2.5 million dollars must be approved by the Council of Ministers and assistance over 5 million dollars becomes a separate budget item under Article 7. Assistance provided in such amounts must be of ''special economic importance and value to the province.'' (*See Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium from Canada*, 57 FR 30946, 30948 (July 13, 1992) (''*Magnesium Investigation*'').)

In 1988, NHCI was awarded a grant under Article 7 to cover a large percentage of the cost of certain environmental protection equipment. In the *Magnesium Investigation*, the Department determined that NHCI received a disproportionately large share of assistance under Article 7. On this basis, we determined that the Article 7 grant was limited to a specific enterprise or industry, or group of enterprises or industries, and, therefore, countervailable. In these reviews, neither the GOQ nor NHCI has provided new information which would warrant reconsideration of this determination.

In the *Magnesium Investigation*, the Department found that the Article 7 assistance received by NHCI constituted a non-recurring grant because it represented a one-time provision of funds. In the *Preliminary Results of First Countervailing Duty Administrative Reviews: Pure Magnesium and Alloy Magnesium From Canada*, 61 FR 11186, 11187 (March 19, 1996), we found this determination to be consistent with the principles enunciated in the Allocation section of the *General Issues Appendix* (''GIA'') appended to the *Final Countervailing Duty Determination; Certain Steel Products from Austria*, 58 FR 37225, 37226 (July 9, 1993). In the current review, no new information has been placed on the record that would cause us to depart from this treatment. Therefore, in accordance with section 351.524(b)(2) of our regulations, we continue to allocate the benefit of this grant over time. We used our standard grant methodology as described in section 351.524(d) of the regulations to calculate the countervailable subsidy. We divided the benefit attributable to the POR by NHCI's total sales of Canadian-manufactured products in the POR. On this basis, we preliminarily determine the countervailable subsidy from the Article 7 SDI grant to be 1.68 percent *ad valorem* for NHCI.

II. *Programs Preliminarily Determined To Be Not Used*

We examined the following programs and preliminarily determine that NHCI did not apply for or receive benefits under these programs during the POR:

- St. Lawrence River Environment Technology Development Program
- Program for Export Market Development
- The Export Development Corporation
- Canada-Québec Subsidiary Agreement on the Economic Development of the Regions of Québec
- Opportunities to Stimulate Technology Programs
- Development Assistance Program
- Industrial Feasibility Study Assistance Program
- Export Promotion Assistance Program
- Creation of Scientific Jobs in Industries
- Business Investment Assistance Program
- Business Financing Program
- Research and Innovation Activities Program
- Export Assistance Program
- Energy Technologies Development Program
- Transportation Research and Development Assistance Program

III. *Program Previously Determined To Be Terminated*

- Exemption from Payment of Water Bills

In the administrative reviews covering calendar year 1997, the Department found that this program was terminated during the POR. In our final results, we stated that we, therefore, did not intend to continue to examine this program in the future (see Pure Magnesium and Alloy Magnesium from Canada: Final Results of Countervailing Duty Administrative Reviews, 64 FR 48805, 48806 (September 8, 1999)).

Alleged Over-assessment of Countervailing Duties

In its January 27, 2003 questionnaire response, NHCI contends that the Department should adjust the assessment rate applied to the value of entries made during the POR in order to avoid alleged over-countervailing in connection with cash deposits retained on 1997 entries. NHCI states that the Department issued appropriate liquidation instructions to the Customs Service (''Customs'') following the completion of the 1997 administrative review, but that Customs erroneously liquidated hundreds of NHCI entries at the cash deposit rate at the time of entry, rather than at the rate established in the final results of the 1997 administrative review.

The Department does not have the authority to address what is essentially a customs protest issue concerning entries from a prior, completed review in the context of this administrative review. Parties cannot revive an issue for which the deadlines for a proper challenge have already passed by raising it in an on-going administrative proceeding. Therefore, the Department will not address an issue which is not properly before the agency in this review.

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(I), we calculated a subsidy rate for NHCI, the sole producer/exporter subject to these administrative reviews. For the period January 1, 2001, through December 31, 2001, we preliminarily find the net subsidy rate for NHCI to be 1.68 percent *ad valorem*. We will disclose our calculations to the interested parties in accordance with section 351.224(b) of the regulations.

Assessment Rates

If the final results of these reviews are affirmative, the Department intends to instruct Customs to assess countervailing duties at the net subsidy rate. The Department will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of the final results of these reviews. For the period January 1, 2001, through December 31, 2001, the assessment rates applicable to

all non-reviewed companies covered by these orders are the cash deposit rates in effect at the time of entry, except for Timminco Limited which was excluded from the orders in the original investigations.

Cash Deposit Instructions

The Department also intends to instruct Customs to collect cash deposits of estimated countervailing duties at the rate of 1.68 percent on the f.o.b. value of all shipments of the subject merchandise from NHCI entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these administrative reviews.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies, (except Timminco Limited which was excluded from the orders during the investigations) at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rate that will be applied to non-reviewed companies covered by these orders is that established in *Pure and Alloy Magnesium From Canada; Final Results of the Second (1993) Countervailing Duty Administrative Reviews*, 62 FR 48607 (September 16, 1997) or the company-specific rate published in the most recent final results of an administrative review in which a company participated. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested.

Public Comment

Interested parties may request a hearing within 30 days of the date of publication of this notice. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs (*see* below). Interested parties may submit written arguments in case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than five days after the date of filing the case briefs. Parties who submit briefs in these proceedings should provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 351.309(c)(1)(ii), are due.

The Department will publish a notice of the final results of these administrative reviews within 120 days from the publication of these preliminary results.

These administrative reviews and notice are in accordance with sections 751(a)(1) and 777(I)(1) of the Act.

Dated: May 5, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–11742 Filed 5–9–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Export Trade Certificate of Review, Application No. 03–00002.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to EXIM Services of North America, Inc. (''EXIM''). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number), or by e-mail at *oetca@ita.doc.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (2001).

The Office of Export Trading Company Affairs (''OETCA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of the Certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11 (a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

1. *Products:* All products.
2. *Services:* All services.
3. *Technology Rights:* Technology Rights, including, but not limited to: patents, trademarks, copyrights, and trade secrets that relate to Products and Services.
4. *Export Trade Facilitation Services (as they Relate to the Export of Products, Services, and Technology Rights*)

Export Trade Facilitation Services, including, but not limited to, professional services and assistance relating to government relations; state and federal export programs; foreign trade and business protocol; consulting; market research and analysis; collection of information on trade opportunities; marketing; negotiations; joint ventures; shipping and export management; export licensing; advertising; documentation and services related to compliance with customs requirements; insurance and financing; trade show exhibitions; organizational development; management and labor strategies; transfer of technology; transportation services and the formation of shippers' associations.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

With respect to the sale of Products and Services, licensing of Technology Rights and provisions of Export Trade Facilitation Services EXIM may:

1. Provide and/or arrange for the provision of Export Trade Facilitation Services;
2. Engage in promotional and marketing activities and collect information on trade opportunities in the Export Markets and distribute such information to clients;
3. Enter into exclusive and/or non-exclusive licensing and/or sales agreements with Suppliers for the export of Products, Services, and/or Technology Rights in Export Markets;
4. Enter into exclusive and/or non-exclusive agreements with distributors and/or sales representatives in Export Markets;
5. Allocate export sales or divide Export Markets among Suppliers for the sale and/or licensing of Products, Services, and/or Technology Rights;
6. Allocate export orders among Suppliers;

7. Establish the price of Products, Services, and/or Technology Rights for sales and/or licensing in Export Markets;

8. Negotiate, enter into, and/or manage licensing agreements for the export of Technology Rights;

9. Enter into contracts for shipping; and

10. Exchange information on a one-on-one basis with individual Suppliers regarding inventories and near-term production schedules for the purpose of determining the availability of Products for export and coordinating export with distributors.

Terms and Conditions of Certificate

1. In engaging in Export Trade Activities and Methods of Operation, EXIM will not intentionally disclose, directly or indirectly, to any Supplier any information about any other Supplier's costs, production, capacity, inventories, domestic prices, domestic sales, or U.S. business plans, strategies, or methods that are not already generally available to the trade or public.

2. EXIM will comply with requests made by the Secretary of Commerce on behalf of the Secretary of Commerce or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities, and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of section 303(a) of the Act.

Definition

1. ''Supplier'' means a person who produces, provides, or sells Products, Services and/or Technology Rights.

Protection Provided by the Certificate

This Certificate protects EXIM and its directors, officers, and employees acting on its behalf from private treble damage actions and government criminal and civil suits under U.S. federal and state antitrust laws for the export conduct specified in the Certificate and carried out during its effective period in compliance with its terms and conditions.

Effective Period of Certificate

This Certificate continues in effect from the effective date indicated below until it is relinquished, modified, or revoked as provided in the Act and the Regulations.

Other Conduct

Nothing in this Certificate prohibits EXIM from engaging in conduct not specified in this Certificate, but such conduct is subject to the normal application of the antitrust laws.

Disclaimer

The issuance of this Certificate of Review to EXIM by the Secretary of Commerce with the concurrence of the Attorney General under the provisions of the Act does not constitute, explicitly or implicitly, an endorsement or opinion by the Secretary or by the Attorney General concerning either (a) the viability or quality of the business plans of EXIM or (b) the legality of such business plans of EXIM under the laws of the United States (other than as provided in the Act) or under the laws of any foreign country. The application of this Certificate to conduct in export trade where the United States Government is the buyer or where the United States Government bears more than half the cost of the transaction is subject to the limitations set forth in Section V. (D.) of the ''Guidelines for the Issuance of Export Trade Certificate of Review (Second Edition),'' 50 FR 1786 (January 11, 1985).

A copy of this certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: May 5, 2003.

Jeffrey C. Anspacher,

Director, Office of Export Trading Company Affairs.

[FR Doc. 03–11687 Filed 5–9–03; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

[I.D. 050103B]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice of availability and request for comment.

SUMMARY: Notice is hereby given that NMFS has prepared a draft environmental assessment (EA) of the potential effects of approval of 10 Hatchery and Genetic Management Plans (HGMPs) submitted by the United States Fish and Wildlife Service (USFWS) for artificial propagation of salmon and steelhead in the Columbia River basin. The HGMPs specify the future management of hatchery programs that potentially could affect salmon and steelhead listed under the Endangered Species Act. This document serves to notify the public of the availability of the draft EA for public comment before a final decision on whether to issue a Finding of No Significant Impact is made by NMFS.

DATES: Written comments on the draft EA must be received no later than 5 p.m. Pacific daylight time on June 11, 2003.

ADDRESSES: Written comments and requests for copies of the draft EA should be addressed to Richard Turner, Salmon Recovery Division, 525 N.E. Oregon Street, Suite 510, Portland, OR 97232 or faxed to (503) 872–2737. The documents are also available on the Internet at *http://www.nwr.noaa.gov/*. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Richard Turner, Portland, OR at phone number (503) 736–4737 or e-mail: *rich.turner@noaa.gov*.

SUPPLEMENTARY INFORMATION: This notice is relevant to the Columbia River chum salmon (*Oncorhynchus keta*), Lower Columbia River chinook salmon (*O. tshawytscha*), Lower Columbia River steelhead (O. mykiss), Upper Willamette River chinook salmon (*O. tshawytscha*), and Middle Columbia River steelhead (*O. mykiss*) Evolutionarily Significant Units.

Background

The USFWS has submitted to NMFS 10 HGMPs for artificial propagation programs that potentially could affect salmon and steelhead listed under the ESA (Table 1).

TABLE 1. HATCHERY AND GENETIC MANAGEMENT PLANS AND LEAD MANAGEMENT AGENCIES.

Hatchery and Genetic Management Plan	Lead Agencies
Little White Salmon/Willard NFH Complex Coho Salmon	USFWS
Little White Salmon/Willard NFH Complex Spring Chinook Salmon	USFWS
Little White Salmon/Willard NFH Complex Upriver Bright Fall Chinook Salmon ENT≤	USFWS
Carson NFH Spring Chinook Salmon	USFWS
Spring Creek NFH Tule Fall Chinook Salmon	USFWS
Eagle Creek NFH Coho Salmon	USFWS

TABLE 1. HATCHERY AND GENETIC MANAGEMENT PLANS AND LEAD MANAGEMENT AGENCIES.—Continued

Eagle Creek NFH Winter Steelhead	USFWS
Warm Springs NFH Warm Springs River Spring Chinook Salmon	USFWS
Touchet River Endemic Summer Steelhead	WDFW/ USFWS
Walla Walla River Summer Steelhead Lyons Ferry Hatchery Stock	WDFW/ USFWS

As specified in the July 10, 2000, ESA 4(d) rule for salmon and steelhead (65 FR 42422), NMFS may approve an HGMP if it meets criteria set forth in § 223.203 (b)(5)(i)(A) through (K). Prior to final approval of an HGMP, NMFS must publish notification announcing its availability for public review and comment. The notice of availability of the ten USFWS HGMPs was published on January 14, 2003 (68 FR 1819) and closed on February 13, 2003.

National Environmental Policy Act requires Federal agencies to conduct an environmental analysis of their proposed actions to determine if the actions may affect the human environment. The proposed action is to approve the 10 HGMPs submitted by the USFWS. The proposed hatchery programs would propagate and release approximately 25.2 million salmon and steelhead in the Columbia River basin. In the draft EA currently available for public comment, NMFS considered the effects of this action on the physical, biological, and socioeconomic environments. NMFS is seeking public input on the scope of the required NEPA analysis, including the range of reasonable alternatives and associated impacts of any alternatives.

Dated: May 6, 2003.

Barbara Schroeder,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–11740 Filed 5–9–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 000202024–3109–03 I.D. 030303B]

Announcement of Funding Opportunity to submit proposals for the South Florida Ecosystem Research and Monitoring Program (SFP) FY04

AGENCY: National Centers for Coastal Ocean Sciences/Center for Sponsored Coastal Ocean Research/Coastal Ocean Program (NCCOS/CSCOR/COP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of Funding Availability for financial assistance for project grants and cooperative agreements.

SUMMARY: The purpose of this notice is to advise the public that NCCOS/CSCOR/COP is soliciting 1–year and 2–year proposals to support coastal ecosystem studies in South Florida including Florida Bay, Florida Keys, the Florida Keys National Marine Sanctuary (FKNMS), and adjacent coastal waters. It will provide support for the NOAA South Florida Program and the FKNMS. The overall goal of this Announcement is to fund high priority research and long term observational data collection needed to predict the impacts of Everglades restoration on the South Florida coastal ecosystem and to fulfill NOAA commitments to the South Florida Ecosystem Restoration effort and the Comprehensive Everglades Restoration Plan. Funding is contingent upon the availability of Fiscal Year 2004 and 2005 Federal appropriations. It is anticipated that projects funded under this announcement will have a March 1, 2004 start date.

DATES: The deadline for receipt of proposals at the COP office is 3 p.m., local time July 16, 2003. (Note that late-arriving applications provided to a delivery service on or before July 16, 2003, with delivery guaranteed before 3 p.m., local time on July 16,2003, will be accepted for review if the applicant can document that the application was provided to the delivery service with delivery to the address listed below guaranteed by the specified closing date and time; and, in any event, the proposals are received in the NCCOS/CSCOR/COP office by 3 p.m., local time, no later than 2 business days following the closing date.)

ADDRESSES: Submit the original and 15 copies of your proposal to Center for Sponsored Coastal Ocean Research/Coastal Ocean Program (N/SCI 2), National Oceanic and Atmospheric Administration, 1305 East-West Highway, SSMC4, 8th Floor Station 8243, Silver Spring, MD 20910, attention SFP 2004.

NOAA and Standard Form Applications with instructions are accessible on the following COP Internet Site: *http://www.cop.noaa.gov* under the COP Grants Information Section, Part D, Application Forms for Initial Proposal Submission.

Forms may be viewed and, in most cases, filled in by computer. All forms must be printed, completed, and mailed to NCCOS/CSCOR/COP with original signatures. If you are unable to access this information, you may call COP at 301–713–3338 to leave a mailing request.

FOR FURTHER INFORMATION CONTACT: *Technical Information.* Larry Pugh, SFP 2004 Program Manager, NCCOS/CSCOR/COP, 301–713–3338/ext 160, Internet: *larry.pugh@noaa.gov*.

Business Management Information. Leslie McDonald, NCCOS/CSCOR/COP Grants Administrator, 301–713–3338/ext 155, Internet: *Leslie.McDonald@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

Background information on the NOAA South Florida Program, including descriptions of presently funded projects, results, data management, and programmatic infrastructure (including small boat access and policy) can be found at *http://www.aoml.noaa.gov/ocd/sferpm*.

Background information on the Florida Bay and Adjacent Marine Systems Interagency Science Program, including the Program Management Committee (PMC), Scientific Oversight Panel (SOP), copies of the annual science conference abstracts, workshop reports, and present Strategic Science Plan, can be found at *http://www.aoml.noaa.gov/flbay*.

Background information regarding Florida Keys National Marine Sanctuary can be found at *http://www.fknms.nos.noaa.gov*.

Background information regarding South Florida Ecosystem Restoration (SFER) in general can be found at *http://www.sfrestore.org*, while the Comprehensive Everglades Restoration Plan (CERP), Florida Bay/Florida Keys Feasibility Study, and RECOVER's South Estuaries Monitoring and Assessment Plan to which the projects funded herein are anticipated to contribute to can be found at *http://www.evergladesplan.org*.

Background

Program Description

For complete program description and other requirements criteria for the NCCOS/CSCOR/Coastal Ocean Program, see the General Grant Administration Terms and Conditions for the Coastal Ocean Program annual notification in the **Federal Register** November 8, 2002(67 FR 68103) and at the COP home page. Unless stated otherwise, in this notice, the requirements and procedures contained in the November 8, 2002 annual notification are applicable to this solicitation.

This program is one of the Federal and state programs contributing to the Florida Bay and Adjacent Marine Systems Interagency Science Program, which is designed to understand and predict the effects of South Florida ecosystem restoration.

The activities conducted to restore the South Florida ecosystem occur predominantly upstream of Florida Bay, and restoration impacts may not be direct or immediate. Through funding of the research areas identified here, NCCOS/CSCOR/COP will fund an integrated suite of activities to better understand the coastal and marine ecosystem adjacent to the Everglades, comprising Florida Bay and the FKNMS. The Goal of the complete effort is to develop a capability to predict the impacts of proposed Everglades Restoration activities on the coastal system from the mangroves to the coral reefs.

Research Areas

To address the goal of developing a capability to predict changes in coastal ecosystems resulting from Restoration activities, this announcement has five specific areas of interest: nutrient inputs and dynamics, water quality, circulation and physical oceanography, fisheries and protected resources, and Florida Keys habitat characterization and research.

(A) *Nutrient Inputs and Dynamics.* Proposals are solicited to address nutrient cycles within the water column and between the water column and benthos. Priority consideration for selection in this area will be given to nutrient proposals that cover the biogeochemical processes (including the microbial loop) governing the bio-availability of the organic forms of plant nutrients.

(B) *Water Quality.* The health of the coral reef community of the FKNMS depends upon the quality (temperature, salinity, nutrients, inorganic particulate load, light fields, and chemical contaminants) of the waters that flow over them. With Everglades restoration, water quality throughout South Florida coastal waters will be changed. Proposals are now solicited that address the chemical, biological, and optical characteristics of Bay waters that exit Keys passes and potentially reach the reef tract and protected areas in the FKNMS including the Dry Tortugas Ecological Reserve. These should address timely dissemination of information to the Interagency SFER science community and the public. Priority consideration for selection in this area will be given to projects coordinated with and complementary to physical oceanographic field studies.

(C) *Circulation and Physical Oceanography.* In the area of Circulation and Physical Oceanography, emphasis is placed on predicting the impacts of restoration scenarios and actions upstream and along the Keys, in the context of the physical variability of the natural system. Priority consideration for selection in this area will be given to proposals that address the following research topics:

(1) Measuring oceanographic parameters needed to verify and initialize regional and interior Bay circulation models;

(2) Determining the interconnections between the Gulf of Mexico loop and Florida currents and the Dry Tortugas Ecological Reserve (e.g.,quantifying flows entering the Florida Bay interior along its western margin and those intermittently exiting through Keys passages and potentially reaching the reef tract);

(3) Determining basin residence and turnover times, circulation, and flow within the Bay and across the banktops; or

(4) Developing a hydrodynamic model of the coastal seas adjacent to Florida Bay and the Florida Keys for use in providing boundary conditions for coastal limited area models in the region and for evaluating simulations of restoration scenarios.

(D) *Fisheries and Protected Resources.* Ecosystem changes caused by South Florida Ecosystem Restoration activities have ultimate impacts on the sustainability of higher trophic level (HTL) species, including fishery and protected resources, which have widely recognized importance.

Proposals are solicited to build models and provide information to increase predictive capability in linking higher trophic levels to ecosystem restoration activities. Priority consideration for selection in this area will be given to proposals having a modeling component, or interdisciplinary emphasis directed at the following research problems:

(1) Determining human (e.g., water management, fishing, excess nutrients, contaminants) and natural influences on biological processes affecting growth, survival, and recruitment of HTL species;

(2) Determining and modeling the major factors that influence distribution and abundance patterns and community, ecosystem and trophic structure;

(3) Identifying and modeling major pathways, mechanisms, and influencing factors in the transport of pre-settlement stages of offshore-spawning species onto nursery grounds; or

(4) Determining the processes impacting early settlement stage larvae and recruitment of important game fishes such as red drum, snook, tarpon, bone fish, and other estuarine and euryhaline dependent fish and macro invertebrates.

(E) *Florida Keys Habitat Characterization and Research.* Coral reefs, sea grass beds, and hard bottom communities comprise the submerged, biogenic habitats of the FKNMS that support diverse species assemblages. FKNMS management issues concerning these habitats cannot be fully addressed because of limited ecological research. Fully protected zones of the FKNMS, including the Dry Tortugas Ecological Reserve have been created to assist in the protection of biological diversity, disperse resource utilization in order to reduce user conflicts, and lessen the concentrated impact to marine organisms on heavily used reefs.

Emphasis in this area is placed on monitoring and research on sea grass beds, coral reef, and hard bottom communities to provide a basis for detecting potential changes associated with Everglades restoration and other anthropogenic and natural factors and evaluating the ecological benefits of FKNMS fully protected zones. Priority consideration for selection in this area will be given to proposals directed at the following research topics:

(1) Investigating the functional significance of hard bottom communities in the FKNMS ecosystem, particularly the roles of filter-feeding organisms and biogenic habitat structure.

(2) Monitoring and research on commercially important species (e.g. spiny lobster) and key depleted fishery species (e.g. queen conch);

(3) Creating ecosystem models of reef fish communities to predict the effects of zoning on species diversity, abundance, and trophic structure;

(4) Investigating how key ecological processes may be modified by zoning; and

(5) Measuring oceanographic processes impacting upon the Tortugas Ecological Reserve.

Other Participant Requirements

As participants in the Interagency Science Program for Florida Bay and Adjacent Marine Systems, funded principal investigators will be expected to:

(a) Participate in meetings for planning and coordination of the Program. This includes attending and contributing to the annual Interagency Science Conference, Research Team Meetings, and other relevant technical workshops.

(b) Promptly quality control their data and make them readily available through the Coordinating Office in accordance with the data collection policy.

(c) Assist the Coordinating Office in the synthesis and interpretation of research results and the development of products of value to restoration and resource.

(d) Work with the Coordinating Office regarding small boat requirements (if any) to schedule access to the dedicated research vessel (description available on the SFERPM website earlier cited). If your project will have small boat needs that you cannot furnish, please provide description and schedule requirements in your proposal.

(e) If your project uses/relies on data/information from research categories in this Announcement, other than the one you are proposing to study, please describe.

Part I: Schedule and Proposal Submission

This document requests full proposals only. The provisions for proposal preparation provided here are mandatory. Proposals received after the published deadline (refer to DATES) or proposals that deviate from the prescribed format will be returned to the sender without further consideration. Information regarding this announcement, additional background information, and required Federal forms are available on the NCCOS/CSCOR/COP home page.

Full Proposals

Applications submitted in response to this announcement require an original proposal and 15 proposal copies at time of submission. This includes color or high-resolution graphics, unusually sized materials, or otherwise unusual materials submitted as part of the proposal. For color graphics, submit either color originals or color copies. The stated requirements for the number of proposal copies provide for a timely review process and is cleared by OMB control number 0648–0384. (See Collection of information requirements.) Facsimile transmissions and electronic mail submission of full proposals will not be accepted.

Required Elements

For clarity in the submission of proposals, the following definitions are provided for recipient use: (1) Funding and/or Budget Period - the period of time when Federal funding is available for obligation by the recipient. The funding period must always be specified in multi-year awards, using fixed year funds. This term may also be used to mean ''budget period''. A budget period is typically 12 months. (2) Award and/or Project Period - the period established in the award document during which Federal sponsorship begins and ends. The term ''award period'' is also referred to as project period in 15 CFR 14.2(cc). Each proposal must also include the following nine elements or it will be returned to sender without further consideration:

(1) *Standard Form 424.* At time of proposal submission, all applicants anticipating direct funding shall submit the Standard Form, SF–424, ''Application for Federal Assistance,'' to indicate the total amount of funding proposed for the whole project period. This form is to be the cover page for the original proposal and all requested copies. Multi-institutional proposals must include signed SF–424 forms from all institutions requesting funding.

(2) *Signed Summary title page.* The title page should be signed by the Principal Investigator (PI). The Summary Title page identifies the project's title starting with the acronym SFP 2004, a short title (less than 50 characters); and the PI's name and affiliation, complete address, phone, FAX and E-mail information. The requested budget for each fiscal year should be included on the Summary Title page. Multi-institution proposals must also identify the lead investigator from each fiscal year for each institution and the requested funding for each fiscal year for each institution on the title page, but no signatures are required on the title page from the additional institutions. Lead investigator and separate budget information is not requested on the title page for institutions that are proposed to receive funds through a subcontractor to the lead institution; however, the COP Summary Proposal Budget Form and accompanying budget justification must be submitted for each contractor. For further details on budget information, please see Section (7) Budget of this Part.

(3) *One-page abstract/project summary.* The Project Summary (Abstract) Form, which is to be submitted at time of application, shall include an introduction of the problem, rationale, scientific objectives and/or hypotheses to be tested, and a brief summary of work to be completed. The prescribed COP format for the Project Summary Form can be found on the NCCOS/CSCOR/COP Internet site under the COP Grants Information section, Part D.

The summary should appear on a separate page, headed with the proposal title, institution(s), investigator(s), total proposed cost and budget period. It should be written in the third person. The summary is used to help compare proposals quickly and allows the respondents to summarize these key points in their own words.

(4) *Project description.* The description of the proposed project must be complete and divided into annual increments of work that include: identification of the problem, scientific objectives, proposed methodology, relevance to the SFP 2004 program goal. The project description section (including relevant results from prior support) should not exceed 15 pages. Page limits are inclusive of figures, other visual materials, and letters of endorsement but exclusive of references, milestone chart, and letters regarding cooperation from unfunded collaborators.

This section should clearly identify project management with a description of the functions of each PI within a team. It should provide a full scientific justification for the research rather than simply reiterating justifications presented in this document; and should also include:

(a) The objective for the period of proposed work and its expected significance;

(b) The relation to the present state of knowledge in the field and relation to previous work and work in progress by the proposing principal investigator(s);

(c) A discussion of how the proposed project lends value to the program goal;

(d) Potential coordination with other investigators.

(5) *References cited.* Reference information is required. Each reference must include the name(s) of all authors in the same sequence in which they appear in the publications, the article title, volume number, page numbers and

year of publications. While there is no established page limitation, this section should include bibliographic citations only and should not be used to provide parenthetical information outside the 15–page project description.

(6) *Milestone chart.* Provide time lines of major tasks covering the 12- to 24-month duration of the proposed project.

(7) *Budget.* At time of proposal submission, all applicants are required to submit a COP Summary Proposal Budget Form for each fiscal year increment. Multi-institution proposals must include a COP Summary Proposal Budget Form for each institution, and multi-investigator proposals using a lead investigator with contractor's/subgrantee's approach must submit a COP Summary Proposal Budget Form for each contractor/subgrantee.

Each contractor or subgrantee should be listed as a separate item. Describe products/services to be obtained and indicate the applicability or necessity of each to the project. Provide separate budgets for each subgrantee or contractor regardless of the dollar value and indicate the basis for the cost estimates. List all subgrantee or contractor costs under line item number 5—Subcontracts on the COP Summary Proposal Budget Form.

The use of this budget form will provide for a detailed annual budget and for the level of detail required by the NCCOS/CSCOR/COP program staff to evaluate the effort to be invested by investigators and staff on a specific project. The COP budget form is compatible with forms in use by other agencies that participate in joint projects with NCCOS/CSCOR/COP and can be found on the CSCOR/COP home page under Grants Information section, Part D.

All applications must include a budget narrative and a justification to support all proposed budget categories. The SF–424A, Budget Information (Non-Construction) Form, will be requested only from those applicants subsequently recommended for award.

Ship time needs should be clearly identified in the proposed budget. The investigator is responsible for requesting ship time and for meeting all requirements to ensure the availability of requested ship time. Copies of relevant ship time request forms should be included with the proposal.

(8) *Biographical sketch.* All principal and co-investigators must provide summaries of up to 2 pages that include the following:

(a) A listing of professional and academic essentials and mailing address;

(b) A list of up to five publications most closely related to the proposed project and five other significant publications.

(c) A list of all persons (including their organizational affiliation) in alphabetical order, with whom the investigator has collaborated on a project or publication within the last 48 months, including collaborators on the proposal and persons listed in the publications. If no collaborators exist, this should be so indicated;

(d) A list of persons (including their organizational affiliation) with whom the individual has had an association like thesis advisor or postdoctoral scholar sponsor;

(e) A list of the names and institutions of the individual's own graduate and postgraduate advisors.

The material presented in (c, d, and e) is used to assist in identifying potential conflicts or bias in the selection of reviewers.

(9) *Current and pending support.* Describe all current and pending federal financial/funding support for all principal and co-investigators, including subsequent funding in the case of continuing grants.

(10) *Proposal format and assembly.* The original proposal should be clamped in the upper left-hand corner, but left unbound. The 15 additional copies can be stapled in the upper left-hand corner or bound on the left edge. The page margin must be one inch (2.5 cm) margins at the top, bottom, left and right, and the typeface standard 12-points size must be clear and easily legible. Proposals should be single spaced.

Part II: Further Supplementary Information

(1) *Funding availability.* Funding is contingent upon receipt of fiscal years 2004–2005 Federal appropriations. NOAA is committed to continual improvement of the grants process and accelerating the award of financial assistance to qualified recipients in accordance with the recommendations of the Program Review Team (Information available at *www.noaa.gov*). In order to fulfill these responsibilities, this solicitation announces that approximately $2.8 million per year is anticipated to be available for FY2004 and FY2005 for SFP projects, in award amounts to be determined by the proposals and available funds.

Applicants are hereby given notice that funds have not yet been appropriated for this SFP program. In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if this program fails to receive funding or is cancelled because of other agency priorities. For prior fiscal history, for Fiscal years 2002 and 2003, NOAA had approximately $2.8 million available for this program, with approximately $2.1 million of these funds provided by NCCOS/CSCOR/COP and approximately $0.6 million provided by NOAA/NMFS/SEFC.

There is no guarantee that sufficient funds will be available to make awards for all qualified projects. Publication of this notice does not oblige NOAA to award any specific project or to obligate any available funds. If one incurs any costs prior to receiving an award agreement signed by an authorized NOAA official, one would do so solely at one's own risk of these costs not being included under the award.

Publication of this notice does not obligate any agency to any specific award or to obligate any part of the entire amount of funds available. Recipients and subrecipients are subject to all Federal laws and agency policies, regulations and procedures applicable to Federal financial assistance awards.

(2) Project/Award period. Full Proposals can cover a project period from 1 to 2 years, i.e. from date of award up to 24 consecutive months. Multi-year awards may be funded incrementally on an annual basis, but, once awarded, those awards will not compete for funding in subsequent years. Each annual award shall require an Implementation Plan and project description that can be easily divided into annual increments of meaningful work representing solid accomplishments (if prospective funding is not made available, or is discontinued).

The following is a description of Multi-Year Awards for those applicants subsequently recommended for award. This information can also be found on the COP web site under Grants Information. Multi-Year Awards: Multi Year Awards are awards which have an award/project period of more than 12 months of activity. Multi Year Awards are partially funded when the awards are approved, and are subsequently funded in increments. One of the purposes of Multi Year Awards is to reduce the administrative burden on both the applicant and the operating unit. For example, with proper planning, one application can suffice for the entire multi year award period. Funding for each year's activity is contingent upon the availability of funds from Congress, satisfactory performance, and is at the sole discretion of the agency. Multi year funding is appropriate for projects to be

funded for 2 to 5 years. Once approved, full applications are not required for the continuations into the out years.

(3) *Additional Evaluation Criteria.* The Evaluation Criteria set out in section(12)(b) of the November 8, 2002 **Federal Register** Notice, under Research Performance Competence, is amended to include the following: The capability of the investigator and collaborators to complete the proposed work in light of present commitments to other projects. Therefore, please discuss the percentage of time investigators and collaborators have devoted to other Federal or non-Federal projects, as compared to the time that will be devoted to the project solicited under this notice.

(4) *Other requirements.* The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), are applicable to this solicitation.

(5) *Intergovernmental review.* Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' It has been determined that this notice is not significant for purposes of Executive Order 12866. Pursuant to 5 U.S.C. 553(a) (2), an opportunity for public notice and comment is not required for this notice relating to grants, benefits and contracts. Because this notice is exempt from the notice and comment provisions of the Administrative Procedure Act, a Regulatory Flexibility Analysis is not required, and none has been prepared. It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

(6) *Collection of information requirements.* This notification involves collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, has been approved by the Office of Management and Budget (OMB) under control numbers 0348–0043 and 0348–0044.

The following requirements have been approved by OMB under control number 0648–0384; a Summary Proposal Budget Form (30 minutes per response), a Project Summary Form (30 minutes per response), a standardized format for the annual Performance Report (5 hours per response), a standardized format for the Final Report (10 hours per response), and the submission of up to 20 copies of proposals (10 minutes per response). The response estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these requirements and the burden estimate, or any other aspect of this collection of information, including suggestions for reducing this burden, to *leslie.mcdonald@noaa.gov*. Copies of these forms and formats can be found on the CSCOR/COP home page under Grant Information sections, Parts D and F.

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

Dated: May 7, 2003.

Ted. I. Lillestolen,

Captain, (NOAA) Associate Deputy Assistant Administrator, National Ocean and Atmospheric Administration, National Ocean Service.

[FR Doc. 03–11741 Filed 5–9–03; 8:45 am]

BILLING CODE 3510–JS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052802D]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Rocket Launches

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

ACTION: Notice of issuance of a modification to a letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that NMFS has amended the letter of authorization (LOA) to take small numbers of seals and sea lions that was issued on May 31, 2002, to the 30th Space Wing, U.S. Air Force.

DATES: Effective from May 9, 2003, through May 31, 2003.

ADDRESSES: The amended letter of authorization and supporting documentation are available for review during regular business hours in the following offices: Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, and the Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, Office of Protected Resources, NMFS, (301) 713–2322, ext 128, or Christina Fahy, NMFS, (562) 980–4023.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued. Under the MMPA, the term ''taking'' means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals.

Permission may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking of seals and sea lions incidental to missile and rocket launches, aircraft flight test operations, and helicopter operations at Vandenberg Air Force Base, CA (Vandenberg AFB) were published on March 1, 1999 (64 FR 9925), and remain in effect until December 31, 2003.

Summary of Request

In accordance with the MMPA, as amended, and implementing regulations, a 1–year LOA to take small numbers of seals and sea lions was issued on May 31, 2002, to the 30th Space Wing (67 FR 38939, June 6, 2002). On August 22, 2002, the 30th Space Wing, U.S. Air Force at Vandenberg AFB, requested an amendment to this LOA to include launches of the Ground-Based Interceptor (GBI) and Alternative Boost Vehicle (ABV).

The Missile Defense Agency is developing the Ground-Based Midcourse Defense (GMD) Element of the conceptual Ballistic Missile Defense

System (BMDS). The GMD Element is designed to protect the United States in the event of a limited ballistic missile attack by destroying the threat missile in mid-course phase of its flight. The GBI canisterized booster and uncanisterized ABV that make up part of the GMD Element, will be flight-tested from Launch Facility (LF)-21 and 23 on the northern end of north Vandenberg AFB. Previously, pinnipeds rarely used this area, but during recent marine mammal surveys conducted in March and April, 2002 and with the overall increase in the harbor seal populations at Vandenberg AFB, a new harbor seal haul-out site was discovered that is regularly used by harbor seal mothers and their pups. This site, designated as Lions Head, is approximately 2.0 km (1 mi) from LF–21 and LF–23; therefore, the 30th Space Wing, Vandenberg AFB, has requested that the GBI boost vehicle launches be included under the 10 ICBM launches authorized for taking pinipeds incidental to launches at Vandenberg AFB under the regulations (64 FR 9925, March 1, 1999).

In 1999, the potential environmental impacts of the activities associated with two canisterized GBI booster verification test flights from LF–21 in northern Vandenberg AFB were analyzed in the 1999 Booster Verification Test Environmental Assessment (EA). The 1999 EA analyzed the potential environmental impacts of all pre-flight, launch, and post-launch activities. Congressional direction in the Defense Authorization Act for fiscal year 2001 included the development of a backup or alternative booster option involving proven technologies. A decision was made to develop and test a second boost vehicle, the uncanisterized ABV. The proposed ABV test flights are an important step in the development of the GMD Element. The ABV being proposed for launch from LF–23 would consist of the GMD Element. The ABV being proposed for launch from LF–23 would consist of a commercially available, solid propellant booster consisting of three stages and an exo-atmospheric kill vehicle emulator that may contain a divert and attitude control system.

Impacts on Marine Mammals

A detailed description of the pinniped stocks potentially affected by missile and rocket launches from Vandenberg AFB and an assessment of those impacts can be found in the final rule on the taking of marine mammals incidental to these activities (64 FR 9925, March 1, 1999).

The primary potential for impacts to pinnipeds would be from the noise created during the proposed missile launches. Noise from Minuteman launches, which have been previously launched from LF–21 and LF–23, ranges from 98 dBA approximately 4.2 km (2.6 mi) from the launch site to 80 dBA approximately 13 km (8 mi) from the launch site. The level of noise for the ABV during launch and flight is expected to be less and relatively short in duration. At approximately the same distance from LF–21, the previous BVT–2 launch (GBI canisterized vehicle) was 6 dB less than the Minuteman III launch and 17 dB less than Peacekeeper launches. Pacific harbor seals (*Phoca vitulina*), the main pinniped species using north Vandenberg AFB, would normally be at least 2.0 km (1 mi) from the launch site. Other pinnipeds, such as California sea lions (*Zalophus californianus*) and northern elephant seals (*Mirounga angustirostris*), may haul-out temporarily on beaches several kilometers from the launch facilities. Noise from prior launches has not appeared to affect pinniped use of the coastal areas on Vandenberg AFB. Pinniped monitoring has been performed for launches of larger missiles on north Vandenberg AFB, such as the Peacekeeper and Delta II. The effect on harbor seals, which were most susceptible to disturbance, has been limited to a negligible short-term (5–30 min) abandonment of nearby haul-out areas. No pinniped mother-pup separations have been noted at the harbor seal haul-out sites closest to launch site. Recent surveys discovered a new harbor seal haul-out site on north Vandenberg AFB that is regularly used by up to 3 harbor seal mothers and their pups. The 30th Space Wing began monitoring harbor seals at this site for ICBM (Minuteman and Peacekeeper) launches that occurred during the harbor seal pupping season (March-June) in accordance with the small take regulations and LOA.

The GBI canisterized and uncanisterized booster launches would be included in the 10 ICBM launches per year that are currently allowed under the regulations and LOA. The planned 6 GBI launches over the next five years will not cause the number of ICBM launches to go over the authorized 10/year.

Monitoring and Reporting

In accordance with the regulations (64 FR 9925, March 1, 1999) and LOA, acoustic monitoring will be performed during initial launch of each type of vehicle (this would be accomplished for the initial GBI canisterized booster launch) and harbor seal monitoring would be conducted during the pupping season in accordance with Vandenberg AFB guidelines. The intermittent launches planned for the ABV test flights (6 flights over the next 5 years) and the relatively small size (smaller than Minuteman and Peacekeeper missiles) are not expected to have more than a negligible impact on harbor seals at Vandenberg AFB.

National Environmental Policy Act (NEPA)

Under rulemaking conducted in 1999 (64 FR 9925, March 1, 1999), NMFS reviewed this action in accordance with NEPA and the Endangered Species Act (ESA). Please refer to that document for additional information. Because the action discussed in this document is not substantially different from the 1999 action, and because no significant new scientific information or analyses have been developed in the past several years significant enough to warrant new NEPA documentation, this action is categorically excluded from further review under NOAA Administrative Order 216–6.

ESA

This action will not affect listed marine mammal species as these species are not expected to haulout on north Vandenberg AFB and thereby potentially be affected through harassment and fleeing from the haulout. No other species listed under the ESA will be affected by this modification.

Determinations

Because the addition of the GBI and ABV missiles to the launch list at Vandenberg AFB will not result in an increase in the number of missile launches authorized to take pinnipeds by Level B harassment under the LOA, NMFS does not expect additional impacts, individually or cumulatively, to occur and therefore, NMFS has determined that the incidental harassment will remain small and not have more than a negligible impact on the pinniped populations off the Vandenberg AFB coast.

Dated: May 6, 2003.

Laurie K. Allen,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–11737 Filed 5–9–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050603C]

New England 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 New England Fishery Management Council (Council) is scheduling a public meeting of its Research Steering Committee in May, 2003. Recommendations from the committee will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will held on Wednesday, May 28, 2003 at 9:30 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn Peabody, One Newbury Street, Peabody, MA 01960; telephone: (978) 535–4600.

Council address: New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The committee will have a discussion of the results of the recent habitat research scoping meetings and development of habitat priorities for inclusion in a NOAA Fisheries Request for Proposals (RFP). They will further refine the RFP review and evaluation process, including project evaluation criteria. Also on the agenda will be discussion of the status of the Committee's process to incorporate the results of cooperative research into the management arena.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. 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

This meeting is 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: May 6, 2003.

Peter H. Fricke,

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

[FR Doc. 03–11736 Filed 5–9–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050603B]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Groundfish Stock Assessment Review (STAR) Panel for cowcod, darkblotched rockfish, and yellowtail rockfish will hold a work session which is open to the public.

DATES: The cowcod, darkblotched rockfish, and yellowtail rockfish STAR Panel will meet beginning at 8 a.m., Wednesday, May 28, 2003. The meeting will continue on Thursday, May 29, 2003 beginning at 8 a.m. The meetings will end at 5 p.m. each day, or as necessary to complete business.

ADDRESSES: The cowcod, darkblotched rockfish, and yellowtail rockfish STAR Panel meeting will be held at NMFS Northwest Fisheries Science Center, Room 370W, 2725 Montlake Blvd. E, Seattle, WA 98112; telephone: 206–860–3200.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. John DeVore, Staff Officer; 503–820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review draft updated stock assessment documents and any other pertinent information, work with the Stock Assessment Teams to make necessary revisions, and produce a STAR Panel report for use by the Council family and other interested persons.

Entry to the Northwest Fisheries Science Center requires identification with photograph (such as a student ID, state drivers license, etc.). A security guard will review the identification and issue a Visitor's Badge valid only for the date of the meeting.

Although nonemergency issues not contained in STAR Panel agendas may come before the STAR Panel for discussion, those issues may not be the subject of formal Panel action during this meeting. STAR Panel 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 Fishery Conservation and Management Act, provided the public has been notified of the Panel's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at 503–820–2280 at least 5 days prior to the meeting date.

Dated: May 6, 2003.

Peter H. Fricke,

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

[FR Doc. 03–11735 Filed 5–9–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042303B]

Marine Mammals; File No. 1045–1713

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Dr. Stephen J. Insley, Hubbs-Sea World Research Institute, 2595 Ingraham St., San Diego, California 92109, has applied in due form for a permit to take northern fur seals (*Callorhinus ursinus*) for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before June 11, 2003.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

FOR FURTHER INFORMATION CONTACT: Jennifer Jefferies or Amy Sloan, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

This research project is designed to remotely investigate atsea interactions between northern fur seals and ships, particularly the impact of commercial fishing vessels on the northern fur seals. Annually, ten lactating female northern fur seals from the Pribilof Islands in Alaska will be captured, measured, outfitted with datalogging instrumentation, and released. The individuals will be tracked and recaptured, the datalogger removed and the animals subsequently released. Additionally, authorization for Level B Harrassment of northern fur seals is requested for 50 pups, 50 breeding females, 25 mature males, and 50 immature males, annually. These activities will be authorized over five years. The results of this research will provide important information for management decisions regarding northern fur seals.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: May 6, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–11738 Filed 5–9–03; 8:45 am]

BILLING CODE 3510–22–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Submission for OMB Review; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

The Corporation for National and Community Service (hereinafter the ''Corporation'') has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, (44 U.S.C. Chapter 35)). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Shelly Ryan, Program Coordinator, (202) 606–5000, extension 549. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 565–2799 between 8:30 a.m. and 5 p.m. Eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs (OIRA), New Executive Office Building, Records Management Center, Room 10102, Attn: Ms. Fumie Yokota, OMB Desk Officer for the Corporation for National and Community Service, 725 17th Street, NW., Washington, DC 20503, (202) 395–3147, within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information to those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submissions of responses.

Description

The Corporation seeks public comment on the forms, the instructions for the forms, and the instructions for the narrative portion of these application instructions.

Type of Review: Reinstatement with change.

Agency: Corporation for National and Community Service.

Title: AmeriCorps Promise Fellows Continuation Instructions.

OMB Number: 3045–0073.

Agency Number: None.

Affected Public: Eligible applicants to the Corporation for funding.

Total Respondents: 41.

Frequency: Once per year.

Average Time Per Response: Twenty-five (25) hours.

Estimated Total Burden Hours: 1,025 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: May 6, 2003.

Nancy Talbot,

Director, Program Planning and Development.

[FR Doc. 03–11734 Filed 5–9–03; 8:45 am]

BILLING CODE 6050–$$–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Meeting

The Board of Directors of the Corporation for National and Community Service gives notice of the following meeting:

DATE AND TIME: Tuesday, May 20, 2003; 9:30 a.m.–12:30 p.m.

PLACE: Crawford Hall 13; Case Western Reserve University, 10900 Euclid Avenue, Cleveland, Ohio 44106.

STATUS: Open.

MATTERS TO BE CONSIDERED:

I. Chair's Opening Remarks.

II. Committee Reports.

III. University/City Partnerships in Service to the Community.

IV. Ohio Service Learning Initiatives: Higher Education.

V. Special and Unique Volunteerism and National Service Initiatives in the State of Ohio.

VI. Presentation and Display of Ohio Bi-Centennial Celebration Quilt.

VII. Public Comment.

ACCOMODATIONS: Anyone who needs an interpreter or other accommodation should notify the Corporation's contact person by 5 p.m. Thursday, May 15, 2003.

FOR FURTHER INFORMATION CONTACT: Michele Tennery, Senior Associate, Public Affairs, Corporation for National and Community Service, 8th Floor, Room 8601, 1201 New York Avenue, NW., Washington, DC 20525. Phone (202) 606–5000 ext. 125. Fax (202) 565–2784. TDD: (202) 565–2799. E-mail: *mtennery@cns.gov.*

Dated: May 8, 2003.

Frank R. Trinity,

General Counsel.

[FR Doc. 03–11914 Filed 5–8–03; 2:12 pm]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Committee Meeting of the Defense Department Advisory Committee on Women in the Services (DACOWITS)

AGENCY: Department of Defense, Advisory Committee on Women in the Services.

ACTION: Notice.

SUMMARY: On April 17, 2003, 68 FR 18972, the Department of Defense published a notice concerning the Committee Meeting of the Defense Department Advisory Committee on Women in the Services (DACOWITS). This notice is published to announce that the session to be held on May 8, 2003, from 1:15 to 2:15, will be closed to the public due to the sensitivity of the briefing content. All other information remains unchanged.

Dated: May 5, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–11702 Filed 5–7–03; 12:37 pm]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas Per Diem Rates

AGENCY: DoD, Per Diem, Travel and Transportation Allowance Committee.

ACTION: Notice of revised non-foreign overseas per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 230. This bulletin lists revisions in the *per diem* rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. AEA changes announced in Bulletin Number 194 remain in effect. Bulletin Number 230 is being published in the **Federal Register** to assure that travelers are paid *per diem* at the most current rates.

EFFECTIVE DATE: May 1, 2003.

FOR FURTHER INFORMATION CONTACT: This document gives notice of revisions in *per diem* rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. It supersedes Civilian Personnel Per Diem Bulletin Number 229. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of revisions in *per diem* rates to agencies and establishments outside the Department of Defense. For more information or questions about per diem rates, please contact your local travel office. The text of the Bulletin follows:

Dated: April 30, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
THE ONLY CHANGES IN CIVILIAN BULLETIN 230 ARE UPDATES TO THE RATES FOR HAWAII AND A CHANGE TO THE M&IE RATE FOR ST. GEORGE, ALASKA.						
ALASKA						
ANCHORAGE [INCL NAV RES]						
05/01 - 09/15	170		66		236	04/01/2003
09/16 - 04/30	85		66		151	04/01/2003
BARROW	159		95		254	05/01/2002
BETHEL	129		66		195	05/01/2002
CLEAR AB	80		55		135	09/01/2001
COLD BAY	90		73		163	05/01/2002
COLDFOOT	135		71		206	10/01/1999
COPPER CENTER	99		63		162	05/01/2002
CORDOVA	90		48		138	04/01/2003
CRAIG	100		53		153	04/01/2003
DEADHORSE	95		67		162	05/01/2002
DELTA JUNCTION	79		60		139	04/01/2003
DENALI NATIONAL PARK						
06/01 - 08/31	115		41		156	04/01/2003
09/01 - 05/31	80		38		118	04/01/2003
DILLINGHAM	95		69		164	05/01/2002
DUTCH HARBOR-UNALASKA	120		86		206	04/01/2003
EARECKSON AIR STATION	80		55		135	09/01/2001
EIELSON AFB						
05/01 - 09/15	149		83		232	04/01/2003
09/16 - 04/30	75		76		151	04/01/2003
ELMENDORF AFB						
05/01 - 09/15	170		66		236	04/01/2003
09/16 - 04/30	85		66		151	04/01/2003
FAIRBANKS						
05/01 - 09/15	149		83		232	04/01/2003
09/16 - 04/30	75		76		151	04/01/2003
FOOTLOOSE	175		18		193	06/01/2002
FT. GREELY	79		60		139	04/01/2003
FT. RICHARDSON						
05/01 - 09/15	170		66		236	04/01/2003
09/16 - 04/30	85		66		151	04/01/2003
FT. WAINWRIGHT						
05/01 - 09/15	149		83		232	04/01/2003
09/16 - 04/30	75		76		151	04/01/2003
GLENNALLEN						
05/01 - 09/30	137		61		198	09/01/2001
10/01 - 04/30	89		56		145	09/01/2001
HEALY						
06/01 - 08/31	115		41		156	04/01/2003
09/01 - 05/31	80		38		118	04/01/2003
HOMER						
05/15 - 09/15	109		72		181	04/01/2003
09/16 - 05/14	76		68		144	04/01/2003
JUNEAU	99		75		174	04/01/2003

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
KAKTOVIK	165	86	251	05/01/2002
KAVIK CAMP	150	69	219	05/01/2002
KENAI-SOLDOTNA				
04/01 - 10/31	110	83	193	04/01/2003
11/01 - 03/31	69	75	144	04/01/2003
KENNICOTT	179	81	260	04/01/2003
KETCHIKAN				
05/01 - 09/30	110	82	192	04/01/2003
10/01 - 04/30	89	80	169	04/01/2003
KING SALMON				
05/01 - 10/01	225	91	316	05/01/2002
10/02 - 04/30	125	81	206	05/01/2002
KLAWOCK	100	53	153	04/01/2003
KODIAK	90	83	173	04/01/2003
KOTZEBUE				
05/01 - 08/31	141	91	232	04/01/2003
09/01 - 04/30	125	89	214	04/01/2003
KULIS AGS				
05/01 - 09/15	170	66	236	04/01/2003
09/16 - 04/30	85	66	151	04/01/2003
MCCARTHY	179	81	260	04/01/2003
METLAKATLA				
05/30 - 10/01	98	48	146	05/01/2002
10/02 - 05/29	78	47	125	05/01/2002
MURPHY DOME				
05/01 - 09/15	149	83	232	04/01/2003
09/16 - 04/30	75	76	151	04/01/2003
NOME	115	91	206	04/01/2003
NUIQSUT	180	53	233	05/01/2002
POINT HOPE	130	70	200	03/01/1999
POINT LAY	105	67	172	03/01/1999
PORT ALSWORTH	135	88	223	05/01/2002
PRUDHOE BAY	95	67	162	05/01/2002
SEWARD				
05/31 - 09/30	189	67	256	04/01/2003
10/01 - 05/30	79	56	135	04/01/2003
SITKA-MT. EDGECUMBE				
05/16 - 09/16	110	81	191	04/01/2003
09/17 - 05/15	99	80	179	04/01/2003
SKAGWAY				
05/01 - 09/30	110	82	192	04/01/2003
10/01 - 04/30	89	80	169	04/01/2003
SPRUCE CAPE	90	83	173	04/01/2003
ST. GEORGE	105	55	160	05/01/2003
TALKEETNA	100	89	189	07/01/2002
TANANA	115	91	206	04/01/2003
TOGIAK	100	39	139	07/01/2002
TOK				
05/01 - 09/30	81	76	157	04/01/2003
10/01 - 04/30	60	74	134	04/01/2003

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
UMIAT	150	98	248	04/01/2003
UNALAKLEET	79	80	159	04/01/2003
VALDEZ				
05/01 - 10/01	139	91	230	04/01/2003
10/02 - 04/30	79	86	165	04/01/2003
WAINWRIGHT	120	83	203	05/01/2002
WASILLA	99	68	167	04/01/2003
WRANGELL				
05/01 - 09/30	110	82	192	04/01/2003
10/01 - 04/30	89	80	169	04/01/2003
YAKUTAT	110	68	178	03/01/1999
[OTHER]	80	55	135	09/01/2001
AMERICAN SAMOA				
AMERICAN SAMOA	85	67	152	03/01/2000
GUAM				
GUAM (INCL ALL MIL INSTAL)	135	76	211	09/01/2002
HAWAII				
CAMP H M SMITH	112	82	194	05/01/2003
EASTPAC NAVAL COMP TELE AREA	112	82	194	05/01/2003
FT. DERUSSEY	112	82	194	05/01/2003
FT. SHAFTER	112	82	194	05/01/2003
HICKAM AFB	112	82	194	05/01/2003
HONOLULU (INCL NAV & MC RES CTR)	112	82	194	05/01/2003
ISLE OF HAWAII: HILO	100	72	172	05/01/2003
ISLE OF HAWAII: OTHER	89	54	143	05/01/2000
ISLE OF KAUAI	158	88	246	05/01/2003
ISLE OF KURE	65	41	106	05/01/1999
ISLE OF MAUI	159	89	248	06/01/2002
ISLE OF OAHU	112	82	194	05/01/2003
KEKAHA PACIFIC MISSILE RANGE FAC	158	88	246	05/01/2003
KILAUEA MILITARY CAMP	100	72	172	05/01/2003
LANAI	395	138	533	05/01/2003
LUALUALEI NAVAL MAGAZINE	112	82	194	05/01/2003
MCB HAWAII	112	82	194	05/01/2003
MOLOKAI	101	98	199	05/01/2003
NAS BARBERS POINT	112	82	194	05/01/2003
PEARL HARBOR [INCL ALL MILITARY]	112	82	194	05/01/2003
SCHOFIELD BARRACKS	112	82	194	05/01/2003
WHEELER ARMY AIRFIELD	112	82	194	05/01/2003
[OTHER]	72	61	133	01/01/2000
JOHNSTON ATOLL				
JOHNSTON ATOLL	0	14	14	05/01/2002
MIDWAY ISLANDS				
MIDWAY ISLANDS [INCL ALL MILITAR	150	47	197	02/01/2000
NORTHERN MARIANA ISLANDS				
ROTA	149	72	221	10/01/2002
SAIPAN	150	88	238	10/01/2002
TINIAN	85	71	156	10/01/2002
[OTHER]	55	72	127	04/01/2000
PUERTO RICO				

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B)	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
BAYAMON				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
CAROLINA				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
FAJARDO [INCL CEIBA & LUQUILLO]	82	54	136	01/01/2000
FT. BUCHANAN [INCL GSA SVC CTR,				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
HUMACAO	82	54	136	01/01/2000
LUIS MUNOZ MARIN IAP AGS				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
MAYAGUEZ	85	59	144	01/01/2000
PONCE	96	69	165	01/01/2000
ROOSEVELT RDS & NAV STA	82	54	136	01/01/2000
SABANA SECA [INCL ALL MILITARY]				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
SAN JUAN & NAV RES STA				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
[OTHER]	62	57	119	01/01/2000
VIRGIN ISLANDS (U.S.)				
ST. CROIX				
04/15 - 12/14	93	72	165	01/01/2000
12/15 - 04/14	129	76	205	01/01/2000
ST. JOHN				
04/15 - 12/14	219	84	303	01/01/2000
12/15 - 04/14	382	100	482	01/01/2000
ST. THOMAS				
04/15 - 12/14	163	73	236	01/01/2000
12/15 - 04/14	288	86	374	01/01/2000
WAKE ISLAND				
WAKE ISLAND	60	32	92	09/01/1998

[FR Doc. 03–11703 Filed 5–9–03; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Naval Research Advisory Committee

AGENCY: Department of the Navy, DoD.

ACTION: Notice of closed meeting.

SUMMARY: The Naval Research Advisory Committee (NRAC) Panel on Technology for FORCEnet will meet to define the concepts and science and technology (S&T) initiatives, including those in the space, atmospheric, surface and subsurface environments, required to achieve the visions of FORCEnet and Sea Power 21. From these discussions the panel will recommend appropriate near and far term Naval science and technology investments to enhance FORCEnet. All sessions of the meeting will be closed to the public.

DATES: The meetings will be held on Monday, May 19, 2003, from 8 a.m. to 5 p.m.; Tuesday, May 20, 2003, from 8 a.m. to 5 p.m.; and Wednesday, May 21, 2003, from 8 a.m. to 5 p.m.

ADDRESSES: The meetings will be held at the Space and Naval Warfare Systems Center San Diego, 53560 Hull Street, San Diego, CA.

FOR FURTHER INFORMATION CONTACT: Dennis Ryan, Program Director, Naval Research Advisory Committee, 800 North Quincy Street, Arlington, VA 22217–5660, (703) 696–6769.

SUPPLEMENTARY INFORMATION: This notice of closed meeting is provided in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2). All sessions of the meeting will be devoted to discussions regarding basic and advanced research and associated science and technology opportunities with respect to concepts and science and technology (S&T) initiatives, including those in the space, atmospheric, surface and subsurface environments, required to achieve the visions of FORCEnet and Sea Power 21. These discussions will contain classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of National Defense and are in fact properly classified pursuant to such Executive Order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. In accordance with 5 U.S.C. App. 2, section 10(d), the Under Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in 5 U.S.C. 552b(c)(1). Due to an unavoidable delay in administrative processing, the normal 15 days notice could not be provided.

Dated: May 7, 2003.

E.F. McDonnell,

Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–11865 Filed 5–9–03; 8:45 am]
BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[CFDA NOs: 84.038, 84.033, and 84.007]

Federal Student Aid

ACTION: Notice of the 2003–2004 award year deadline dates for campus-based programs.

SUMMARY: The Secretary announces the 2003–2004 award year deadline dates for postsecondary institutions to submit various requests and documents for the campus-based programs.

SUPPLEMENTARY INFORMATION: There are three programs that are collectively known as the campus-based programs: The Federal Perkins Loan Program encourages institutions to make low-interest, long-term loans to needy undergraduate and graduate students to help pay for their education.

The Federal Work-Study (FWS) Program encourages the part-time employment of needy undergraduate and graduate students to help pay for their education and to involve the students in community service activities.

The Federal Supplemental Educational Opportunity Grant (FSEOG) Program encourages institutions to provide grants to exceptionally needy undergraduate students to help pay for their cost of education.

The Federal Perkins Loan, FWS, and FSEOG programs are authorized by parts E and C, and part A, subpart 3, respectively, of title IV of the Higher Education Act of 1965, as amended.

Throughout the year, the Department will continue to provide additional information for the individual deadline dates listed in its ''Dear Partner' letters and the 2003–2004 Federal Student Aid Handbook via the Information for Financial Aid Professionals (IFAP) Web site at: *http://www.ifap.ed.gov.*

Deadline Dates: The following table provides the deadline dates for the campus-based programs for the 2003–2004 award year. Institutions must meet the established deadline dates to ensure consideration for funding or a waiver, as appropriate.

2003–2004 AWARD YEAR DEADLINE DATES

What does an institution submit?	Where does the institution submit this?	What is the deadline for Submission?
1. A request for a waiver of the minimum FWS Community Service Expenditure Requirement for the 2003–2004 award year.	The FWS Community Service (CS) waiver request and justification must be mailed to the FWS CS Administrator at the following email address: *CBFOB@ED.GOV*.	June 20, 2003.
2. The Campus-Based Reallocation Form designated for the return of 2002–2003 funds and request of supplemental FWS funds.	The Reallocation Form must be submitted electronically and is located in the ''Setup'' section of the FISAP on the Internet at: *http://www.cbfisap.sfa.ed.gov*.	August 22, 2003.
3. The 2002–2003 Fiscal Operations Report and 2004–2005 Application to Participate (FISAP).	The FISAP is located on the Internet at the following site: *http://www.cbfisap.sfa.ed.gov*. The FISAP form must be submitted electronically via the Internet, and the combined signature page must be mailed to: The FISAP Administrator, INDUS Corporation, 1953 Gallows Road, Suite 300, Vienna, VA 22182.	October 1, 2003.
4. A request for a waiver of the 2004–2005 award year penalty for the underuse of 2002–2003 award year funds.	The request for a waiver can be found in Part II, Section C of the FISAP on the Internet at: *http://www.cbfisap.fsa.ed.gov*. The request and justification must be submitted electronically via the Internet	February 13, 2004.

2003–2004 AWARD YEAR DEADLINE DATES—Continued

What does an institution submit?	Where does the institution submit this?	What is the deadline for Submission?
5. The Institutional Application for Approval to Participate in the Federal Student Financial Aid Programs.	An institution which has not already established eligibility must submit an application to Case Management and Oversight through the ED Web site: *http://www.eligcert.ed.gov*.	February 13, 2004.
6. The Institutional Application and Agreement for Participation in the Work-Colleges Program for the 2004–2005 award year.	The Institutional Application and Agreement for Participation in the Work-Colleges Program can be found in the ''Setup'' section of the FISAP via the Internet at: *http://www.cbfisap.sfa.ed.gov.*. The application and agreement must be signed and mailed to: Work-Colleges Program Campus-Based Operations U.S. Dept. of Education, 830 First Street, NE., Suite 061J1, Washington, DC 20202–5453.	March 9, 2004.

Proof of Delivery of Request and Supporting Documents

If you submit documents by mail or by a non-U.S. Postal Service courier, we accept as proof one of the following:

(1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(2) A legibly dated U.S. Postal Service postmark.

(3) A legibly dated shipping label, invoice, or receipt from a commercial courier.

(4) Other proof of mailing or delivery acceptable to the Secretary.

If the request and documents are sent through the U.S. Postal Service, we do not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. An institution should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office. All institutions are encouraged to use certified or at least first-class mail.

The Department accepts commercial couriers or hand deliveries between 8 a.m. and 4:30 p.m., Eastern time, Monday through Friday except Federal holidays.

Sources for Detailed Information on These Requests

A more detailed discussion of each request for funds or waiver is provided in a specific ''Dear Partner'' letter, which is posted on the Department's Web page at least 30 days before the established deadline date for the specific request. Information on these items is also found in the Federal Student Aid Handbook.

Applicable Regulations: The following regulations apply to these programs:

(1) Student Assistance General Provisions, 34 CFR part 668.

(2) General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program, 34 CFR part 673.

(3) Federal Perkins Loan Program, 34 CFR part 674.

(4) Federal Work-Study Program, 34 CFR part 675.

(5) Federal Supplemental Educational Opportunity Grant Program, 34 CFR part 676.

(6) Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600.

(7) New Restrictions on Lobbying, 34 CFR part 82.

(8) Governmentwide Debarment and Suspension (Nonprocurement) and Government wide requirements for Drug-Free Workplace (Grants), 34 CFR part 85.

(9) Drug and Alcohol Abuse Prevention, 34 CFR part 86.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Coppage, Director of Campus-Based Operations at (202) 377–3174 or via Internet: *Richard.Coppage@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format, (*e.g.* Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document

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To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 1087aa *et seq.*; 42 U.S.C. 2751 *et seq.*; and 20 U.S.C. 1070b *et seq.*

Dated: May 6, 2003.

Theresa S. Shaw,

Chief Operating Officer, Federal Student Aid.

[FR Doc. 03–11761 Filed 5–9–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Regulatory Flexibility Act

AGENCY: Department of Education.

ACTION: Notice of procedures and policies.

SUMMARY: This notice announces Department of Education procedures and policies to promote compliance with the Regulatory Flexibility Act. This notice is issued in accordance with Executive Order 13272 on ''Proper Consideration of Small Entities in Agency Rulemaking.'' Executive Order 13272 provides that draft rules must be thoroughly reviewed ''to assess and take appropriate account of the potential impact on small businesses, small governmental jurisdictions, and small organizations.''

FOR FURTHER INFORMATION CONTACT: Kenneth C. Depew, Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW., room 6E227, Washington, DC 20202–2241. Telephone: (202) 401–8300.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact person listed

under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act, as amended (Act), 5 U.S.C. 601 *et seq.,* applies, with certain limited exceptions, to any rule for which an agency issues a notice of proposed rulemaking pursuant to 5 U.S.C. 553(b) or any other law, including any rule of general applicability governing Federal grants to State and local governments for which the agency provides an opportunity for notice and public comment.

Except in those cases that the Secretary of Education can certify the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities, the Department must publish an initial regulatory flexibility analysis (IRFA) or a summary of an IRFA in the **Federal Register** with the proposed rule. A final regulatory flexibility analysis (FRFA) or a summary of an FRFA must be published with the final rule.

The IRFA must include the following:

(1) A description of the reasons why action by the Department is being considered;

(2) A succinct statement of the objectives of, and legal basis for, the proposed rule;

(3) A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

(4) A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

(5) An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule; and

(6) A description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.

The FRFA must include the following:

(1) A succinct statement of the need for, and objectives of, the rule;

(2) A summary of the significant issues raised by the public comments in response to the IRFA, a summary of the assessment of the Department of such issues, and a statement of any changes made in the proposed rule as a result of such comments;

(3) A description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;

(4) A description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and

(5) A description of the steps the Department has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the Department which affect the impact on small entities was rejected.

Notice to Public

Semiannually, under section 602 of the Act, the Department publishes an Agenda of Federal Regulatory and Deregulatory Actions, which contains a list of all rules currently under development or review. The purpose of the agenda is to encourage more effective public participation in the regulatory process by providing the public with early information about pending regulatory activities.

For each rule listed, the agenda provides the following information:

- An abstract, which includes a description of the problem to be addressed, any principal alternatives being considered, and potential costs and benefits of the action.
- An indication of whether the planned action is likely to have a significant economic impact on a substantial number of small entities as defined by the Act.
- A reference to where the reader can find any current regulations in the Code of Federal Regulations.
- A citation of legal authority.
- The name, address, and telephone number of the contact person at the Department from whom a reader can obtain additional information regarding the planned regulatory action.

In addition, the Department publishes its Regulatory Plan on an annual basis. The plan contains a statement of the Department's regulatory and deregulatory priorities for the coming year.

In order to provide information and support enhanced exchange, the Department has instituted 1–800–USA–LEARN (1–800–872–5327) to connect our customers to a center for information about departmental programs and initiatives; 1–800–4FED–AID (1–800–433–3243) for information on student aid; and an on-line library of information on education legislation, research, statistics, and promising programs.

The Department has an impressive record of successful communication and shared policy development with affected persons and groups, including parents, students, educators, representatives of State and local governments, neighborhood groups, schools, colleges, special education and rehabilitation service providers, professional associations, advocacy organizations, business, and labor.

In particular, the Department continues to seek greater and more useful customer participation in its rulemaking activities through the use of consensual (negotiated) rulemaking and new technology. When rulemaking is determined to be absolutely necessary, customer participation is essential and sought at all stages—in advance of formal rulemaking, during rulemaking, and after rulemaking is completed—in anticipation of further improvements through statutory or regulatory changes. The Department has expanded its outreach efforts through the use of satellite broadcasts, electronic bulletin boards, and teleconferencing. For example, the Department invites comments on all proposed regulations through the Internet.

The Department is streamlining information collections, reducing burden on information providers involved in our programs, and making information maintained by the Department easily available to the public. To the extent permitted by statute, regulations are being revised to eliminate barriers that inhibit coordination across programs (such as by creating common definitions), to reduce the frequency of reports, and to eliminate unnecessary data requirements.

The Department has also piloted the use of two new Internet-based software applications, e-Application and e-Reports, that enable applicants, grantees, and grant teams to process applications and file performance reports online, and we have received positive feedback from participants in the pilot programs. Our goal over time is to encourage applicants and grantees to make electronic commerce, or the process of conducting business over the Internet, their preferred method of doing business with the Department.

Periodic Review of Rules

Section 610 of the Act requires review of existing rules within 10 years of the

effective date of the Act and review of rules adopted after the effective date within 10 years of the adoption of the final rule. The purpose of the reviews is to determine if these rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the rules upon a substantial number of small entities. The Department considers the following factors in reviewing the rules:

- The continued need for the rule.
- The nature of complaints or comments received concerning the rule from the public.
- The complexity of the rule.
- The extent to which the rule overlaps, duplicates, or conflicts with other Federal rules, and to the extent feasible, with State and local governmental rules.
- The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

In accordance with section 610, on August 5, 1981 (46 FR 39882), the Department published a notice of its plan for review of its rules that might have a significant economic impact upon a substantial number of small entities. The plan for review established a deadline of January 1, 1991, for completing the review of all rules existing on January 1, 1981, and the Department met this deadline.

The Department has reviewed all rules published after January 1, 1981, prior to publication to determine if the rule would have a significant economic impact upon a substantial number of small entities. Periodic enactment of reauthorizing legislation for Department programs therefore ensures a review of existing regulations under section 610 at least every four or five years.

Review of All Proposed and Final Rules

It is the policy of the Secretary of Education that all proposed and final rules be thoroughly reviewed to assess their impact on small entities. To ensure this review, the Department has established a clearance process for all regulatory documents managed by the Division of Regulatory Services (DRS) in the Office of the General Counsel.

While it is Department policy to regulate only when absolutely necessary and in the least burdensome way possible, it is necessary for the Department to issue a limited number of proposed and final rules each year. Each rule is carefully screened under the Act to determine if it will have an impact on any small entities and, if so, what this impact will be.

In most cases the analysis supports a determination the rule can be certified by the Secretary as not having a significant economic impact upon a substantial number of small entities. The certification and a supporting explanation are then included with both the proposed and final rules.

For a proposed rule with a certification by the Secretary, all of the comments received are carefully screened to determine if any of them specifically address the certification or relate to the consequences of the rule or the alternatives considered by the Department. If comments are received on the certification or the supporting rationale for the certification, the Department analyzes the impact of the rule on small entities in light of the additional information provided by the commenters, prepares an appropriate response to the comments, and certifies the final rule or prepares a regulatory impact analysis, as appropriate.

A significant rule, following Department clearance, is also sent to the Office of Management and Budget (OMB) for further review under Executive Order 12866 (Regulatory Planning and Review). Similarly, a draft rule that has a significant economic impact on a substantial number of small entities under the Act will be sent to the Small Business Administration Office of Advocacy (Advocacy), and Advocacy comments will be given appropriate consideration by the Department, as required by Executive Order 13272. As necessary, OMB may consult with Advocacy on the impact on small entities under the March 29, 2002, Memorandum of Understanding between those offices.

For those rules where a certification is not supported by the analysis of the impact on small entities, the Department prepares an IRFA and FRFA, as appropriate, in accordance with the following procedures.

Procedures for Compliance With the Regulatory Flexibility Act and Executive Order 13272

(1) Determine whether the rule is subject to the Act. Generally, the Act applies in all cases in which the Department is required to publish a notice of proposed rulemaking (NPRM).

(2) If the rule is subject to the Act, prepare an IRFA for the rule incorporating the necessary information. Some of this information will be available from the initial analysis of the proposed rule and the preamble to the NPRM, other information will require identifying the specific actions a small entity must take in order to comply with the rule.

(3) Notify the Chief Counsel for Advocacy of the Small Business Administration (SBA) and provide a copy of the draft NPRM and IRFA a reasonable time prior to publication. This notification will usually occur at the time the draft NPRM is submitted to the Office of Management and Budget for review under Executive Order 12866.

(4) Publish the IRFA or a summary of the IRFA with the NPRM in the **Federal Register**. Unless the IRFA is extremely lengthy or complex, it is preferable to publish the entire analysis rather than a summary.

(5) In preparing the final rule, consider and respond to all comments on the impact of the rule on small entities, including comments from the SBA.

If a determination is made at this time that the rule will not have a significant economic impact on a substantial number of small entities, a certification and statement of factual basis of support may be included with the final rule. Otherwise, a FRFA incorporating the required information must be prepared. Publish the FRFA or a summary in the **Federal Register** with the final rule. Unless the FRFA is extremely lengthy or complex, it is preferable to publish the entire analysis rather than a summary.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

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(Catalog of Federal Domestic Assistance Number does not apply.)

Dated: May 6, 2003.

Rod Paige,

Secretary of Education.

[FR Doc. 03–11762 Filed 5–9–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–385–000]

Black Marlin Pipeline Company; Notice of Cash-Out Report

May 5, 2003.

Take notice that on April 30, 2003, Black Marlin Pipeline Company (Black Marlin) hereby tendered for filing its annual cash-out report for the calendar year ended December 31, 2002.

Black Marlin states that copy of this filing has been served to its shippers, State Commissions and other interest parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the comment date below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: May 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11661 Filed 5–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–395–000]

CMS Trunkline Gas Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

May 5, 2003.

Take notice that on April 30, 2003, CMS Trunkline Gas Company, LLC (Trunkline) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to be effective June 1, 2003:

Second Revised Sheet No. 5.
Second Revised Sheet No. 6.
Second Revised Sheet No. 7.
Second Revised Sheet No. 8.
Second Revised Sheet No. 9.

Trunkline states that the purpose of this filing, made in accordance with the provisions of Section 154.106 of the Commission's Regulations, is to revise the tariff maps to reflect changes in the pipeline facilities and the points at which service is provided. Trunkline indicates that it is filing these general location maps as Non-Internet Public documents pursuant to instructions in Order No. 630.

Trunkline states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: May 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11665 Filed 5–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–399–000]

CMS Trunkline LNG Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

May 5, 2003.

Take notice that on April 30, 2003, CMS Trunkline LNG Company, LLC (TLNG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 4, to be effective June 1, 2003.

TLNG states that the purpose of this filing is to file the tariff map as a Non-Internet Public document pursuant to instructions in Order No. 630.

TLNG states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: May 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11667 Filed 5–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–190–024]

Colorado Interstate Gas Company; Notice of Negotiated Rates

May 5, 2003.

Take notice that on April 30, 2003, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of May 1, 2003:

First Revised Sheet No. 11E
First Revised Sheet No. 11I

CIG states that the tendered tariff sheets are submitted to update two previously filed negotiated rate transactions involving Western Gas Resources and Williams Energy Marketing & Trading Company and are proposed to become effective on May 1, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: May 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11669 Filed 5–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–397–000]

Discovery Gas Transmission LLC; Notice of Cash-Out Report

May 5, 2003.

Take notice that on April 28, 2003, Discovery Gas Transmission LLC (Discovery) hereby tendered for filing its annual cash-out report for the calendar year ending on December 31, 2002.

Discovery states that a copy of this filing has been served on shippers, State Commissions, and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the comment date below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: May 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11666 Filed 5–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–392–000]

Dominion Cove Point LNG, LP; Notice of Tariff Filing

May 5, 2003.

Take notice that on May 1, 2003, Dominion Cove Point LNG, LP (Dominion Cove Point) tendered for filing to be part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with an effective date of June 1, 2003:

First Revised Sheet No. 8.
First Revised Sheet No. 21.
First Revised Sheet No. 22.
First Revised Sheet No. 25.
First Revised Sheet No. 26.
First Revised Sheet No. 27.
First Revised Sheet No. 30.
First Revised Sheet No. 31.
First Revised Sheet No. 32.
First Revised Sheet No. 34.
First Revised Sheet No. 35.
First Revised Sheet No. 52.
First Revised Sheet No. 55.
First Revised Sheet No. 57.
Second Revised Sheet No. 71.
Second Revised Sheet No. 226.
Second Revised Sheet No. 228.
Second Revised Sheet No. 229.
First Revised Sheet No. 233.
Original Sheet No. 234.
Original Sheet No. 235.
Original Sheet No. 236.
Original Sheet No. 237.
Sheet No. 238.

Dominion Cove Point states that its filing moves into effect the tariff sheets approved by the Commission between Dominion Cove Point and the Parties involved in the Settlements in January 2003.

Dominion Cove Point states that copies of its letter of transmittal and enclosures have been served upon Dominion Cove Point's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the

Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: May 13, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11663 Filed 5–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–220–014]

Great Lakes Gas Transmission Limited Partnership; Notice of Negotiated Rate Agreement

May 5, 2003.

Take notice that on April 30, 2003, Great Lakes Gas Transmission Limited Partnership (Great Lakes) filed for disclosure, a transportation service agreement pursuant to Great Lakes' Rate Schedule LFT entered into by Great Lakes and Nexen Marketing U.S.A. Inc. (Nexen) (LFT Service Agreement). Great Lakes states that the LFT Service Agreement being filed reflects a negotiated rate arrangement between Great Lakes and Nexen commencing May 1, 2003.

Great Lakes states that the LFT Service Agreement is being filed to implement a negotiated rate contract as required by both Great Lakes' negotiated rate tariff provisions and the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines, issued January 31, 1996, in Docket Nos. RM95–6–000 and RM96–7–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: May 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11671 Filed 5–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–407–004, RP00–619–005, and RP03–118–001]

High Island Offshore System; Notice of Compliance Filing

May 5, 2003.

Take notice that on April 29, 2003, High Island Offshore System (HIOS), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets referenced in Appendix A to its filing, to become effective May 1, 2003.

HIOS states that it is filing the tariff sheets to comply with the Commission's April 14, 2003, Order in the above-referenced dockets, which relates to compliance with the Commission's Order No. 637.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: May 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11656 Filed 5–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–157–012]

Kern River Gas Transmission Company; Notice of Negotiated Rates

May 5, 2003.

Take notice that on April 30, 2003, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective May 1, 2003:

Sixth Revised Sheet No. 495
Third Revised Sheet No. 496
Second Revised Sheet No. 497

Kern River states that the purpose of this filing is to implement a negotiated rate transaction between Kern River and Coral Energy Resources, LP, in accordance with the Commission's Policy Statement on alternatives to Traditional Cost of Service Ratemaking for Natural Gas Pipelines, and to reference the agreement in Kern River's tariff.

Kern River states that it has served a copy of this filing upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the

Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: May 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11655 Filed 5–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–131–000]

Natural Gas Pipeline Company of America; Notice of Application

May 5, 2003.

Take notice that on April 28, 2003, Natural Gas Pipeline Company of America (Natural), 747 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP03–131–000, an application pursuant to Section 7(b) of the Natural Gas Act (NGA) and Parts 157 of the Commission's Rules and Regulations for permission and approval to abandon an inactive injection/withdrawal well and the associated 2,380 foot 8-inch lateral and 6-inch meter facilities located at Natural's North Lansing storage field in Harrison County, Texas, all as more fully set forth in the application. This filing may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* and follow the instructions or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any questions or correspondence concerning this application should be addressed to: Bruce H. Newsome, Vice President, Natural Gas Pipeline Company of America, 747 East 22nd Street, Lombard , Illinois 60148, phone (630) 691–3526.

Natural states that the injection/withdrawal well has been plugged and inactive since 1997 when a leak was detected in the production tubing. Natural states further that the Texas Railroad Commission regulations required the well to be plugged. Natural asserts that the lateral that is connected to the well has been inactive since the well was plugged, as has the associated meter, and also asserts that the location of the subject lateral at the storage field is not conducive for future connections to other possible wells.

Natural avers that if the authorization sought herein is approved, the injection/withdrawal well and the lateral would be retired in place, and the meter would be removed from the ground and returned to stock.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protest only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission review process, a final Commission order approving or denying a certificate will be issued.

Comment Date: May 27, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11654 Filed 5–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–7–003]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

May 5, 2003.

Take notice that on April 30, 2003, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective June 27, 2003.

Natural states that the purpose of this filing is to comply with the Commission's Order on Technical Conference and Denying Requests for Rehearing (Order) issued on March 31, 2003. This proceeding involves the credit procedures in Natural's Tariff. No tariff changes other than those required by the Order are reflected in this filing.

Natural states that copies of the filing have been mailed to all parties set out on the Commission's official service list in Docket No. RP03–7.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: May 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11668 Filed 5–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–393–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 5, 2003.

Take notice that on May 1, 2003, Northern Natural Gas Company (Northern) tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1 the following tariff sheets to be effective June 1, 2003:

Seventeenth Revised Sheet No. 54.
Fourth Revised Sheet No. 54A.
Fifteenth Revised Sheet No. 61.
Fifteenth Revised Sheet No. 62.
Fifteenth Revised Sheet No. 63.
Fifteenth Revised Sheet No. 64.

Northern states that the revised tariff sheets are being filed in accordance with section 53 of Northern's Tariff. Northern indicates that this filing establishes the fuel and unaccounted for percentages to be in effect June 1, 2003, based on actual data for the 12 month period that ended March 31, 2003.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: May 13, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11664 Filed 5–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–272–050]

Northern Natural Gas Company; Notice of Negotiated Rates

May 5, 2003.

Take notice that on April 30, 2003, Northern Natural Gas Company (Northern) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, 31 Revised Sheet No. 66, and 27 Revised Sheet No. 66A, proposed to be effective on May 1, 2003.

Northern states that the above sheets are being filed to implement a specific negotiated rate transaction with WPS Energy Services, Inc.(WPS) in accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and to delete terminated transactions. In addition, Northern states that this filing deletes certain transactions that have terminated.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-

free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: May 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11670 Filed 5–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–382–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

May 5, 2003.

Take notice that on April 30, 2003, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets to be effective June 1, 2003:

Fifth Revised Sheet No. 3.
Fourth Revised Sheet No. 3A.
Sixth Revised Sheet No. 3B.

Panhandle states that the purpose of this filing, made in accordance with the provisions of Section 154.106 of the Commission's Regulations, is to revise the tariff maps to reflect changes in the pipeline facilities and the points at which service is provided. Panhandle indicates that it is filing these general location maps as Non-Internet Public documents pursuant to instructions in Order No. 630.

Panhandle states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: May 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11659 Filed 5–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–414–002 and RP01–15–003]

PG&E Gas Transmission, Northwest Corporation; Notice of Compliance Filing

May 5, 2003.

Take notice that on April 30, 2003, PG&E Gas Transmission, Northwest Corporation (GTN), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the revised tariff sheets listed in Appendix A to the filing, with an effective date of August 29, 2002.

GTN states that the filing is being made to comply with the Commission's Second Order on Compliance with Order No. 637 issued April 9, 2003, in Docket Nos. RP00–414 and RP01–15.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: May 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11657 Filed 5–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–386–000]

Sea Robin Pipeline Company; Notice of Tariff Filing

May 5, 2003.

Take notice that on April 30, 2003, Sea Robin Pipeline Company (Sea Robin) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Third Revised Sheet No. 6, to be effective June 1, 2003.

Sea Robin states that the purpose of this filing, made in accordance with the provisions of Section 154.106 of the Commission's Regulations, is to revise the tariff map to reflect changes in the pipeline facilities and the points at which service is provided. Sea Robin states that it is filing this general location map as a Non-Internet Public document pursuant to instructions in Order No. 630.

Sea Robin states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the

Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: May 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11662 Filed 5–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–339–001]

Southern Star Central Gas Pipeline, Inc.; Notice of Tariff Filing

May 5, 2003.

Take notice that on April 30, 2003 Southern Star Central Gas Pipeline, Inc. (Southern Star) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 214, to become effective May 15, 2003.

Southern Star states that the purpose of this filing is to apply right-of-first-refusal provisions to maximum rate service agreements and to remove the five-year term matching cap from the right-of-first-refusal provisions of the Southern Star Central Gas Pipeline, Inc. Tariff consistent with the Commission's Order on Remand in Docket No. RM98–10–011. The instant filing is an amendment to the initial filing made on April 11, 2003, and is identical except that Southern Star's name designation is now ''Inc.'' instead of ''LLC.''

Southern Star states that copies the transmittal letter and appendices are being mailed to Southern Star's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: May 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11658 Filed 5–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–383–000]

Southwest Gas Storage Company; Notice of Tariff Filing

May 5, 2003.

Take notice that on April 30, 2003, Southwest Gas Storage Company (Southwest) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 4; First Revised Sheet No. 4A; and First Revised Sheet No. 4B to be effective June 1, 2003.

Southwest states that the purpose of this filing is to file the tariff maps as Non-Internet Public documents pursuant to instructions in Order No. 630.

Southwest states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: May 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11660 Filed 5–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Headgate Rock to Blythe Transmission Line, Bernardino County, CA

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of floodplain involvement.

SUMMARY: The Western Area Power Administration (Western), a power marketing agency of the U.S. Department of Energy (DOE), proposes to replace existing wood-pole H-frame structures with steel-pole H-frame structures along 52 miles of transmission line between Headgate Rock Substation in Parker, Arizona, and Bylthe Substation in Blythe, California. Western proposes to replace 23 wood structures with light duty steel structures within the 100-year floodplain of the Colorado River, below Parker Dam, in San Bernardino County, California. Western will prepare a floodplain assessment per the DOE floodplain/wetland review requirements.

DATES: Comments on the proposed floodplain action are due to the address below no later than May 27, 2003.

ADDRESSES: Comments should be addressed to Mr. John Holt, Environment Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–

6457, fax (602) 352–2414, e-mail *holt@wapa.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. George R. Perkins, Environmental Specialist, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, telephone (602) 352–2536, e-mail *Gperkins@wapa.gov.*

SUPPLEMENTARY INFORMATION: Western proposes to replace existing wood-pole H-frame structures with steel-pole H-frame structures along 52 miles of transmission line between Headgate Rock Substation in Parker and Bylthe Substation in Blythe. The transmission line crosses the Colorado River near the town of Parker and Colorado River Indian Tribe administered lands in San Bernardino County, California. The transmission line crosses through riparian vegetation consisting of tamarisk but no wetland vegetation would be impacted. Western proposes to replace the existing wood-pole structures with light-duty steel structures because the existing poles have developed cracks and rot, and are in danger of failing. The project would involve replacing 23 structures and clearing about 1 acre of riparian vegetation for an access road within the boundaries of the 100-year floodplain of the Colorado River. The proposal to replace 23 structures covers a distance of 3 miles. The floodplain area has been subdivided and paved streets have been added. The area currently provides housing and several homes are built in the area.

In accordance with the DOE's Floodplain/Wetland Review Requirements (10 CFR part 1022), Western will prepare a floodplain assessment and will perform the proposed actions in a manner so as to avoid or minimize potential harm to or within the affected floodplain. The floodplain assessment will examine the proposed pole replacement activities. The floodplain action is located in San Bernardino, County, California, in T.1 N., R. 25 E., Sections 23, 24, 26, and 27. Maps and further information are available from the Western contact above.

Dated: May 1, 2003.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 03–11722 Filed 5–9–03; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2003–0073, FRL–7496–8]

Agency Information Collection Activities: Proposed Collection; Comment Request; Distribution of Offsite Consequence Analysis Information Under Section 112(r)(7)(H) of the Clean Air Act (CAA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Distribution of Offsite Consequence Analysis Information under section 112(r)(7)(H) of the Clean Air Act (CAA), EPA ICR Number 1981.02, OMB Control Number 2050–0172, expiration date of the *active* ICR is October 31, 2003. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before July 11, 2003.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Sicy Jacob, Chemical Emergency Preparedness and Prevention Office, Mail Code 5104A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8019; fax number: (202) 564–8233; email address: *jacob.sicy@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OAR–2003–0073, which is available for public viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 60 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by email to *a-and-r-Docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Air Docket, Mail Code 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket.*

Affected entities: Entities potentially affected by this action are State and local agencies and members of the public.

Title: Distribution of Offsite Consequence Analysis Information Under Section 112(r)(7)(H) of the Clean Air Act (CAA), OMB Control Number 2050–0172, EPA ICR Number 1981.02 expiring 10/31/2003.

Abstract: This ICR is the renewal of the ICR developed for the final rule, Accidental Release Prevention Requirements; Risk Management Programs Under the Clean Air Act Section 112(r)(7); Distribution of Off-Site Consequence Analysis Information. CAA section 112(r)(7) required EPA to promulgate reasonable regulations and appropriate guidance to provide for the prevention and detection of accidental releases and for responses to such releases. The regulations include requirements for submittal of a risk

management plan (RMP) to EPA. The RMP includes information on offsite consequence analyses (OCA) as well as other elements of the risk management program.

On August 5, 1999, the President signed the Chemical Safety Information, Site Security, and Fuels Regulatory Relief Act (CSISSFRRA). The Act required the President to promulgate regulations on the distribution of OCA information (CAA section 112(r)(7)(H)(ii)). The President delegated to EPA and the Department of Justice (DOJ) the responsibility to promulgate regulations to govern the dissemination of OCA information to the public. The final rule was published on August 4, 2000 (65 FR 48108). The regulations imposed minimal requirements on the public, State and local agencies that request OCA data from EPA. The State and local agencies who decide to obtain OCA information must send a written request on their official letterhead to EPA certifying that they are covered persons under Public Law 106–40, and that they will use the information for official use only. EPA will then provide paper copies of OCA data to those agencies as requested. The rule authorizes and encourages State and local agencies to set up reading rooms. The local reading rooms would provide read-only access to OCA information for all the sources in the LEPC's jurisdiction and for any source where the vulnerable zone extends into the LEPC's jurisdiction.

Members of the public requesting to view OCA information at Federal reading rooms would be required to sign in and self certify. If asking for OCA information from Federal reading rooms for the facilities in the area where they live or work, they would be required to provide proof that they live or work in that area. Members of the public are required to give their names, telephone number, and the names of the facilities for which OCA information is being requested, when they contact the central office to schedule an appointment to view OCA 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.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

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

Burden Statement: For this ICR period, EPA estimates a total of 3,270 hours (annually) for local agencies requesting OCA data from EPA and providing read-only access to the public. For the State agencies, the total annual burden for requesting OCA data from EPA and providing read-only access to the public, is 3,816 hours. For the public to display photo identification, sign a sign-in sheet, certify that the individual has not received access to OCA information for more than 10 stationary sources for that calendar month, and to request information from the vulnerable zone indicator system (VZIS), EPA estimates a total of 8,754 hours annually. The total burden for the members of the public, State and local agencies is 15,840 hours and $413,380 annually (47,520 hours for three years and $1,240,140).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: May 6, 2003.

Deborah Y. Dietrich,

Director, Chemical Emergency Preparedness and Prevention Office.

[FR Doc. 03–11754 Filed 5–9–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[RCRA–2003–0011; FRL–7496–6]

Development and Implementation of a Mercury Lamp Recycling Outreach Program

AGENCY: Environmental Protection Agency.

ACTION: Request for Applications (RFA)—Cooperative Agreements.

SUMMARY: In FY 2002 Congress appropriated funds to the Environmental Protection Agency (EPA) for the development and implementation of a lamp (light bulb) recycling outreach program to increase awareness of proper disposal methods among commercial and industrial users of mercury-containing lamps, in compliance with the Universal Waste Rule.

Mercury is a naturally occurring element commonly used by lamp manufacturers to increase the energy efficiency of the lamps they produce. Examples of these mercury-containing lamps include familiar varieties such as the fluorescent lamps commonly found in office buildings, high intensity discharge (HID) lamps, and mercury vapor lamps. While mercury is an essential component allowing lamps to operate more efficiently, it is also hazardous to humans and the environment, thus EPA categorizes spent mercury-containing lamps as hazardous waste under the Resource Conservation and Recovery Act (RCRA).

On July 6, 1999, (*see* 64 FR 36466) mercury-containing lamps were added to EPA's Universal Waste program. This program, created in 1995, (*see* 60 FR 25492, May 11, 1995) eases the regulatory burden on facilities that manage certain widely generated hazardous wastes, known as universal waste. The program was designed to promote the collection and recycling of these wastes. It is important that mercury-containing wastes are properly managed since incorrect disposal of these wastes can seriously threaten the health of citizens, the environment, and wildlife. Repeated exposure to large amounts of mercury can cause kidney, and nerve damage in adults and children, and neurological damage in developing fetuses. Unfortunately, many members of the industrial and commercial community do not realize that the lamps in their buildings pose such a threat, and they are unaware of acceptable methods for disposing of their lamps. As a result, illegal dumping of this hazardous waste is common. To address this issue, EPA's Lamp

Recycling Outreach Program was given funds to award to organizations creating and implementing outreach programs that educate the commercial community about the nature of mercury-containing lamps and their proper disposal.

At the end of FY 2002, EPA awarded approximately half of the available funds in cooperative agreements for the development of outreach materials and developing an outreach plan. Today we are requesting applications for funding of the second phase of the program, the implementation of outreach, utilizing the tools and materials developed under the first phase.

Specific materials which are to be developed in the first phase, and which will be available for use during the second phase are as follows:

1. Printed collateral materials for use by government and business organizations about lamp recycling.
2. A searchable database of relevant state agency contacts involved with lamp recycling.
3. A ''Frequently Asked Questions'' sheet on mercury lamp management.
4. A CD–ROM with Power Point training presentations patterned after the training module produced for, with trainer notes regarding lamp recycling. With a booklet version of training module.
5. Electronic version of the DOE Rebuild America training that is interactive with state links.
6. A Business Lamp Recycling Program Implementation Guide that includes educational materials, handouts, and textual components for setting up a mercury lamp recycling program.
7. Presentation for a Business Lamp Recycling Program Implementation Workshop.
8. Mailers and stickers (or POS materials) for use by local franchise agencies, SW companies, contractors and utilities.
9. Public service announcements targeted at local areas and advertising copy for target media.
10. An advertisement to promote recycling and increase awareness of the *lamprecycle.org* web site.
11. A ''Business Lamp Recycling Implementation Program'' Web Page.

DATES: Please submit applications on or before July 11, 2003.

ADDRESSES: U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (mailing addresses); Crystal Station (7th Floor); 2800 Crystal Drive, Arlington, VA 22202 (building address).

FOR FURTHER INFORMATION CONTACT: Anna Tschursin with EPA's Office of Solid Waste and Emergency Response, Office of Solid Waste: (703) 308–8805 or *tschursin.anna@epa.gov.*

SUPPLEMENTARY INFORMATION:

Proposal Submission and Selection Schedule

(*See: www.epa.gov/ogd/grants/how_to_apply.htm.*) EPA has established an official public docket for this action under Docket ID No. RCRA–2003–0011. The official public docket is the collection of materials that is available for public viewing at the OSWER Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OSWER Docket is (202) 566–0270. Copies cost $0.15 per page.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center. Once in the system, select ''search'' then key in the appropriate docket ID number.

EPA will accept proposals post-marked or sent to EPA via registered or tracked mail by July 11, 2003. Copies of the Standard Form 424 (SF 424) Application for Federal Assistance may be obtained by following the links to SF forms on the following Web site: *www.gsa.gov/forms.*

Applicants should send one (1) original (clearly labeled as such) and three (3) copies of their proposal to the individual and address shown below:

Anna Tschursin, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW. (5303W), Washington, DC 20460.

Applicants must clearly mark information they consider confidential, and that EPA will make final confidentiality decisions in accordance with Agency regulations at 40 CFR part 2, subpart B. EPA will offer pre-application assistance by receiving and responding to questions via e-mail. EPA will work with the successful applicant to comply with the Intergovernmental review requirements of Executive Order 12372 and 40 CFR part 29.

Authority

Solid Waste Disposal Act, section 8001 (a) authorizes EPA to render financial and other assistance to appropriate public (whether Federal, State, interstate, or local) authorities, agencies, and institutions, private agencies and institutions, and individuals in the conduct of, and promote the coordination of, research, investigations, experiments, training, demonstrations, surveys, public education programs, and studies. The overall objective of the Lamp Recycling Outreach Program is to increase public awareness and access to resource information by the development of educational material and a mechanism for disseminating this information through a highly visible outreach campaign. The objective of this cooperative agreement directly relates to the coordination of public education programs and training aspect of this statutory authority.

Award Information

Anticipated Type of Award(s): Cooperative Agreement.

Anticipated Total Available Funding Amount: $725,417.

Project Period: September 2003–Sept 2008.

Eligibility for Funding

The term ''non-profit'' is defined in OMB Circular A–122 and ''educational institution'' refers to colleges and universities subject to OMB Circular A–21. Groups of two or more eligible applicants may choose to form a coalition and submit a single application for this cooperative agreement. However, one applicant will be accountable to EPA for proper expenditure of funds and any financial transactions between coalition members must comply with 40 CFR part 30.

Per § 501(c)(4) of the Internal Revenue Code, non-profit organizations that engage in lobbying activities—as defined in section 3 of the Lobbying Disclosure Act of 1995—are not eligible to apply or be part of a coalition.

Matching or Cost Sharing Requirements

There are no cost sharing requirements.

Applicable Regulations

The recipient will be subject to EPA regulations applicable to non-profit organizations and institutions of higher education, 40 CFR part 30 and OMB Cost Principles, A–122 or A–21,

respectively. The dispute resolution process will be followed in accordance with 40 CFR 30.63. Executive Order 12372, Intergovernmental Review of Federal Programs is applicable.

Evaluation of Proposals

EPA will conduct the competition consistent with EPA Order 5700.5, Policy on Competition for Assistance Agreements (9/12/02). EPA will assemble a review panel consisting of members familiar with issues related to public outreach, mercury-containing lamps, and the Universal Waste Rule. The review panel will use a point system to rank applications and make recommendations to the Director, Permits and State Programs Division, Office of Solid Waste, Office of Solid Waste and Emergency Response. The Director will make the final selection.

Successful and unsuccessful applicants will be notified of their award status in writing. EPA anticipates awarding the cooperative agreement within 45 days of the application deadline.

EPA reserves the right to reject all applications and make no awards.

Proposal Contents

Proposals must be clear and decisive, strictly follow the criteria, and provide sufficient detail for the panel to compare the merits of each and decide which proposal best supports the intent of the project. Vague descriptions and unnecessary redundancy may reduce the chance of a favorable rating. Proposals providing the best evidence of a quality project and appropriate use of funds will have the best chance of being recommended by the panel. Each proposal must include the following sections, all of which are described in detail further below:

Cover Page (1 page).

Overview (½ page).

Budget (1 page).

Responses to Threshold Criteria (up to 4 pages):

Experience with public outreach on waste related issues; Experience with management of Federal cooperative agreements (or ability to secure such experience).

Responses to Evaluation Criteria (up to 10 pages):

Project Description;

Sustainable, Comprehensive Integrated Outreach Program;

Qualifications and Experience;

Project Partners/Institutionalization;

Use of Existing Materials;

Measurability of Project Results;

Transferability.

To ensure fair and equitable evaluation of the proposals, please do not exceed the single-sided page limitations referenced above. There is no guarantee that pages submitted beyond the limitations will be reviewed by the evaluation panel and doing so could reduce your chances of a favorable rating. In addition, all materials included in the proposal (including attachments) must be printed on letter-sized paper with font sizes no smaller than 12 points. Furthermore, all materials must be printed double-sided on paper with a minimum recycled content of at least 35%.

Cover Page: This page is intended to introduce the applicant and identify a primary point of contact for communication with EPA. The cover page should be on a single page and include the following data elements in the format of your choice:

- Applicant identification—the name of the main implementor of the project.
- Contact—the name of the person who is responsible for the proposal.
- Mailing address/Telephone and Fax numbers/e-mail address of the point of contact for the proposal.
- Submittal Date.

Overview

Briefly summarize the overall goal of the project and how the achievement of that goal can be measured after completion of the project.

Budget

Provide a proposed budget for the project. A clear and concise budget is a critical element of the package. The following budget categories may be useful when presenting your budget in the proposal: personnel, travel, equipment, supplies, contractual, other. EPA defines equipment as items which cost $5,000 or more. Items less than $5,000 are considered supplies. Allowable expenses include direct costs related to organizing and implementing the project and indirect costs authorized under the applicable OMB Circular.

Threshold Criteria

In order to be considered for award of this cooperative agreement, the applicant must meet the threshold criteria described below:

1. Eligibility: Applicants must demonstrate that it is an eligible non-profit organization or an eligible educational institution.

2. Experience with management of Federal cooperative agreements (or ability to secure such experience).

Evaluation Criteria

An applicant's response to each of the following criteria will be the primary basis on which EPA selects or rejects your proposal for the project. The evaluation panel will review the proposals carefully and assess each response based on how well it addresses each criterion. A point system will be used to evaluate the proposals. Next to the title of each evaluation criterion below is the maximum number of points that can be awarded for that criterion (with a total possible score of 100). If a particular criterion is not relevant to your proposal, please acknowledge and explain why it does not apply.

1. Project Description (15 Points)

Provides a complete and clear statement of project goals, activities, budget, and detailed work plan. Budgets should include: how funds will be used, estimated cost of each task, equipment supplies, travel, *etc.*

Work plans should include: the projected time-frame for the outreach program from initiation through completion, as well as a time line of significant milestones and work products to be developed.

2. Sustainable, Comprehensive Integrated Outreach Program (30 Points)

Demonstrates how program will promote lamp recycling by commercial and industrial users of mercury-containing lamps, in compliance with Federal and State Universal Waste Rule provisions. Justifies the work products to be developed. Describes how each product or activity meets the program goals. Describes how your program will deliver long-term national benefit, including how you anticipate assisting the attainment of a national lamp recycling goal of 40% by 2005 and 80% by 2009.

3. Qualifications and Experience (20 Points)

Explains qualifications you have which can be applied to developing this outreach program. Details your interest in recycling. Demonstrates the availability of properly trained staff, facilities, or infrastructure to conduct the program. Demonstrates an understanding of the key audiences that need to be reached. Demonstrates an ability to develop accurate and compelling information for a wide audience. Demonstrates a history of successfully working with the private sector, State, and local government and recycling groups (business and environmental groups). Justifies that you have the capability to develop an outreach program that can continue to encourage long-term improved recycling rates even after your direct involvement is complete.

4. Project Partners/Institutionalization (10 Points)

Demonstrates an awareness of existing programs. Describes efforts to leverage resources from other project partners, including other cooperative agreement awardees (from phase one and phase two of the program), surrounding communities, non-profits, businesses, State and Federal agencies. Describes the possible role of EPA within the program. Describes how you will collaborate with other stakeholders.

(10 bonus Points)

Identifies partnering organization(s) and documents the relationship with the applicant. This can be done, for example, through a letter of support, a joint statement, or principles of agreement signed by other parties.

5. Use of existing materials (10 Points)

Explains how existing materials (including those developed in phase one of the program) will be utilized.

6. Measurability of Project Results (5 Points)

Demonstrates the ability to quantitatively measure and document the effectiveness of your program. Explains approach to tracking and reporting results. At the end of the cooperative agreement period, should be able to provide a description of project outcomes—*i.e.*, What, if any was the impact on the recycling rate of your target audience?

7. Transferability (10 Points)

Explains how the information and lessons learned during the project will be transferred to others in order to continue to encourage long-term improved recycling rates even after your direct involvement is complete.

Pre-application Assistance

EPA will provide pre-application assistance by responding to all questions which are submitted by e-mail to *tschursin.anna@epa.gov.*

Terms and Reporting

Grants will include programmatic and administrative terms and conditions. These terms and conditions will describe what is expected from the grant recipient.

The grantee will be required to submit quarterly progress reports. The grantee should only report on activities funded (in whole or in part) via the grant. The narrative should include descriptions of all action items resulting from meetings, site visits, and other activities, as well as milestones achieved and any challenges encountered. The reports should include lists of action items and corresponding milestone dates. In addition, all quarterly reports must be internally reviewed and approved for quality assurance purposes prior to submission. Costs incurred in complying with reporting requirements are an eligible expense under the Solid Waste Disposal Act, section 8001(a).

Dated: April 29, 2003.

Robert Springer,

Director, Office of Solid Waste.

[FR Doc. 03–11756 Filed 5–9–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–FRL–7497–1]

Government-Owned Invention: Available for Licensing

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of invention for licensing.

SUMMARY: The invention named below is owned by the U.S. Government and is available for licensing in the United States in accordance with 35 U.S.C. 207 and 37 CFR Part 404. Pursuant to 37 CFR 404.7, beginning three months after the date of this notice the Government may grant exclusive or partially exclusive licenses on the invention.

Copies of the patent application and 37 CFR Part 404 can be obtained from Laura Scalise, Patent Attorney, U.S. Environmental Protection Agency (EPA) at the address indicated below. Requests for copies of the patent application must include the patent application serial number listed in this notice. Requesters of the patent application will be asked to sign a Confidentiality Agreement before the application is mailed.

A party that is interested in obtaining a license must apply to EPA at the contact address below. The license application must contain the information set forth in 37 CFR 404.8, including the license applicant's plan for development or marketing of the invention.

Prior to granting an exclusive or partially exclusive license on this invention, EPA, pursuant to 37 CFR 404.7, will publish in the **Federal Register** an additional notice identifying the specific invention and the prospective licensee.

FOR FURTHER INFORMATION CONTACT: Laura Scalise, Patent Attorney, Office of General Counsel (2377), Environmental Protection Agency, Washington, DC 20460, telephone (202) 564–8303.

Patent Application

U.S. Patent Application No. 09/866,793: METHODS FOR ISOLATING AND USING FUNGAL HEMOLYSINS; filed May 30, 2001.

Dated: May 6, 2003.

Marla E. Diamond,

Associate General Counsel.

[FR Doc. 03–11757 Filed 5–9–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7496–9]

Meeting of the Mobile Sources Technical Review Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Act, Pub. L. 92–463, notice is hereby given that the Mobile Sources Technical Review Subcommittee will meet in June 2003. This is an open meeting. The theme of the meeting is future energy legislation and EPA's proposed non-road diesel rule. The meeting will include presentations from outside organizations and EPA. The preliminary agenda for this meeting will be available on the Subcommittee's Web site in May. Draft minutes from the previous meetings are available on the Subcommittee's Web site now at: *http://www.epa.gov/air/caaac/mobile_sources.html.*

DATES: Wednesday, June 11, 2003, from 9 a.m. to 1 p.m. Registration begins at 8:30 a.m.

ADDRESSES: The meeting will be held at the Radisson Hotel Old Town Alexandria, 901 N Fairfax St, Alexandria, VA 22314; (703) 683–6000. Cut-off date to make reservations for discounted rooms associated with this meeting is May 16, 2003.

FOR FURTHER INFORMATION CONTACT: *For technical information:* Mr. Barry Garelick, Technical Staff Contact, Transportation and Regional Programs Division, MC: 6406J, U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460; Ph: (202) 564–9028; FAX: (202) 565–2085, e-mail; *garelick.barry@epa.gov.*

For logistical and administrative information: Ms. Kim Derksen, FACA Management Officer, U.S. EPA, 2000 Traverwood Drive, Ann Arbor, Michigan, Ph: 734–214–4272; FAX 734–214–4906, e-mail: *derksen.kimberly@epa.gov.*

Background on the work of the Subcommittee is available at: *http://transaq.ce.gatech.edu/epatac.*

For more current information: *http://epa.gov/air/caaac/mobile_sources.html.*

Individuals or organizations wishing to provide comments to the Subcommittee should submit them to Mr. Garelick at the address above by May 30, 2003. The Mobile Sources Technical Review Subcommittee expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

SUPPLEMENTARY INFORMATION: During this meeting, the Subcommittee may also hear progress reports from some of its workgroups as well as updates and announcements on activities of general interest to attendees.

Dated: May 5, 2003.

Donald E. Zinger,

Acting Director, Office of Transportation and Air Quality.

[FR Doc. 03–11753 Filed 5–9–03; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

RIN 3046–AA58

Agency Information Collection Activities: Proposed Collection; Comments Request

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of information collection under review: ADEA waivers.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Equal Employment Opportunity Commission (Commission or EEOC) announces that it intends to submit to the Office of Management and Budget (OMB) a request for an extension of the expiration date without change to existing collection requirements under 29 CFR 1625.22, Waivers of rights and claims under the Age Discrimination in Employment Act (ADEA). The Commission is seeking public comments on the proposed extension.

DATES: Written comments on this notice must be submitted on or before July 11, 2003.

ADDRESSES: Comments should be submitted to Frances M. Hart, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 10th Floor, 1801 L Street, NW., Washington, DC 20507. The Executive Secretariat will accept comments transmitted by facsimile (''FAX'') machine. The telephone number for the FAX receiver is (202) 663–4114. (This is not a toll-free-number.) Only comments of six or fewer pages will be accepted via FAX transmittal. This limitation is necessary to assure access to the equipment. Receipt of FAX transmittal will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4070 (voice) or (202) 663–4074 (TDD). (These are not toll-free-telephone numbers.) Copies of comments submitted by the public will be available for review at the Commission's library, Room 6502, 1801 L Street, NW., Washington, DC 20507 between the hours of 9:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Thomas J. Schlageter, Assistant Legal Counsel, Office of Legal Counsel, at (202) 663–4669 or TTY (202) 663–7026. This notice is also available in the following formats: Large print, braille, audio tape and electronic file on computer disk. Requests for this notice in an alternative format should be made to the Publications Center at 1–800–669–3362.

SUPPLEMENTARY INFORMATION: The EEOC enforces the ADEA of 1967, as amended, 29 U.S.C. 621 *et seq.,* which prohibits discrimination against employees and applicants for employment who are age 40 or older. Congress amended the ADEA by enacting the Older Workers Benefit Protection Act of 1990 (OWBPA), Public Law 101–433, 104 Stat. 983 (1990), to clarify the prohititions against discrimination on the basis of age. In Title II of OWBPA, Congress addressed waivers of rights and claims under the ADEA, amending section 7 of the ADEA by adding a new subsection (f), 29 U.S.C. 626(f). The provisions of Title II of OWBPA require employers to provide certain information to employees (but not to EEOC) in writing. The regulation at 29 CFR 1625.22 reiterates those requirements. The EEOC seeks extension without change of the information collection requirements contained in this record keeping regulation.

Collective Title: Informational requirements under Title II of the Older Workers Benefit Protection Act of 1990 (OWBPA), 29 CFR Part 1625.

Form Number: None. Frequency of Report: None required.

OMB Control No.: 3046–0042.

Type of Respondent: Business, state or local governments, not for profit institutions.

Description of the Affected Public: Any employer with 20 or more employees that seeks waiver agreements in connection with exit incentive or other employment termination programs (hereinafter, ''Programs'').

Responses: 13,713.

Reporting Hours: 41,139.

Number of Forms: None.

Abstract: This requirement involves providing adequate information in waiver agreements offered to a group or class of persons in connection with a Program, to satisfy the requirements of the OWBPA.

Burden Statement: The only paperwork burden involved is the inclusion of the relevant data in waiver agreements under the OWBPA. The rule applies to those employers who have 20 or more employees and who offer waivers to a group or class of employees in connection with a Program.

Pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and OMB regulation 5 CFR 1320.8(d)(1), the Commission solicits public comment to enable it to:

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

(2) Evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

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

Dated: May 1, 2003.

For the Commission.

Cari M. Dominguez,

Chair.

[FR Doc. 03–11686 Filed 5–9–03; 8:45 am]

BILLING CODE 6570–01–P

FEDERAL COMMUNICATIONS COMMISION

Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission

May 6, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other

Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 11, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at 202–418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0912.

Title: Cable Attribution Rules, Sections 76.501, 76.503 and 76.504.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 20.

Estimated Time per Response: 4 hours.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 80 hours.

Total Annual Costs: $3,200.

Needs and Uses: The FCC uses filings required under 47 CFR sections 76.501, 76.503 and 76.504 of Commission rules to determine the nature of the corporate, financial, partnership, ownership and other business relationships that confer on their holders a degree of ownership or other economic interest, or influence or control over an entity engaged in the provision of communications services such that the holders are subject to the Commission's regulations.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 03–11725 Filed 5–9–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act; Meetings

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:45 a.m. on Wednesday, May 7, 2003, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate and supervisory activities.

In calling the meeting, the Board determined, on motion of Vice Chairman John M. Reich, seconded by Director James E. Gilleran (Director, Office of Thrift Supervision), concurred in by Director John D. Hawke, Jr. (Comptroller of the Currency), and Chairman Donald E. Powell, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no notice earlier than May 2, 2003, of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (6), (8), (9)(A)(ii), and (c)(10) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 500—17th Street, NW., Washington, DC.

Dated: May 7, 2003.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 03–11927 Filed 5–08–03; 2:48 pm]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

DATE AND TIME: Thursday, May 15, 2003 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Draft Advisory Opinion 2003–07: Virginia Highlands Advancement Fund by Regina Cordle, Treasurer.

Administrative Matters.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 03–11892 Filed 5–8–03; 12:26 am]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

[Petition No. P1–03]

Petition of China Shipping Container Lines Co., Ltd., for a Limited Exemption From Section 9(C) of the Shipping Act of 1984; Notice of Filing

Notice is hereby given that China Shipping Container Lines Co., Ltd. (''Petitioner'') has petitioned, pursuant to section 16 of the Shipping Act of 1984, 46 U.S.C. App. 1715, for a limited exemption from the tariff publishing requirements of section 9 of the Shipping Act, 46 U.S.C. App. 1708(c). Petitioner seeks an exemption so that it can lawfully reduce rates to meet or exceed the published rates of competing ocean common carriers on one day's notice.

In order for the Commission to make a thorough evaluation of the Petition, interested persons are requested to submit views or arguments in reply to the Petition no later than May 27, 2003. Replies shall consist of an original and 15 copies, be directed to the Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001, and be served on Petitioner's counsel: Brett M. Esber, Esquire, Thomas Z. Cheplo, Esquire, Blank Rome LLP, Watergate, Eleventh Floor, 600 New Hampshire Avenue, NW., Washington, DC 20037. It is also requested that a copy of the reply be submitted in electronic form (WordPerfect, Word or ASCII) on diskette or e-mailed to *secretary@fmc.gov.*

Copies of the Petition are available at the Office of the Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Room 1046. A copy may also be obtained by sending a request to *secetary@fmc.gov* or by calling 202–523–5725. Parties participating in this proceeding may elect to receive service of the

Commission's issuances in this proceeding through e-mail in lieu of service by U.S. mail. A party opting for electronic service shall advise the Office of the Secretary in writing and provide an e-mail address where service can be made.

By the Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–11764 Filed 5–9–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 27, 2003.

A. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Robert Schmucker, Raymond, Nebraska, and Mark Blazek, Valparaiso, Nebraska; to acquire control of Valparaiso Enterprises, Inc., Valparaiso, Nebraska, and thereby indirectly acquire control of Oak Creek Valley Bank, Valparaiso, Nebraska.

Board of Governors of the Federal Reserve System, May 6, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–11684 Filed 5–9–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 4, 2003.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Guaranty Federal Bancshares, Inc., Springfield, Missouri, to become a bank holding company through the conversion of its subsidiary Guaranty Federal Savings Bank, Springfield, Missouri, from a federally chartered savings bank to a state chartered bank to be named Guaranty Bank.

Board of Governors of the Federal Reserve System, May 6, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–11683 Filed 5–9–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

[File No. 031 0002]

Carlsbad Physician Association, Inc., et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 30, 2003.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov,* as prescribed in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Jeffrey Brennan, FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3688.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and section 2.34 of the Commission's rules of practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for May 2, 2003), on the World Wide Web, at *http://www.ftc.gov/os/2003/05/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled ''confidential.'' Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following

email box: *consentagreement@ftc.gov.* Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's rules of practice, 16 CFR 4.9(b)(6)(ii)).

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed consent order with the Carlsbad Physician Association (CPA), its executive director, and seven physicians. The agreement settles charges that these parties violated section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by orchestrating and implementing agreements among members of CPA to fix prices and other terms on which they would deal with health plans, and to refuse to deal with such purchasers except on collectively-determined terms. The proposed consent order has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the proposed order final.

The purpose of this analysis is to facilitate public comment on the proposed order. The analysis is not intended to constitute an official interpretation of the agreement and proposed order, or to modify their terms in any way. Further, the proposed consent order has been entered into for settlement purposes only and does not constitute an admission by any respondent that said respondent violated the law or that the facts alleged in the complaint (other than jurisdictional facts) are true.

The Complaint Allegations

CPA was organized in 1998–1999 to be a vehicle for competing physicians to bargain collectively with health plans, in order to obtain ''favorable reimbursement'' for its members. Its 38 physician members represent 76 percent of all physicians and 83 percent of the primary care physicians practicing in the Carlsbad area, which is located in southeastern New Mexico.

CPA members have refused to deal with health plans on an individual basis. Instead, CPA's executive director (Glen Moore), its five-member Board of Directors, and a ''Contract Committee'' consisting of Board members and additional physician members of CPA negotiate with health plans that desire to contract with CPA members. Each of the named physician respondents is or has been a member of CPA's Board of Directors and Contract Committee and actively participated in negotiations with payors.

Contracts that the CPA leadership negotiates are presented to the general membership, and members vote on whether CPA should accept the contract. The Board signs contracts that a majority of CPA members vote to accept. In accordance with this model, respondents have orchestrated collective agreements on fees and other terms of dealing with health plans, have carried out collective negotiations with several health plans, and have orchestrated refusals to deal and threats to refuse to deal with health plans that resisted respondents' desired terms. Although CPA purported to operate as a ''messenger''—that is, an arrangement that does not facilitate horizontal agreements on price—it engaged in various actions that reflected or orchestrated such agreements.[1]

Since its inception, CPA has operated solely to exert the collective bargaining power of its members. It engages in no activities or functions other than health plan contracting. Further, in connection with health plan contracting, its members do not engage in any cooperative activities to benefit consumers.

Respondents have succeeded in forcing numerous health plans to raise fees paid to CPA members, and thereby raised the cost of medical care in the Carlsbad area. As a result of the challenged actions of respondents, CPA members receive the highest fees for physician services in New Mexico. By orchestrating agreements among CPA members to deal only on collectively-determined terms, together with actual or threatened refusals to deal with health plans that would not meet those terms, respondents have violated section 5 of the FTC Act.

The Proposed Consent Order

The proposed order is designed to remedy the illegal conduct charged in the complaint and prevent its recurrence. It is similar to many previous consent orders that the Commission has issued to settle charges that physician groups engaged in unlawful agreements to raise fees they receive from health plans, with two exceptions. First, in addition to the core prohibitions, the proposed order in this matter requires that CPA dissolve itself. Such structural relief is not routinely imposed, but has been used in physician price-fixing consent orders in the past when circumstances warrant.[2] Here, the organization is alleged to have had no function other than unlawful collective bargaining activities. Second, the order includes temporary ''fencing-in'' relief to ensure that the alleged unlawful conduct does not continue through other means. Thus, for three years, it bars the respondents from acting as a messenger or agent in health plan contracting and limits the ability of the individual physician respondents to use the same agent in connection with health plan contracting.

The proposed order's specific provisions are as follows:

Paragraph II.A prohibits the respondents from entering into or facilitating any agreement between or among any physicians: (1) To negotiate with payors on any physician's behalf; (2) to deal, not to deal, or threaten not to deal with payors; (3) on what terms to deal with any payor; or (4) not to deal individually with any payor, or to deal with any payor only through an arrangement involving the respondents.

Other parts of Paragraph II reinforce these general prohibitions. Paragraph II.B prohibits the respondents from facilitating exchanges of information among physicians concerning whether, or on what terms, to contract with a payor. Paragraph II.C bars attempts to engage in any action prohibited by Paragraph II.A or II.B. Paragraph II.D proscribes inducing anyone to engage in any action prohibited by Paragraphs II.A through II.C.

Paragraph II.E contains certain additional, ''fencing-in'' relief, which is imposed for three years. Under this provision, respondents may not, in connection with physician health plan contracting, either (1) act as an agent for any physicians; or (2) use an agent who represents any other physician with respect to such contracting. Such relief, designed to assure that respondents do not seek to use other arrangements to continue the challenged conduct, is warranted in light of complaint charges that respondents engaged in overt price-fixing behavior and respondents'

[1] An appropriate ''messenger model'' arrangement that can facilitate and minimize the costs involved in contracting between physicians and payors, without fostering an agreement among competing physicians on fees or fee-related terms, is described in the 1996 Statements of Antitrust Enforcement Policy in Health Care jointly issued by the Federal Trade Commission and U.S. Department of Justice. *See http://www.ftc.gov/reports/hlth3s.htm.*

[2] *See Obstetrics and Gynecology Medical Corporation of Napa Valley,* Docket No. C–4048 (May 14, 2002); *Physician Group, Inc.* 120 F.T.C. 567 (1995); *Southbank IPA, Inc.* 114 F.T.C. 783 (1991).

assertion that their conduct was legitimate ''messengering'' of health plan contract offers. The prohibition on using the same agent as any other physician in connection with health plan contracting would not apply where respondents are obtaining bona fide legal services (that is, activities undertaken by an attorney that constitute the practice of law as defined by New Mexico law).

As in other orders addressing providers' collective bargaining with health care purchasers, certain kinds of agreements are excluded from the general bar on joint negotiations.

First, respondents would not be precluded from engaging in conduct that is reasonably necessary to form or participate in legitimate joint contracting arrangements among competing physicians, whether a ''qualified risk-sharing joint arrangement'' or a ''qualified clinically-integrated joint arrangement.''

As defined in the proposed order, a ''qualified risk-sharing joint arrangement'' possesses two key characteristics. First, all physician participants must share substantial financial risk through the arrangement, such that the arrangement creates incentives for the participants to control costs and improve quality by managing the provision of services. Second, any agreement concerning reimbursement or other terms or conditions of dealing must be reasonably necessary to obtain significant efficiencies through the joint arrangement.

A ''qualified clinically-integrated joint arrangement,'' on the other hand, need not involve any sharing of financial risk. Instead, as defined in the proposed order, physician participants must participate in active and ongoing programs to evaluate and modify their clinical practice patterns in order to control costs and ensure the quality of services provided, and the arrangement must create a high degree of interdependence and cooperation among physicians. As with qualified risk-sharing arrangements, any agreement concerning price or other terms of dealing must be reasonably necessary to achieve the efficiency goals of the joint arrangement.

Second, because the order is intended to reach agreements among horizontal competitors, Paragraph II would not bar agreements that only involve physicians who are part of the same medical group practice (defined in Paragraph I.E).

Paragraph III, which applies only to CPA, provides for the dissolution of the organization following the expiration or termination of all payor contracts, and in the interim requires that CPA cease all activities except those necessary to comply with the order and the winding down of its affairs. Further, Paragraph III.B requires CPA to distribute the complaint and order to all physicians who have participated in CPA, to payors that negotiated contracts with CPA or indicated an interest in contracting, and to the Carlsbad Medical Center. Paragraph III.C requires CPA, at any payor's request and without penalty, to terminate its current contracts with respect to providing physician services.

In the event that CPA fails to comply with the requirement to send out the notices set forth in Paragraph III.B, Paragraph IV requires Mr. Moore to do so.

Paragraphs V through IX of the proposed order impose various obligations on respondents to report or provide access to information to the Commission to facilitate monitoring respondents' compliance with the order.

The proposed order will expire in 20 years.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–11721 Filed 5–9–03; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Delegations of Authority

Notice is hereby given that I have delegated to the Director, Indian Health Service, with authority to redelegate, all the authorities vested in the Secretary of Health and Human Services under Pub. L. 107–63, the Interior and Related Agencies Appropriations Act for Fiscal Year 2002, 115 Stat. 458, to accept land donated by the Tanadgusix Corporation.

This delegation is effective upon date of signature. In addition, I hereby ratify and affirm any actions taken by the Director, Indian Health Service, or his subordinates which involved the exercise of the authorities delegated herein prior to the effective date of this delegation.

Dated: May 2, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–11685 Filed 5–9–03; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of a Modified or Altered System of Records

AGENCY: Department of Health and Human Services (HHS) Centers for Medicare & Medicaid Services (CMS)(formerly the Health Care Financing Administration).

ACTION: Notice of a modified or altered System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to modify or alter an SOR, ''1–800 Medicare + Choices Helpline (HELPLINE), System No. 09–70–0535.'' We are proposing to amend the purpose of the HELPLINE to include maintaining utilization and bill processing data and change the name to read the ''1–800–Medicare Helpline'' to reflect this amended purpose. Information collected will also be used to update the Enrollment Data Base, System No. 09–70–0502, which is now used to maintain enrollment-related data. The HELPLINE will retrieve utilization data used for bill payment record processing maintained in the ''Common Working File,'' System No. 09–70–0526.

CMS proposes 6 new routine uses to permit release of information to: (1) Another Federal and/or state agency, agency of a state government, an agency established by state law, or its fiscal agent; (2) providers and suppliers of services for administration of Title XVIII of the Social Security Act (the Act); (3) third parties where the contact is expected to have information relating to the individual's capacity to manage his or her own affairs; (4) other insurers, third party administrators (TPA), employers, self-insurers, managed care organizations, other supplemental insurers, non-coordinating insurers, multiple employer trusts, group health plans (*i.e.*, health maintenance organizations (HMOs) or a competitive medical plan (CMP) with a Medicare contract, or a Medicare-approved health care prepayment plan (HCPP)), directly or through a contractor, and other groups providing protection for their enrollees to assist in the processing of individual insurance claims; and (5) combat fraud and abuse in certain health benefits programs.

We are modifying the language in the remaining routine uses to provide an easy to read format to CMS's intention to disclose individual-specific

information contained in this system. The routine uses will then be prioritized and reordered according to their proposed usage. We will also take the opportunity to update any sections of the system that were affected by the recent reorganization and to update language in the administrative sections to correspond with language used in other CMS SORs.

The primary purpose of the SOR is to provide general information to beneficiaries and future beneficiaries so that they can make informed Medicare decisions, maintain information on Medicare enrollment for the administration of the Medicare program, including the following functions: Ensuring proper Medicare enrollment, claims payment, Medicare premium billing and collection, coordination of benefits by validating and verifying the enrollment status of beneficiaries, and validating and studying the characteristics of persons enrolled in the Medicare program including their requirements for information. Information retrieved from this SOR will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the Agency or by a contractor or consultant; (2) another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent; (3) providers and suppliers of services for administration of Title XVIII of the Act; (4) third parties where the contact is expected to have information relating to the individual's capacity to manage his or her own affairs; (5) other insurers for processing individual insurance claims; (6) support constituent requests made to a congressional representative; (7) support litigation involving the Agency; and (8) combat fraud and abuse in certain health benefits programs. We have provided background information about the modified system in the **SUPPLEMENTARY INFORMATION** section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed routine uses, CMS invites comments on all portions of this notice. See **EFFECTIVE DATES** section for comment period.

EFFECTIVE DATES: CMS filed a modified system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on March 13, 2003. To ensure that all parties have adequate time in which to comment, the new SOR, including routine uses, will become effective 40 days from the publication of the notice, or from the date it was submitted to OMB and the Congress, whichever is later, unless CMS receives comments that require alterations to this notice.

ADDRESSES: The public should address comments to: Director, Division of Privacy Compliance Data Development, OIS, CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern daylight time.

FOR FURTHER INFORMATION CONTACT: Kenneth Taylor, Health Insurance Specialist, Division of Call Center Operations, Customer Teleservice Operations Group, Center for Beneficiary Choices, CMS, 7500 Security Boulevard, C2–26–20, Baltimore, Maryland 21244–1850. The telephone number is 410–786–6736.

SUPPLEMENTARY INFORMATION:

I. Description of the Modified System

A. Background

The ''1–800–Medicare + Choices Helpline, System No. 09–70–0535, was established as a new system to broadly disseminate information to Medicare beneficiaries and prospective Medicare beneficiaries on the coverage options provided under the Medicare + Choice program in order to promote an active, informed selection among such options. The information campaign included, general information, information comparing plan options, information on Medi-gap and Medicare Select. This information is to be provided through toll-free telephone service, Internet site, print, and local education and outreach. Notice of this system was published at 66 **Federal Register** 16679 (Mar 20, 2001).

B. Statutory and Regulatory Basis for System

Authority for maintenance of the system is given under Title 41 Code of Federal Regulation (CFR) Chapter 101–20.302, Conduct on Federal Property, and OMB Circular A–123, Internal Control Systems, and Title 42 United States Code (U.S.C.) section 1395w–21 (d) (Pub. L. 105–3, the Balanced Budget Act of 1997).

II. Collection and Maintenance of Data in the System

A. Scope of the Data Collected

The collected information will contain name, address, telephone number, health insurance claim (HIC) number, geographic location, race/ethnicity, sex, date of birth, as well as, background information relating to Medicare or Medicaid issues. The HELPLINE will also maintain a caller history for purposes of re-contacts by customer service representatives or CMS, contain information related to Medicare enrollment and entitlement, group health plan enrollment data, as well as, background information relating to Medicare or Medicaid issues.

Information is collected on individuals age 65 or over who have been, or currently are, entitled to health insurance (Medicare) benefits under Title XVIII of the Act or under provisions of the Railroad Retirement Act, individuals under age 65 who have been, or currently are, entitled to such benefits on the basis of having been entitled for not less than 24 months to disability benefits under Title II of the Act or under the Railroad Retirement Act, individuals who have been, or currently are, entitled to such benefits because they have ESRD, individuals age 64 and 8 months or over who are likely to become entitled to health insurance (Medicare) benefits upon attaining age 65, and individuals under age 65 who have at least 21 months of disability benefits who are likely to become entitled to Medicare upon the 25th month of their being disabled.

B. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a ''routine use.'' The government will only release HELPLINE information that can be associated with an individual as provided for under ''Section III. Proposed Routine Use Disclosures of Data in the System.'' Both identifiable and non-identifiable data may be disclosed under a routine use.

We will only collect the minimum personal data necessary to achieve the purpose of HELPLINE. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. Disclosure of information from the SOR will be approved only to the extent necessary to accomplish the purpose of the disclosure and only after CMS:

1. Determines that the use or disclosure is consistent with the reason data is being collected; *e.g.*, maintain a caller history for purposes of re-contacts by customer service representatives or CMS, contain information related to Medicare enrollment and entitlement, group health plan enrollment data, as well as, background information relating to Medicare or Medicaid issues, insuring proper reimbursement for services provided, claims payment, and coordination of benefits provided to patients.

2. Determines that:

a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. There is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy at the earliest time all patient-identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. Entities Who May Receive Disclosures Under Routine Use

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the HELPLINE without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. We are proposing to establish or modify the following routine use disclosures of information maintained in the system:

1. To Agency contractors, or consultants who have been contracted by the Agency to assist in accomplishment of a CMS function relating to the purposes for this SOR and who need to have access to the records in order to assist CMS.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing a CMS function relating to purposes for this SOR.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or consultant whatever information is necessary for the contractor or consultant to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or consultant from using or disclosing the information for any purpose other than that described in the contract and requires the contractor or consultant to return or destroy all information at the completion of the contract.

2. To another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Assist Federal/state Medicaid programs within the state.

Other Federal or state agencies in their administration of a Federal health program may require HELPLINE information in order to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper reimbursement for services provided;

In addition, other state agencies in their administration of a Federal health program may require HELPLINE information for the purposes of determining, evaluating and/or assessing cost, effectiveness, and /or the quality of health care services provided in the state;

Disclosure under this routine use shall be used by state Medicaid agencies pursuant to agreements with the HHS for determining Medicaid and Medicare eligibility, for quality control studies, for determining eligibility of recipients of assistance under Titles IV, XVIII, and XIX of the Act, and for the administration of the Medicaid program. Data will be released to the state only on those individuals who are patients under the services of a Medicaid program within the state or who are residents of that state.

We also contemplate disclosing information under this routine use in situations in which state auditing agencies require HELPLINE information for auditing state Medicaid eligibility considerations. CMS may enter into an agreement with state auditing agencies to assist in accomplishing functions relating to purposes for this SOR.

3. To providers and suppliers of services directly or through fiscal intermediaries (FIs) or carriers for the administration of Title XVIII of the Act.

Providers and suppliers of services require HELPLINE information in order to establish the validity of evidence or to verify the accuracy of information presented by the individual, as it concerns the individual's entitlement to benefits under the Medicare program, including proper reimbursement for services provided.

4. To third party contacts in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs or to his or her eligibility for, or an entitlement to, benefits under the Medicare program and,

a. The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exists: The individual is confined to a mental institution, a court of competent jurisdiction has appointed a guardian to manage the affairs of that individual, a court of competent jurisdiction has declared the individual to be mentally incompetent, or the individual's attending physician has certified that the individual is not sufficiently mentally competent to manage his or her own affairs or to provide the information being sought, the individual cannot read or write, cannot afford the cost of obtaining the information, a language barrier exist, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

b. The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: The individual's entitlement to benefits under the Medicare program, the amount of reimbursement, and in cases in which the evidence is being reviewed as a result of suspected fraud and abuse, program integrity, quality appraisal, or

evaluation and measurement of activities.

Third parties contacts require HELPLINE information in order to provide support for the individual's entitlement to benefits under the Medicare program; to establish the validity of evidence or to verify the accuracy of information presented by the individual, and assist in the monitoring of Medicare claims information of beneficiaries, including proper reimbursement of services provided.

5. To insurance companies, third party administrators (TPA), employers, self-insurers, managed care organizations, other supplemental insurers, non-coordinating insurers, multiple employer trusts, group health plans (*i.e.*, health maintenance organizations (HMOs) or a competitive medical plan (CMP) with a Medicare contract, or a Medicare-approved health care prepayment plan (HCPP)), directly or through a contractor, and other groups providing protection for their enrollees. Information to be disclosed shall be limited to Medicare entitlement data. In order to receive the information, they must agree to:

a. Certify that the individual about whom the information is being provided is one of its insured or employees, or is insured and/or employed by another entity for whom they serve as a TPA;

b. Utilize the information solely for the purpose of processing the identified individual's insurance claims; and

c. Safeguard the confidentiality of the data and prevent unauthorized access.

Other insurers, TPAs, HMOs, and HCPPs may require HELPLINE information in order to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper reimbursement for services provided.

6. To a Member of Congress or a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

Beneficiaries often request the help of a Member of Congress in resolving some issue relating to a matter before HCFA. The Member of Congress then writes HCFA, and HCFA must be able to give sufficient information tin response to the inquiry.

7. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The Agency or any component thereof, or

b. Any employee of the Agency in his or her official capacity, or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government, is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

Whenever CMS is involved in litigation, or occasionally when another party is involved in litigation and CMS's policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court, or adjudicatory body involved.

8. To a CMS contractor (including, but not limited to FIs and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contract or grant with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud and abuse.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or grantee whatever information is necessary for the contractor or grantee to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or grantee from using or disclosing the information for any purpose other than that described in the contract and requiring the contractor or grantee to return or destroy all information.

9. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

Other agencies may require HELPLINE information for the purpose of combating fraud and abuse in such Federally funded programs.

B. Additional Circumstances Affecting Routine Use Disclosures

This system contains Protected Health Information as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, 65 FR 82462 (12–28–00), Subparts A and E. Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.''

In addition, our policy will be to prohibit release even of not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

I. Safeguards

A. Administrative Safeguards

The HELPLINE system will conform to applicable law and policy governing the privacy and security of Federal automated information systems. These include but are not limited to: The Privacy Act of 1984, Computer Security Act of 1987, the Paperwork Reduction Act of 1995, the Clinger-Cohen Act of 1996, and the Office and Management and Budget (OMB) Circular A–130, Appendix III, ''Security of Federal Automated Information Resources.'' CMS has prepared a comprehensive system security plan as required by OMB Circular A–130, Appendix III. This plan conforms fully to guidance issued by the National Institute for Standards and Technology (NIST) in NIST Special Publication 800–18, ''Guide for Developing Security Plans for Information Technology Systems. Paragraphs A–C of this section highlight some of the specific methods that CMS is using to ensure the security of this system and the information within it.

Authorized users: Personnel having access to the system have been trained in Privacy Act and systems security requirements. Employees and contractors who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data. In addition, CMS is monitoring

the authorized users to ensure against excessive or unauthorized use. Records are used in a designated work area or workstation and the system location is attended at all times during working hours.

To insure security of the data, the proper level of class user is assigned for each individual user as determined at the Agency level. This prevents unauthorized users from accessing and modifying critical data. The system database configuration includes five classes of database users:

- Database Administrator class owns the database objects; *e.g.*, tables, triggers, indexes, stored procedures, packages, and has database administration privileges to these objects;
- Quality Controls Administrator classes have read and write access to key fields in the database;
- Quality Indicator Report Generator class has read-only access to all fields and tables;
- Policy Research class has query access to tables, but are not allowed to access confidential patient identification information; and
- Submitter classes have read and write access to database objects, but no database administration privileges.

B. Physical Safeguards

All server sites have implemented the following minimum requirements to assist in reducing the exposure of computer equipment and thus achieve an optimum level of protection and security for the HELPLINE system:

Access to all servers is controlled, with access limited to only those support personnel with a demonstrated need for access. Servers are to be kept in a locked room accessible only by specified management and system support personnel. Each server requires a specific log-on process. All entrance doors are identified and marked. A log is kept of all personnel who were issued a security card; key and/or combination that grant access to the room housing the server, and all visitors are escorted while in this room. All servers are housed in an area where appropriate environmental security controls are implemented, which include measures implemented to mitigate damage to Automated Information System resources caused by fire, electricity, water and inadequate climate controls.

Protection applied to the workstations, servers and databases include:

- User Log on—Authentication is performed by the Primary Domain Controller/Backup Domain Controller of the log-on domain.
- Workstation Names—Workstation naming conventions may be defined and implemented at the Agency level.
- Hours of Operation—May be restricted by Windows NT. When activated all applicable processes will automatically shut down at a specific time and not be permitted to resume until the predetermined time. The appropriate hours of operation are determined and implemented at the Agency level.
- Inactivity Log-out—Access to the NT workstation is automatically logged out after a specified period of inactivity.
- Warnings—Legal notices and security warnings display on all servers and workstations.
- Remote Access Services (RAS)—Windows NT RAS security handles resource access control. Access to NT resources is controlled for remote users in the same manner as local users, by utilizing Windows NT file and sharing permissions. Dial-in access can be granted or restricted on a user-by-user basis through the Windows NT RAS administration tool.

C. Procedural Safeguards

All automated systems must comply with Federal laws, guidance, and policies for information systems security as stated previously in this section. Each automated information system should ensure a level of security commensurate with the level of sensitivity of the data, risk, and magnitude of the harm that may result from the loss, misuse, disclosure, or modification of the information contained in the system.

V. Effect of the Modified System on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. We will only disclose the minimum personal data necessary to achieve the purpose of HELPLINE. Disclosure of information from the SOR will be approved only to the extent necessary to accomplish the purpose of the disclosure. CMS has assigned a proper level of security clearance for the information in this system to provide added security and protection of data in this system.

CMS will monitor the collection and reporting of HELPLINE data. CMS will take precautionary measures to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act.

CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of the disclosure of information relating to individuals.

Dated: March 13, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare and Medicaid Services.

09–70–0535

SYSTEM NAME:

1–800 Medicare Helpline (HELPLINE), HHS/CMS/CBC.

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive.

SYSTEM LOCATION:

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850 and at various co-locations of CMS Call Center contractors.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Information is collected on individuals age 65 or over who have been, or currently are, entitled to health insurance (Medicare) benefits under Title XVIII of the Act or under provisions of the Railroad Retirement Act, individuals under age 65 who have been, or currently are, entitled to such benefits on the basis of having been entitled for not less than 24 months to disability benefits under Title II of the Act or under the Railroad Retirement Act, individuals who have been, or currently are, entitled to such benefits because they have ESRD, individuals age 64 and 8 months or over who are likely to become entitled to health insurance (Medicare) benefits upon attaining age 65, and individuals under age 65 who have at least 21 months of disability benefits who are likely to become entitled to Medicare upon the 25th month of their being disabled.

CATEGORIES OF RECORDS IN THE SYSTEM:

The collected information will contain name, address, telephone number, health insurance claim (HIC) number, geographic location, race/ethnicity, sex, and date of birth, as well as, background information relating to Medicare or Medicaid issues. The HELPLINE will also maintain a caller history for purposes of re-contacts by customer service representatives or CMS, contain information related to

Medicare enrollment and entitlement, and group health plan enrollment data, as well as, background information relating to Medicare or Medicaid issues.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of this system is given under provisions of 41 Code of Federal Regulations (CFR), Chapter 101–20.302, Conduct on Federal Property, Office of Management and Budget (OMB) Circular A–123, Internal Control, and Title 42 United States Code (U.S.C.) section 1395W–21 (d) (Public Law 105–33, the Balanced Budget Act of 1997).

PURPOSE (S):

The primary purpose of the SOR is to provide general information to beneficiaries and future beneficiaries so that they can make informed Medicare decisions, maintain information on Medicare enrollment for the administration of the Medicare program, including the following functions: ensuring proper Medicare enrollment, claims payment, Medicare premium billing and collection, coordination of benefits by validating and verifying the enrollment status of beneficiaries, and validating and studying the characteristics of persons enrolled in the Medicare program including their requirements for information. Information retrieved from this SOR will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the Agency or by a contractor or consultant; (2) another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent; (3) providers and suppliers of services for administration of Title XVIII of the Social Security Act; (4) third parties where the contact is expected to have information relating to the individual's capacity to manage his or her own affairs; (5) other insurers for processing individual insurance claims; (6) support constituent requests made to a congressional representative; (7) support litigation involving the Agency; and (8) combat fraud and abuse in certain health benefits programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the HELPLINE without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

This SOR contains Protected Health Information as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, 65 **Federal Register** (FR) 82462 (12–28–00), subparts A and E. Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.'' We are proposing to establish or modify the following routine use disclosures of information maintained in the system:

1. To Agency contractors, or consultants who have been contracted by the Agency to assist in accomplishment of a CMS function relating to the purposes for this SOR and who need to have access to the records in order to assist CMS.

2. To another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Assist Federal/state Medicaid programs within the state.

3. To providers and suppliers of services directly or through fiscal intermediaries or carriers for the administration of Title XVIII of the Social Security Act.

4. To third party contacts in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs or to his or her eligibility for, or an entitlement to, benefits under the Medicare program and,

a. The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exists: The individual is confined to a mental institution, a court of competent jurisdiction has appointed a guardian to manage the affairs of that individual, a court of competent jurisdiction has declared the individual to be mentally incompetent, or the individual's attending physician has certified that the individual is not sufficiently mentally competent to manage his or her own affairs or to provide the information being sought, the individual cannot read or write, cannot afford the cost of obtaining the information, a language barrier exist, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

b. The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: The individual's entitlement to benefits under the Medicare program, the amount of reimbursement, and in cases in which the evidence is being reviewed as a result of suspected fraud and abuse, program integrity, quality appraisal, or evaluation and measurement of activities.

5. To insurance companies, third party administrators (TPA), employers, self-insurers, managed care organizations, other supplemental insurers, non-coordinating insurers, multiple employer trusts, group health plans (*i.e.*, health maintenance organizations (HMOs) or a competitive medical plan (CMP) with a Medicare contract, or a Medicare-approved health care prepayment plan (HCPP)), directly or through a contractor, and other groups providing protection for their enrollees. Information to be disclosed shall be limited to Medicare entitlement data. In order to receive the information, they must agree to:

a. Certify that the individual about whom the information is being provided is one of its insured or employees, or is insured and/or employed by another entity for whom they serve as a TPA;

b. Utilize the information solely for the purpose of processing the identified individual's insurance claims; and

c. Safeguard the confidentiality of the data and prevent unauthorized access.

6. To a Member of Congress or a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

7. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The Agency or any component thereof, or

b. Any employee of the Agency in his or her official capacity, or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government, is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

8. To a CMS contractor (including, but not limited to FIs and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

9. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is maintained on paper, computer diskette and on magnetic storage media.

RETRIEVABILITY:

The records are retrieved by name and identification number.

SAFEGUARDS:

CMS has safeguards for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and systems security requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data.

In addition, CMS has physical safeguards in place to reduce the exposure of computer equipment and thus achieve an optimum level of protection and security for the HELPLINE system. For computerized records, safeguards have been established in accordance with the Department of Health and Human Services (HHS) standards and National Institute of Standards and Technology guidelines, *e.g.*, security codes will be used, limiting access to authorized personnel. System securities are established in accordance with HHS, Information Resource Management (IRM) Circular #10, Automated Information Systems Security Program; CMS Automated Information Systems (AIS) Guide, Systems Securities Policies, and OMB Circular No. A–130 (revised), Appendix III.

RETENTION AND DISPOSAL:

Records are maintained for a period of 10 years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Call Center Operations, Customer Teleservice Operations Group, Center for Beneficiary Choices, CMS, 7500 Security Boulevard, C2–26–20, Baltimore, Maryland 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager who will require the system name, health insurance claim number, address, date of birth, and sex, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), and social security number (SSN). Furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay.

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with department regulation 45 CFR 5b.5(a)(2)).

CONTESTING RECORD PROCEDURES:

The subject individual should contact the systems manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with department regulation 45 CFR 5b.7).

RECORD SOURCE CATEGORIES:

The data contained in these records are furnished by the individual, or in the case of some situations, through third party contacts that make calls to the 1–800 Medicare Helpline. Updating information is also obtained from the Enrollment Data Base, Common Working File, and the Master Beneficiary Record maintained by the Social Security Administration.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 03–11748 Filed 5–9–03; 8:45 am]

BILLING CODE 4120–03–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; NCCAM Customer Service Data Collection

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Center for Complementary and Alternative Medicine (NCCAM), the National Institutes of Health (NIH), will submit to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. A notice of this proposed information collection was previously published in the **Federal Register** on February 24, 2003, page 8610–8611, and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to announce a final 30 days for public comment. NIH may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: NCCAM Customer Service Data Collection. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* NCCAM provides the public, patients, families, health care providers, complementary and alternative medicine (CAM) practitioners, and others with the latest scientifically based information on CAM and information about NCCAM's programs through a variety of channels including its toll-free telephone information service and its quarterly newsletter. NCCAM wishes to measure customer satisfaction with NCCAM telephone interactions and the NCCAM

newsletter and to assess which audiences are being reached through these channels. This effort involves a telephone survey consisting of 9 questions, which will be asked of 50 percent of all callers, for an annual total of approximately 4,059 respondents; and a newsletter survey consisting of 10 questions, which will be sent as a print survey to all newsletter subscribers, for an annual total of approximately 823 respondents. NCCAM will use the data collected from the surveys to help program staff measure the impact of their communication efforts, tailor services to the public and health care providers, measure service use among special populations, and assess the most effective media and messages to reach these audiences. *Frequency of Response:* Once for the telephone survey, and periodically for the newsletter survey (to measure any changes in customer satisfaction). *Affected Public:* Individuals and households. *Type of Respondents:* For the telephone survey, patient, spouse/family/friend of patient, health care providers, physicians, CAM practitioners, or other individuals contacting the NCCAM Clearinghouse; for the newsletter survey, subscribers to the NCCAM newsletter. The annual reporting burden is as follows.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Telephone survey				
Individuals or households	4,059	1	0.075	305
Newsletter survey				
Individuals or households	823	2	0.050	82
Annualized totals	4,882			387

The annualized cost to respondents is estimated at $5,545 for the telephone survey and $1,312 for the newsletter survey. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Christy Thomsen, Director, Office of Communications and Public Liaison, NCCAM, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20892–5475; or fax your request to 301–480–3519; or e-mail *thomsenc@mail.nih.gov.* Ms. Thomsen can be contacted by telephone at 301–451–8876.

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: May 1, 2003.

Christy Thomsen,

Director, Office of Communications and Public Liaison, National Center for Complementary and Alternative Medicine, National Institutes of Health.

[FR Doc. 03–11719 Filed 5–9–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases: Licensing Opportunity and Cooperative Research and Development Agreement (''CRADA'') Opportunity; Live Attenuated Vaccine To Prevent Disease Caused by West Nile Virus

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The National Institute of Allergy and Infectious Diseases (NIAID) of the NIH is seeking licensees and/or CRADA partners to further develop, evaluate, and commercialize modified West Nile virus (WNV) chimeras as a live attenuated vaccine against infections of WNV in humans. NIAID is also seeking licensees to commercialize modified WNV chimeras as live attenuated veterinary vaccines against infections of WNV in animals.

DATES: Respondents interested in licensing the invention will be required to submit an ''Application for License to Public Health Service Inventions'' on or before August 11, 2003, for priority consideration.

Interested CRADA collaborators must submit a confidential proposal summary to the NIAID (attention Richard K. Williams, Ph.D. at the address mentioned below) on or before August 11, 2003, for consideration. Guidelines for preparing full CRADA proposals will be communicated shortly thereafter to all respondents with whom initial confidential discussions will have established sufficient mutual interest. CRADA and PHS License Applications submitted thereafter may be considered if a suitable CRADA collaborator or Licensee(s) has not been selected.

ADDRESSES: Questions about licensing opportunities should be addressed to Peter Soukas, J.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–

3804, Telephone: (301) 435–4646; Facsimile: (301) 402–0220; E-mail: *ps193c@nih.gov.* Information about Patent Applications and pertinent information not yet publicly described can be obtained under the terms of a Confidential Disclosure Agreement. Respondents interested in licensing the invention will be required to submit an ''Application for License to Public Health Service Inventions.''

Depending upon the mutual interests of the Licensee(s) and the NIAID, a CRADA to collaborate to develop WNV vaccines in humans may also be negotiated. Proposals and questions about this CRADA opportunity should be addressed to Richard K. Williams, Ph.D., Technology Development Associate, Office of Technology Development, NIAID, 6610 Rockledge Drive, Room 4071, Bethesda, MD 20892–6606, Telephone: (301) 402–0960; E-mail: *rwilliams@niaid.nih.gov.* Respondents interested in submitting a CRADA Proposal should be aware that it may be necessary to secure a license to the above-mentioned patent rights in order to commercialize products arising from a CRADA.

SUPPLEMENTARY INFORMATION: WNV has recently emerged in the U.S. and is considered a significant emerging disease that has embedded itself over a considerable region of the U.S. WNV infections have been recorded in humans as well as in different animals. To date, WNV has killed 294 people in the U.S. and caused severe disease in more than 4222 others. This project is part of NIAID's comprehensive emerging infectious disease program, which supports research on bacterial, viral, and other types of disease-causing microbes.

The methods and compositions of this invention provide a means for prevention of WNV infection by immunization with attenuated, immunogenic viral vaccines against WNV. The invention involves a chimeric virus form consisting of parts of WNV and Dengue virus. Construction of the hybrids and their properties are described in detail in *PNAS,* Pletnev AG *et al.,* 2002; 99(5):3036–3041.

The WNV chimeric vaccine does not target the central nervous system, which would be the case in an infection with wild type WNV. The vaccine stimulates strong anti-WNV immune responses, even following a single dose of the vaccine. When injected into mice, the vaccine protected all of the immunized animals from subsequent exposure to the New York WNV strain. The vaccine was also effective in primates. Researchers intend to begin human trials in late 2003.

The WNV vaccine may be used to protect the human population, particularly the elderly people, and domestic animals from WNV infection in the affected regions of the U.S. as well as worldwide.

The invention claimed in DHHS Reference No. E–357–01/0, ''Construction of West Nile Virus and Dengue Virus Chimeras for Use in a Live Virus Vaccine to Prevent Disease Caused by West Nile Virus'' (AG Pletnev *et al.*), PCT/US03/00594 filed Jan 09, 2003, is available for exclusive or non-exclusive licensing for developing a vaccine against WNV for humans or veterinary use in accordance with 35 U.S.C. 207 and 37 CFR part 404. NIAID is also interested in further development of the technology under one or more CRADAs in the human applications described below.

Under the CRADA the production of WNV vaccines for humans will be optimized and the vaccine evaluated in a series of clinical studies in humans as well as initial safety testing in humans. Positive outcomes of these studies will indicate continued clinical development aimed at supporting regulatory approval of a product to be labeled for use in humans. The Public Health Service (PHS) has filed patent applications both in the U.S. and internationally related to this technology. Notice of the availability of the patent application for licensing was first published in the **Federal Register** on May 2, 2002 (67 FR 22093).

NIAID's principal investigator has extensive experience with live attenuated vaccines, their production and testing, and clinical trials. The Collaborator in this endeavor is expected to assist NIAID in evaluating its current system for producing the WNV chimeras claimed in the patent applications and to develop and optimize an alternative production method, if necessary, to manufacture sufficient quantities of the vaccine for clinical testing in humans and initial safety studies in humans. The Collaborator must have experience in the manufacture of live attenuated vaccines according to applicable FDA guidelines and Points to Consider documents to include Good Manufacturing Procedures (GMP). In addition, it is expected that the Collaborator would provide funds to supplement the LID's research budget for the project and to support the initial human testing.

The capability statement should include detailed descriptions of: (1) Collaborator's expertise in the production of live attenuated vaccines, (2) Collaborator's ability to manufacture sufficient quantities of the vaccine according to FDA guidelines and Points to Consider documents, (3) the technical expertise of the Collaborator's principal investigator and laboratory group in preclinical safety testing (*e.g.*, expertise in *in vitro* and *in vivo* toxicity and pharmacology studies) and initial human safety studies, and (4) Collaborator's ability to provide adequate funding to support initial human safety studies required for marketing approval.

Dated: April 25, 2003.

Michael Mowatt,

Director, Office of Technology Development, NIAID.

Dated: May 1, 2003.

Steven M. Ferguson,

Acting Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 03–11720 Filed 5–9–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Mathematics Cognition and Specific Learning Disabilities.

Date: May 29–30, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Hotel George, 15 E Street NW., Washington, DC 20001.

Contact Person: Norman Chang, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd.,

Room 5E03, Bethesda, MD 20892, (301) 496–1485.

The notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 5, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–11715 Filed 5–9–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group, Diabetes, Endocrinology and Metabolic Diseases B Subcommittee.

Date: June 17–18, 2003.

Time: 6:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn, Philadelphia Center City, 1100 Arch Street, Philadelphia, PA 19107.

Contact Person: John F. Connaughton, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 757, 6707 Democracy Boulevard, Bethesda, MD 20892, (301) 594–7797, *connaughtonj@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 5, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–11716 Filed 5–9–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group Digestive Diseases and Nutrition C Subcommittee DDK–C.

Date: June 12–13, 2003.

Open: June 12, 2003, 8 a.m. to 8:30 a.m.

Agenda: To review procedures and discuss policies.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Closed: June 12, 2003, 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Closed: June 13, 2003, 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Carolyn Miles, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 755, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–7791, *milesc@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 5, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–11717 Filed 5–9–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel ZGM1 MBRS 7 03.

Date: May 7, 2003.

Time: 2 PM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Richard I. Martinez, PhD., Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN–12B, 45 Center Drive MSC 6200, Bethesda, MD 20892–6200, 301–594–2849, *rm63f@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and

Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: May 2, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–11718 Filed 5–9–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Center for Substance Abuse Prevention (CSAP) Drug Testing Advisory Board to be held in June 2003.

A portion of the meeting will be open and will include a Department of Health and Human Services drug testing program update, a Department of Transportation drug testing program update, and a discussion of the proposed guidelines for alternative specimen testing and on-site testing. If anyone needs special accommodations for persons with disabilities, please notify the Contact listed below.

The meeting will include an evaluation of sensitive National Laboratory Certification Program (NLCP) internal operating procedures and program development issues. Therefore, a portion of the meeting will be closed to the public as determined by the SAMHSA Administrator in accordance with Title 5 U.S.C. 552b(c)(9)(B) and 5 U.S.C. App.2, section 10(d).

A roster of the board members may be obtained from: Mrs. Giselle Hersh, Division of Workplace Programs, 5600 Fishers Lane, Rockwall II, Suite 815, Rockville, MD 20857, Telephone: (301) 443–6014. The transcript for the open session will be available on the following website: *http://workplace.samhsa.gov*. Additional information for this meeting may be obtained by contacting the individual listed below.

Committee Name: Center for Substance Abuse Prevention, Drug Testing Advisory Board.

Meeting Date: June 3, 2003; 8:30 a.m.–4:30 p.m., June 4, 2003; 8:30 a.m.–Noon.

Place: Residence Inn by Marriott, 7335 Wisconsin Avenue, Bethesda, Maryland 20814.

Type: Open: June 3, 2003; 8:30 a.m.–10:30 a.m., Closed: June 3, 2003; 10:30 a.m.–4:30 p.m., Closed: June 4, 2003; 8:30 a.m.–Noon.

Contact: Donna M. Bush, Ph.D., Executive Secretary, Telephone: (301) 443–6014, and FAX: (301) 443–3031.

Dated: May 2, 2003.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 03–11500 Filed 5–9–03; 8:45 am]

BILLING CODE 4162–20–U

DEPARTMENT OF HOUSING AND UBRAN DEVELOPMENT

[Docket No.FR–4815–N–25]

Notice of Submission of Proposed Information Collection to OMB: Public Housing Drug Elimination Program: Grantee Reporting

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: June 11, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2577–0124) 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.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *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: Public Housing Drug Elimination Program: Grantee Reporting.

OMB Approval Number: 2577–0124.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: Recipients of Drugh Elimination Grants submit their semi-annual performance report to HUD on the progress of each grant and use of funding. Reports cover activities funded by, or coordinated through, that specific grant during the reporting period for all developments or areas targeted by that grant. A close-out report is submitted at the end of the grant life-cycle. Grant applications are no longer included in this information collection.

Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions.

Frequency of Submission: Annually, Semi-annually, at the end of the grant life-cycle.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	1,600	2		16		51,200

Total Estimated Burden Hours: 51,200.

Status: Reinstatement, with change, of previously approved collection for which approval has expired.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 2, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–11673 Filed 5–9–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4801–C–02]

Notice of Funding Availability for HOPE VI Demolition Grants Fiscal Year 2002; Correction

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability for HOPE VI Demolition Grants Fiscal Year 2002; Correction.

SUMMARY: On April 4, 2003, HUD published the Notice of Funding Availability (NOFA) for HOPE VI Demolition Grants Fiscal Year 2002. This document makes six technical corrections to the NOFA.

FOR FURTHER INFORMATION CONTACT: Caroline Clayton, Office of Public Housing Investments, Room 4130, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, (202) 401–8812, extension 5461 (this is not a toll-free number). Persons with hearing and/or speech challenges may access the above telephone number by TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION: On April 4, 2003, HUD published the Notice of Funding Availability (NOFA) for HOPE VI Demolition Grants for Fiscal Year 2002 (68 FR 16672). Subsequent to publication, an error was discovered in the NOFA and appended Application within the description of standard relocation requirements. That error is corrected in this document. In addition, it was discovered that the NOFA incorrectly instructed that applicants should leave blank box 15 of HUD-Form 424; however, it is box 20 that should remain blank. Also, it was determined that the Application section of the NOFA contained an ambiguous requirement that applicants include a list of prior HUD public housing grant assistance used for physical revitalization of the proposed development. This notice removes that requirement. Finally, this notice amends the NOFA to make it consistent with Executive Order 13202, ''Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects.''

Accordingly, the Notice of Funding Availability (NOFA) for HOPE VI Demolition Grants Fiscal Year 2002, published in the **Federal Register** on April 4, 2003, (68 FR 16672) is corrected as follows:

1. On page 16675, in the first column, paragraph (B)(1) is corrected to read as follows: ''Relocation as a result of demolition approved by a section 18 demolition application is subject to section 18 of the 1937 Act.''

2. On page 16679, in the first column, insert a new section XV that reads as follows:

XV. Executive Order 13202. Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects.

Consistent with Executive Order 13202, ''Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects,'' as amended, it is a condition of receipt of assistance under this NOFA that neither you nor any subrecipient or program beneficiary receiving funds under an award granted under this NOFA, nor any construction manager acting on behalf of you or any such subrecipient or program beneficiary, may require bidders, offerors, contractors, or subcontractors to enter into or adhere to any agreement with any labor organization on any construction project funded in whole or in part by such award or on any related federally funded construction project; or prohibit bidders, offerors, contractors, or subcontractors from entering into or adhering to any such agreement on any such construction project; or otherwise discriminate against bidders, offerors, contractors, or subcontractors on any such construction project because they become or refuse to become or remain signatories or otherwise to adhere to any such agreements. Contractors and subcontractors are not prohibited from voluntarily entering into such agreements. A recipient or its construction manager may apply to HUD under section 5(c) of the Executive Order for an exemption from these requirements for a project where a construction contract on the project had been awarded as of February 17, 2001, and was subject to requirements that are prohibited under the Executive Order.

3. On page 16679, section ''XV. Findings and Certifications'' is redesignated as section ''XVI. Findings and Certifications.''

4. On page 16683, in the paragraph numbered ''3,'' the third sentence is corrected to read as follows: ''Do not fill in box 20, as you will report your funding elsewhere in the application.''

5. On page 16688, the paragraph numbered ''6'' is deleted.

6. On page 16690, the second sentence in the paragraph is corrected to read as follows: ''In accordance with section IX of the NOFA, you must provide a certification that you have completed a HOPE VI Relocation Plan and that it conforms to the applicable requirements.''

Dated: May 6, 2003.

Michael M. Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 03–11763 Filed 5–9–03; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1320–EL, WYW157607]

Coal Lease Exploration License, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of invitation for coal exploration license.

SUMMARY: Pursuant to section 2(b) of the Mineral Leasing Act of 1920, as amended by section 4 of the Federal Coal Leasing Amendments Act of 1976, 90 Stat. 1083, 30 U.S.C. 201 (b), and to the regulations adopted at 43 CFR part 3410, all interested parties are hereby invited to participate with Powder River Coal Company on a pro rata cost sharing basis in its program for the exploration of coal deposits owned by the United States of America in the following-described lands in Campbell and Converse Counties, WY:

T. 41 N., R. 70 W., 6th P.M., Wyoming
Sec. 19: Lots 6–11, 12(S½), 13–20;
Sec. 20: Lots 5(S½), 6(S½), 7(S½), 8(S½), 9–16;
Sec. 21: Lots 5(S½), 6–16;
Sec. 27: Lots 1–16;
Sec. 28: Lots 1–15, NE¼SW¼;
Sec. 29: Lots 1–16;
Sec. 30: Lots 5–12;

Sec. 33: Lots 1–8;
Sec. 34: Lots 1–8;
T. 41 N., R. 71 W., 6th P.M., Wyoming
Sec. 23: Lots 1, 8, 9;
Sec. 24: Lots 1–16;
Sec. 25: Lots 1–4, 9, 10, 12(N½).
Containing 5,426.045 acres, more or less.

All of the coal in the above-described land consists of unleased Federal coal within the Powder River Basin Known Recoverable Coal Resource Area. The purpose of the exploration program is to obtain data for the purpose of delineating the burnlines for the upper and lower splits of the Wyodak-Anderson coal seam and further fine-tune coal quality and structure.

ADDRESSES: The proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. Copies of the exploration plan are available for review during normal business hours in the following offices (serialized under number WYW157607): Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, WY 82003; and, Bureau of Land Management, Casper Field Office, 2987 Prospector Drive, Casper, WY 82604.

SUPPLEMENTARY INFORMATION: This notice of invitation will be published in ''The News-Record'' of Gillette, WY, and ''The Douglas Budget'' of Douglas, WY, once each week for two consecutive weeks beginning the week of May 5, 2003, and in the **Federal Register**. Any party electing to participate in this exploration program must send written notice to both the Bureau of Land Management and Powder River Coal Company no later than thirty days after publication of this invitation in the **Federal Register**. The written notice should be sent to the following addresses: Powder River Coal Company, Attn: Les Petersen, P.O. Box 3034, Gillette, WY 82717, and the Bureau of Land Management, Wyoming State Office, Branch of Solid Minerals, Attn: Mavis Love, P.O. Box 1828, Cheyenne, WY 82003.

The foregoing is published in the **Federal Register** pursuant to 43 CFR 3410.2–1(c)(1).

Dated: March 11, 2003.

Alan Rabinoff,

Deputy State Director, Minerals and Lands.

[FR Doc. 03–10434 Filed 5–9–03; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–050–1020–PG: GP03–0160]

Notice of Public Meeting, John Day/Snake Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of revised public meeting date. (The meeting date has already been published for May 16, 2003. The meeting date should be changed to May 15, 2003.)

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) John Day Snake Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held on Thursday, May 15, 2003 at the Geiser Grand Hotel in Baker City, OR beginning at 8 a.m. The public comment period will begin at approximately 1 p.m. and the meeting will adjourn at approximately 3 p.m.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in North East Oregon.

Meeting Topics

National Meeting with RAC Chairs

Subcommittee Updates

Meeting Procedures

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below.

FOR FURTHER INFORMATION CONTACT: Virginia Gibbons at (541) 416–6700, Prineville Bureau of Land Management, 3050 NE Third Street, Prineville, OR, 97754.

Dated: May 6, 2003.

A. Barron Bail,

District Manager.

[FR Doc. 03–11867 Filed 5–09–03; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day notice of information collection under review: Revision of a currently approved collection; explosives delivery record.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until July 11, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Megan Morehouse, Public Safety Branch, 800 K Street, NW., Suite 710, Washington, DC 20001.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated,

electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Explosives Delivery Record.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 5400.8. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Other: Business or other for-profit. The ATF F 5400.8, Explosives Delivery Record, will provide a record of to whom the explosive materials were given, as well as a positive identification verification, for purposes of delivery to a Federal explosive licensee or permittee.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 25,000 respondents will complete an 18 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 7,500 annual total burden hours associated with this collection.

If additional information is required contact: Robert B Briggs, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: May 8, 2003.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 03–11672 Filed 5–9–03; 8:45 am]

BILLING CODE 4410–EB–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

April 30, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contract Darrin King on (202) 693–4129 (this is non a toll-free number) of e-mail: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Office for the Mine Safety and Health Administration, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Mine Safety and Health Administration (MSHA).

Title: Emergency Evacuations and Mine Emergency Evaluation and Fire-fighting Program of Instruction.

Type of Review: Extension of a currently approved collection.

OMB Number: 1219–0137.

Frequency: On occasion and Annually.

Type of Response: Recordkeeping and Reporting.

Affected Public: Business or other for-profit.

Number of Respondents: 664.

Annual Responses: 55,908.

Annual Burden Hours: 5,010.

Average Annual Response Time per Establishment: 7.5 hours.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $320.00.

Description: MSHA's Emergency Temporary Standard; Final Rule 67 FR 239, Thursday, December 12, 2002) revises requirements for Emergency Evacuations of underground coal mines (30 CFR parts 48 and 75) by setting forth requirements that allow for miners and mine operators to rapidly and safely respond to emergency situations created by fire, explosion, or gas or water inundation hazards, and initiate an immediate mine evacuation when necessary to protect miners from the grave dangers of remaining underground or re-entering affected areas when hazards and conditions arise that endanger safety.

On December 11, 2002, OMB approved the information collection requirements contained in the Emergency Temporary Standard for the maximum period allowed under 5 CFR 1320.13 (''Emergency Processing''). Since the training, recordkeeping, and reporting requirements contained in the Emergency Temporary Standard are critical to safety of miners, MSHA is seeking to extend OMB approval for these information collection requirements under standard clearance procedures.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–11674 Filed 5–9–03; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Bureau of International Labor Affairs

Notice of Final Determination Regarding Forced/Indentured Child Labor Pursuant to Executive Order 13126

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of final determination regarding forced child labor in the firecracker industry in China.

SUMMARY: This notice sets forth the final determination regarding a May 2001 submission, pursuant to Executive Order 13126 (''Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor'') and alleging forced child labor in the firecracker industry in China. The Department of Labor, in consultation and cooperation with the Departments of Treasury and State, has determined that firecrackers from China should not be added to final list of products prohibited from acquisition under Executive Order 13126, based on the lack of recent, credible and appropriately corroborated information indicating that this product is being manufactured with forced or indentured child labor. The review of this country/

product was conducted pursuant to Executive Order 13126 and the Department's ''Procedural Guidelines for Maintenance of the List of Products Requiring Federal Contractor Certification as to Forced or Indentured Child Labor.''

SUPPLEMENTARY INFORMATION:

I. Background

Executive Order No. 13126, which was published in the **Federal Register** on June 16, 1999 (64 FR 32383), declared that it was ''the policy of the United States Government * * * that the executive agencies shall take appropriate actions to enforce the laws prohibiting the manufacture or importation of goods, wares articles, and merchandise mined, produced or manufactured wholly or in part by forced or indentured child labor''. Pursuant to the Executive Order, and following public notice and comment, the Department of Labor published in the January 18, 2001 **Federal Register,** a final list of products, identified by their country of origin, that the Department, in consultation and cooperation with the Departments of State and Treasury, has a reasonable basis to believe might have been mined, produced or manufactured with forced or indentured child labor. In addition to this list, the Department of Labor also published on January 18, 2001, a notice of procedural guidelines for maintaining, reviewing, and, as appropriate, revising the list of products required by Executive Order 13126. (66 FR 5351). The list of products can be accessed on the Internet at *http://www.dol.gov/ilab* or can be obtained from: International Child Labor Program (ICLP), Bureau of International Labor Affairs, Room S–5307, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–4843; fax (202) 693–4830. A copy of the Procedural Guidelines is also available from this office.

Pursuant to Section 3 of the Executive Order, the Federal Acquisition Regulatory Councils published a final rule in the **Federal Register** on January 18, 2001, providing that federal contractors who supply products that appear on the list issued by the Department of Labor must certify to the contracting officer that the contractor, or, in the case of an incorporated contractor, a responsible official of the contractor, has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce or manufacture any product furnished under the contract and that, on the basis of those efforts, the contractor is unaware of any such use of child labor. (48 CFR subpart 22.15). The regulation also imposes other requirements with respect to contracts for products on the list of products.

II. China/Firecrackers Executive Order Submission

On June 29, 2001, the Department of Labor accepted for review a submission under Executive Order 13126 regarding the use of forced child labor in the firecracker industry in China. The submission, which was provided by State Department Watch, consisted of a newspaper article with information describing a March 2001 incident in which children in Jiangxi Province, China were allegedly killed while being forced to manufacture firecrackers at their school.

In accordance with the ''Procedural Guidelines for Maintenance of the List,'' the Department initiated a review into the manufacturing of this product using forced or indentured child labor in China. In conducting the review, the Department focused on available information concerning the use of forced or indentured child labor from a variety of sources, including the Departments of State and Treasury, nongovernmental organizations, and international organizations. In addition, as part of its review effort, the Department released a **Federal Register** notice on August 21, 2002, requesting information from the public on the use of forced child labor in the manufacturing of firecrackers in China. The Department of Labor received no responses to the August 2002 notice. Through this review process, insufficient recent and credible evidence was acquired to corroborate the news article and to establish a reasonable basis to believe that this product is being manufactured with forced or indentured child labor in China.

III. Final Determination

In general, the Department of Labor considers and weighs several factors in making determinations under the Executive Order: the nature of the information describing the use of forced or indentured child labor; the source of the information; the date of the information; the extent of corroboration of the information by appropriate resources; and whether the information involved more than an isolated incident. In addition, the Department of Labor also takes into consideration whether recent, credible efforts are being made to address forced or indentured child labor in a particular country or industry.

Based on the lack of recent, credible and appropriately corroborated information found through the review process to establish a reasonable basis to believe that this product is manufactured with forced or indentured child labor, and as the submitted news article is insufficient by itself to establish such a basis, the Department of Labor, after consulting with the Departments of Treasury and State, has determined that firecrackers from China should not be added to the Executive Order 13126 list of products.

Signed at Washington, DC this 30th day of April 2003.

Martha E. Newton,

Acting Deputy Under Secretary for International Labor Affairs.

[FR Doc. 03–11677 Filed 5–9–03; 8:45 am]

BILLING CODE 4510–28–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice of proposed data collection.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation process to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This process helps to ensure that requested data can be provided in the desired format, reporting burdens are minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is requesting an extension of the Migrant and Seasonal Farmworker (MSFW) Youth Program Planning, Reporting and Performance System forms and related instructions. OMB approved the forms on November 13, 2001 (OMB Control No. 1205–0429, expiring 7/31/2003). A copy of the proposed Information Collection Request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before July 11, 2003.

ADDRESSES: Alina Walker, Acting Chief, Division of Seasonal Farmworker Programs, Employment and Training Administration, U.S. Department of Labor, Room N–4641, 200 Constitution Avenue, NW, Washington, DC 20210. Telephone: 202–693–2706 (this is not a toll-free number) or *walker.alina@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Workforce Investment Act (WIA) Final Rule at 20 CFR 667.300 requires annual plans and quarterly performance reports from all ''direct grant recipients.'' The data under WIA 167 MFSW Youth Program is used to provide material reports to the Secretary of Labor, respond to congressional inquiries, support congressional testimony on behalf of the program, and identify areas of technical assistance need and performance improvement.

On November 1, 2002, the MSFW Youth Program began on-line reporting via the Enterprise Information Management System (EIMS) of the Department of Labor. All MSFW Youth Grantees are required to submit quarterly reports through the EIMS.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's burden estimate for the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

This proposed ICR will be used by approximately 12 Workforce Investment Act (WIA) MSFW Youth Program grant recipients as the primary reporting and performance measurement vehicle for enrolled youths to indicate their characteristics, training and services provided, outcomes (including job placement and retention, and attainment of basic skills), as well as detailed financial data on program expenditures.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Planning, reporting, and performance system for WIA MSFW Youth grant recipients.

OMB Number: 1205–0429.

Catalog of Federal Domestic Assistance Number:

Record Keeping: Grant recipients shall retain supporting and other documents necessary for the compilation and submission of the subject reports for three years after submission of the final financial report for the grant in question [29 CFR 97.42 and/or 29 CFR 95.53].

Affected Public: State agencies; private, non-profit corporations.

Cite/Reference/Form/etc.: The collection instrument is for the MSFW Youth Program Planning, Reporting, and Performance System and related instructions. OMB-approved forms are provided for use in gathering information at the grant recipient field office level.

IV. Total Burden

Required section 167 activity	NFJP Form #	Number of respondents	Responses per year	Total responses	Hours per response	Total burden hrs.
Plan Narrative		12	1	12	5	60
Data Record		12	([1])	5,000	3	15,000
Report from Data Record		12	1	12	2	24
Budget Information Summary	ETA 9096	12	1	12	15	180
Program Planning Summary	ETA 9097	12	1	12	15	180
Program Status Summary	ETA 9098	12	4	48	7	336
Totals		12	8	5,096	47	15,780

[1] On occasion.

Total Respondents: 12.

Frequency: Annually for planning information; quarterly for both financial information and participation and characteristics information.

Total Responses:

Planning—36 (12 times 3).

Participant Reporting—48 (1 Program Status Summary per quarter, per grant recipient per year).

Participant record keeping (MSFW SPIR)—5000 records.

There are four statutorily-required quarterly financial status reports per grant recipient per year, by year of appropriation. For participation and characteristics information, there are four quarterly submissions per year, regardless of the year(s) of funding expended during the program year.

Average Time per Grantee Response:

Annual Plan—2 hours.

Budget Information Summary (BIS)—30 minutes; [ETA 9096].

Program Planning Summary (PPS)—1 hour; [ETA 9097].

Financial Status Report—30 minutes; [ETA 9092, OMB Approval No. 1205–0428, expiring 10/04].

Program Status Summary (PSS)—1 hour; [ETA 9098].

Individual Recordkeeping (Workforce Investment Act Standardized Participant Record)—3 hours (per participant record).

The individual time per response varies widely depending on the degree of automation attained by individual grant recipients. Grant recipients also vary according to the numbers of individuals served in each program year. If the grant recipient has a fully developed and automated Management Information System, the response time is limited to one-time programming, plus processing time for each response.

Estimated Total Burden Hours:

Planning (MSFW)—12 responses times 2 hours per response equals 24 burden hours.

BIS (MSFW)—12 responses times 30 minutes per response equals 6 burden hours.

PPS (MSFW)—12 responses times 1 hour per response equals 12 burden hours.

FSR (MSFW)—48 (12 times 4) responses times 30 minutes per response equals 24 minimum burden hours.

PSS (MSFW)—48 (12 times 4) responses times 1 hour per response equals 48 burden hours.

The use of the term ''minimum'' refers to the fact that an individual grantee must continue to report on expenditures by year of appropriation until those funds are completely expended. Thus, if more than one year's appropriation is expended in a given quarter, two FSRs (or more) must be submitted for that period.

Total Burden Cost (capital/startup): $-0-.

Total Burden Cost (operating/maintaining):

MSFW Youth Program—(hours times $15.00 per hour).

Costs may vary widely among grantees, from nearly no additional cost to some higher figure, depending on the state of automation attained by each grantee and the wages paid to the staff actually completing the various forms. All costs associated with the submission of these forms are allowable grant expenses.

Comments submitted in response to this request will be summarized and/or included in the Office of Management and Budget request for approval of the information collection. All comments will become a matter of public record.

Signed at Washington, DC, this 2nd day of May 2003.

Emily Stover DeRocco,

Assistant Secretary of Labor, Employment and Training Administration.

[FR Doc. 03–11676 Filed 5–9–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Solicitation for Grant Applications (SGA); National Farmworker Jobs Program; Housing assistance for Migrants and Seasonal Farmworkers

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice: amendment to SGA/DFA–03–108.

SUMMARY: The Employment and Training Administration published a document in the **Federal Register** dated April 17, 2003, concerning the availability of grant funds for the National Farmworker Jobs Program (NFJP) and Housing for Migrant and Seasonal Farmworkers (MSFWs). The document is being amended to provide clarifications as follows:

- A completed SF 424 along with a Program Planning Summary (ETA 9094/Attachment I) and a Budget Information Summary (ETA 9093/Attachment II) should be included in all National Farmworker Jobs Program applications. Please note that completing the ETA 9094 will not satisfy the requirement to provide estimated numbers for those proposed to receive training services and to receive related assistance services.
- For the purposes of the Farmworker Housing Assistance SGA, applicants should submit the SF 424 and SF 424A.

Dated: Signed at Washington, DC, this 6th day of May, 2003.

Lorraine H. Saunders,

Grant Officer, Employment and Training Administration.

BILLING CODE 4510–30–M

WIA Program Planning Summary - NFJP
Title I-D, Section 167 - Migrant/Seasonal Farmworker Program

U.S. Department of Labor
Employment and Training Administration

F

a. Grantee Name and Address	b. Grant Number	OMB Approval No: 1205-0425 Expires: 12/31/04
	c. Period of Grant From: To:	d. Modification Year ____ No. ____

I. **Participation and Termination Summary**	B. Cumulative Periods			
	1st	2nd	3rd	4th
A. Total Participants				
1. New Participants				
2. Participants Carried Over				
3. Total Number of Participants Exiting Program				
II. **Participant Outcomes**				
A. Entered Unsubsidized Employment				
B. Completed Training Services				
C. Total Current Participants (End-of-Period)				

Remarks

Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Respondents obligation to reply to these reporting requirements are required to obtain or retain benefits (20 CFR 667.300). Public reporting burden for this collection of information is estimated to average 15 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of National Programs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N-4641, Washington, D.C. 20210 (Paperwork Reduction Project 1205-0425).

ETA 9094
(July 2001)

Instructions for Completing NFJP, WIA Program Planning Summary (PPS)

General Instructions. The PPS is required to be submitted as part of the annual grant plan. The specific instructions below explain the items on the PPS.

a. Grantee Name and Address - Enter the name and mailing address.

b. Grant Number - FOR GRANT OFFICE'S USE ONLY

c. Period of Grant - Enter the month, day, and year of the program year's starting and ending dates.

d. FOR GRANT OFFICER'S USE ONLY.

Participation and Termination Summary

Section I. describes the planned flow of participants through the program: the number entering, those leaving and those remaining in the program. The plan is cumulative on a quarterly basis, and includes carry over participants.

Line A. Total Participants - Enter for each quarter the cumulative number of participants planned for the program year.

Participant is an inidividual who has received at a minimum the core service of being determined eligible for the program, and enrolled in the program.

Line A.1. New Participants - Enter, for each quarter, the cumulative number of new participants projected to be enrolled in this program year.

Line A.2. Participants Carried Over - Enter for each quarter, the number of participants projected to be in the grantee's program on the last day of the previous program year whose participation will continue in the current program year.

Line B. Total Number of Participants Exiting the Program - Enter, for each quarter, the cumulative number of participants expected to exit the program during the program year. Participants exit the program after the 6 month follow-up period or when you have determined they should no longer receive Employment and Training services funded under the NFJP.

Section II. Participant Outcomes.

Line II.A. Entered Unsubsidized Employment - Enter, for each quarter, the cumulative number of participants you expect to place in ubsubsidized employment by the end of the program year.

Line II.B. Completed Training Services - Enter, for each quarter, the cumulative number of participants you expect will complete at least one training service by the end of the program year.

Line C. Total Current Participants (End of Period) - Enter, for each quarter, the projected number of participants you expect to be enrolled in the program as of the end of that quarter.

WIA Budget Information Summary - NFJP
Title I-D, Section 167 - National Farmworker Jobs Program (NFJP)

U.S. Department of Labor
Employment and Training Administration

F

a. Grantee Name and Address	b. Grant Number	OMB Approval No: 1205-0425 Expires: 12/31/04
	c. Period of Grant From: To:	d. Modification Year ____ No. ____

I. Cumulative Quarterly Projections of Expenditures by Cost Categories (Report in Whole Dollars ONLY)

A. Grant Program Function and Activity	B. Cumulative Periods			
	1st	2nd	3rd	4th
1. Program Costs				
a. Related Assistance (Emergency Assistance and Supportive Services)				
b. All Other Program Services				
2. Administration				
3. Total Grant Costs				
II. Available Funds in this Grant Year				
A. Balance in Previous Year Grant (available funds in 5th quarter)				
B. New Obligational Authority				
C. Total Available Funds				

Remarks

Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Respondents obligation to reply to these reporting requirements are required to obtain or retain benefits (20 CFR 667.300). Public reporting burden for this collection of information is estimated to average 15 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of National Programs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N-4641, Washington, D.C. 20210 (Paperwork Reduction Project 1205-0425).

ETA 9093
(July 2001)

Instructions for Completing the NFJP Budget Information Summary (BIS)

General Instructions. The BIS is required for each Section 167 grantee's program and is a required part of the annual grant application. Planned expenditures are arrayed cumulatively by program year quarter.

a. Grantee Name and Address - Enter the name and complete mailing address.

b. Grant Number - Enter the grant number for the reporting year of appropriation.

c. Period of Grant - Enter the month, day, and year of the program year's starting and ending dates.

d. Modification - FOR GRANT OFFICER USE ONLY.

SECTION I - Cumulative Quarterly Projections of Expenditures by Cost Categories - Annual projections of costs by quarter. Planning periods correspond to WIA Program Year quarters; for NFJP, the Program Year is from July 1 through June 30. Please round entries on the BIS to the nearest whole dollar. Entries must be listed for all the items below.

Column (A) Grant Program Function and Activity

Line A.1. Program Costs - Enter, for each quarter, the cumulative projected costs for program activities listed below. The entry for Line A.1. for each period is the sum of the entries for Lines A.1.a. amd A.1.b. Program costs are described in 20 CFR 669, subpart C.

Line A.1.a. Related Assistance - These are projected costs of related assistance services as described in Section 669.430.

Line A.1.b. All Other Program Services - All program costs that are not Related Assistance services costs.

Line 2. Administration - Enter, for the quarterly periods, the projected expenditures for administrative costs as described in the regulations at §667.220.

Line 3. Total Grant Costs - Enter the projected sum of Lines A.1. and A.2.

Section II. AVAILABLE FUNDS

Line II.A. Balance in Previous Year Grant - For incumbent grantee only, enter the amount of projected unexpended WIA Section 167 funds remaining from the preceding program year's allocation. The amount listed in this line item is the uncommitted grant funds available for expenditure in the fifth quarter of the previous grant.

Line II.B. New Obligational Authority - Enter the amount of the grant award for the program year covered by this financial planning document.

Line II.C. Total Available Funds - Enter the projected sum of Line II.A and IIB. This amount must equal Section I Line 3, for the 4th quarter.

[FR Doc. 03–11678 Filed 5–9–03; 8:45 am]
BILLING CODE 4510–30–C

NATIONAL SCIENCE FOUNDATION

Proposal Review; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces its intent to hold proposal review meetings throughout the year. The purpose of these meetings is to provide advice and recommendations concerning proposals

submitted to the NSF for financial support. The agenda for each of these meetings is to review and evaluate proposals as part of the selection process for awards. The majority of these meetings will take place at NSF, 4201 Wilson Blvd., Arlington, Virginia 22230.

All of these meetings will be closed to the public. The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act. NSF will continue to review the agenda and merits of each meeting for overall compliance of the Federal Advisory Committee Act.

These closed proposal review meetings will no longer be announced on an individual basis in the **Federal Register**. NSF intends to publish a notice similar to this on a quarterly basis. For an advance listing of the closed proposal review meetings that include the names of the proposal review panel and the time, date, place, and any information on changes, corrections, or cancellations, please visit the NSF Web site: *http://www.nsf.gov/home/pubinfo/advisory.htm.* This information may also be requested by telephoning (703) 292–8182.

Dated: May 6, 2003.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 03–11679 Filed 5–9–03; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Social, Behavioral and Economic Sciences; Notices of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Social, Behavioral, and Economic Sciences (ACSBE) (#1171).

Date and Time: May 29, 2003, 8:30 a.m.–5 p.m. May 30, 2003, 8:30 a.m.–12:30 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room II–595, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Dr. Sally Kane, Senior Advisor, ACSBE, Directorate for Social, Behavioral, and Economic Sciences, National Science Foundation, 4201 Wilson Boulevard, Room 905, Arlington, VA 22230, (703) 292–8741.

Summary Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To provide advice and recommendations to the National Science Foundation on major goals and policies pertaining to Social, Behavioral, and Economic Sciences Directorate programs and activities.

Agenda: Discussion on issues, role and future direction of the Directorate for Social, Behavioral, and Economic Sciences.

Note: Visitors from outside of NSF should call (703) 292–8741 to arrange for a visitor's badge in order to facilitate getting into the building.

Dated: May 6, 2003.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 03–11680 Filed 5–9–03; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting

AGENCY HOLDING MEETING: National Science Foundation, National Science Board.

DATE AND TIME: May 12, 2003: 1:30 p.m.–2:45 p.m.—Open Session.

PLACE: The National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, *http://www.nsf.gov/nsb.*

FOR FURTHER INFORMATION CONTACT: Cathy Hines, (703) 292–7000.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Monday, May 12, 2003

Open: NSB Subcommittee on S&E Indicators, Teleconference, Room 120.

- Reviewer comments on Chapter 1, K–12 Education

Cathy Hines,

Operations Officer, NSBO.

[FR Doc. 03–11896 Filed 5–8–03; 12:26 pm]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Sunshine Act; Meetings

AGENCY HOLDING MEETING: National Science Foundation, National Science Board.

DATE AND TIME: May 14, 2003: 10:30 a.m.–12 Noon—Open Session

PLACE: The National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, *http://www.nsf.gov/nsb.*

FOR FURTHER INFORMATION CONTACT: Cathy Hines, (703) 292–7000.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Wednesday, May 14, 2003.

Open: NSB Subcommittee on S&E Indicators, Teleconference Room 130

- Reviewer comments on Chapter 8, State S&E Indicators

Cathy Hines,

Operations Officer, NSBO.

[FR Doc. 03–11897 Filed 5–8–03; 12:26 pm]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* 10 CFR Part 50, ''Risk-Informed Categorization and Treatment of Structures, Systems, and Components,'' proposed rule.

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* Information is required to be collected when categorization is performed and when replacement components are designed, procured, installed, and tested by the licensee. Reporting of conditions is required when discovered. A one-time submittal is required for implementation, for those licensees (or applicants) who choose to follow the requirements in section 50.69 in lieu of other requirements.

5. *Who will be required or asked to report:* Power reactor licensees and applicants who voluntarily adopt the provisions of section 50.69.

6. *An estimate of the number of annual responses:* Part 50 would result in 10 responses (6 additional reports and 4 additional records); Part 21 would result in a reduction of 2 responses; and section 50.73 reporting would result in a reduction of 4 responses.

The estimated number of annual respondents: The total number of respondents under part 50 that could potentially be subject to these requirements is 104 reactor licensees and some unknown, but likely small number for applicants. However, the actual number is expected to be considerably smaller. For purposes of this notice, the number assumed is 4 licensees.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 4,126 hours (an increase in 1,630 hours for reporting; and an increase of 2,496 hours for recordkeeping, or 1,032 hours per licensee). This estimate includes an annualized one-time burden of 5,600 hours for implementation of the rule through procedures and training of personnel, NRC approval of implementation, and conducting and documenting categorization reviews. The burden depends upon factors such as current development of the probabilistic risk assessment and categorization procedures, existing plant procedures, and the scope and implementation schedule for revised rule requirements.

9. *An indication of whether section 3507(d), Pub. L. 104–13 applies:* Applicable.

10. *Abstract:* The NRC is revising its requirements to permit power reactor licensees and applicants for licenses to implement an alternative regulatory framework with respect to ''special treatment,'' that is, those requirements that provide increased assurance (beyond normal industrial practices) that SSCs perform their design basis functions. Under this framework, licensees or applicants, using a risk-informed process for categorizing SSCs according to their safety-significance, can remove SSCs of low safety-significance from the scope of certain identified special treatment requirements.

Submit, by June 11, 2003, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. The proposed rule indicated in ''The title of the information collection'' is or has been published in the **Federal Register** within several days of this **Federal Register** Notice. The OMB clearance package and rule are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html* for 60 days after the signature date of this notice and are also available at the rule forum site, *http://ruleforum.llnl.gov.*

Comments and questions should be directed to the OMB reviewer listed below by June 11, 2003:

Bryon Allen, Office of Information and Regulatory Affairs (3150–0011, –0035, and –0104), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 24th day of April, 2003.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 03–11698 Filed 5–9–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 142nd meeting on May 28–30, 2003, 11545 Rockville Pike, Rockville, Maryland. The entire meeting will be open to public attendance. The schedule for this meeting is as follows:

Wednesday, May 28, 2003

1 p.m.–1:10 p.m.: Opening Statement (Open)—The Chairman will open the meeting with brief opening remarks, outline the topics to be discussed, and indicate items of interest.

1:10 p.m.–3 p.m.: Control of Solid Materials (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff on the potential regulation on control of solid materials containing no or very small amounts of radioactivity.

3:15 p.m.–4:45 p.m.: License Termination Rule (LT) (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff on the evaluation of issues related to making the restricted release/alternate criteria provisions of the LTR more available for licensee use.

5 p.m.–6 p.m.: Proposed ACNW Reports (Open)—The Committee will discuss proposed ACNW reports on matters considered during this meeting, as well as proposed ACNW reports on the March 2003 Working Group Meeting on NRC and DOE Performance Assessments. In addition, the Committee will consider proposed reports on presentations made during the April meeting by the State of Nevada on Transportation of Spent Fuel and High Level Waste (HLW) and by representatives of the National Academy on its report ''One Step at a Time: The Staged Development of Geologic Repositories for HLW.''

Thursday, May 29, 2003

8:30 a.m.–8:35 a.m.: Opening Statement (Open)—The Chairman will make opening remarks regarding the conduct of today's sessions.

8:35 a.m.–9:45 a.m.: Yucca Mountain Review Plan (YMRP) Revision 2 (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff on the changes incorporated in Draft Final Yucca Mountain Review Plan, Revision 2.

10 a.m.–11 a.m.: 2003–04 ACNW Research Report (Open)—An outline and potential plan for the next ACNW Research Report will be discussed.

12:30 p.m.–5 p.m.: Proposed ACNW Reports (Open)—The Committee will continue to discuss proposed ACNW reports.

Friday, May 30, 2003

8:30 a.m.–8:35 a.m.: Opening Statement (Open)—The Chairman will make opening remarks regarding the conduct of today's sessions.

8:35 a.m.–11:45 a.m.: Proposed ACNW Reports (Open)—The Committee will continue its discussion on proposed ACNW reports.

11:45 a.m.–12 Noon: 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 ACNW meetings were published in the **Federal Register** on October 11, 2002 (67 FR 63459). In accordance with these procedures, oral or written statements may be presented by members of the public. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Persons

desiring to make oral statements should notify Mr. Howard J. Larson, ACNW (Telephone 301/415–6805), between 7:30 a.m. and 4 p.m. ET, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Howard J. Larson as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting Mr. Howard J. Larson.

ACNW meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *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/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/agendas).

Videoteleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audiovisual Technician (301/415–8066), between 7:30 a.m. and 3:45 p.m. ET, 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: May 6, 2003.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 03–11700 Filed 5–9–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards

Subcommittee Meeting on Safeguards and Security; Notice of Meeting

The ACRS Subcommittee on Safeguards and Security will hold a closed meeting on May 21–23, 2003, Sandia National Laboratories, Albuquerque, New Mexico.

The entire meeting will be closed to public attendance to protect information classified as national security information pursuant to 5 U.S.C. 552b(c)(1).

The agenda for the subject meeting shall be as follows:

Wednesday, Thursday and Friday, May 21–23, 2003—8:30 a.m. until the conclusion of business

The Subcommittee will hear presentations from representatives of the NRC staff, NRC staff consultants and industry on the performance of risk-informed vulnerability assessments. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Further information contact: Mr. Richard K. Major (telephone: (301) 415–7366) or Dr. Richard P. Savio (telephone: (301) 415–7363) between 7:30 a.m. and 4:15 p.m. (ET).

Dated: May 5, 2003.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–11701 Filed 5–9–03; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

[RI 20–63, RI 20–116, RI 20–117]

Proposed Collection; Comment Request for Review of an Information Collection

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 to the Office of Management and Budget (OMB) a request for review of an information collection. RI 20–63, Survivor Annuity Election for a Spouse, is used by annuitants to elect a reduced annuity with a survivor annuity for their spouse. RI 20–116 is a cover letter for RI 20–63 giving information about the cost to elect less than the maximum survivor annuity. This letter may be used to decline to elect. RI 20–117 is a cover letter for RI 20–63 giving information about the cost to elect the maximum survivor annuity. This letter may be used to ask for more information or to decline to elect.

RI 20–117 is accompanied by RI 20–63A, Information on Electing a Survivor Annuity for Your Spouse, or RI 20–63B, Information on Electing a Survivor Annuity for Your Spouse When You Are Providing a Former Spouse Annuity. Both books explain the election. RI 20–63A is for annuitants who do not have a former spouse who is entitled to a survivor annuity benefit; RI 20–63B is for those who do have a former spouse who is entitled to a benefit. These books do not require OMB clearance. They have been included because they provide the annuitant additional information.

Comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, 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.

Approximately 2,200 RI 20–63 forms are returned each year electing survivor annuities and 200 annuitants return the cover letter to ask for information about the cost to elect less than the maximum survivor annuity or to refuse to provide any survivor benefit. It is estimated to take approximately 45 minutes to complete the form with a burden of 1,800 hours and 10 minutes to complete the letter, which gives a burden of 34 hours. The total burden for RI 20–63 is 1,834 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via e-mail to *mbtoomey@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received on or before July 11, 2003.

ADDRESSES: Send or deliver comments to—Ronald W. Melton, Chief, Operations Support Group, Center for Retirement and Insurance Services,

Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415–3540.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services, (202) 606–0623.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 03–11730 Filed 5–9–03; 8:45 am]

BILLING CODE 6325–50–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47796; File No. SR–Amex–2003–34]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC, Relating to Indications, Openings and Re-Openings

May 5, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on April 23, 2003, the American Stock Exchange, LLC (''Amex'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in items I, II and III below, which items have been prepared by Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt rule 119 to codify and revise the Exchange's policies regarding tape indications and re-openings in stocks that are subject to a trading halt (other than ''circuit breaker'' or ''equipment changeover'' halts). Below is the text of the proposed rule change. Although this text is not currently in the Amex rulebook, it was approved by the Commission as Amex policy in 1997.[3] Text that Amex is now proposing to add to the previously approved policy is *italicized.*

* * * * *

INDICATIONS, OPENINGS AND REOPENINGS

Rule 119. Except as provided elsewhere in the Constitution and rules of the Exchange, this rule shall govern indications, openings and (re)openings of securities traded on the Exchange.

(1) Mandatory Indications: When Commencements Is Permitted

A specialist is required to disseminate indications of interest prior to (re)opening trading in a previously halted stock or in the event of a delayed opening as follows:

(a) Regulatory Halts—A specialist may commence disseminating indications of interest in a stock subject to a Regulatory Halt when the Exchange determines that an adequate publication or disclosure of information has occurred so as to permit the termination of the halt and a Floor Official approves the dissemination of indications of interest for the stock. In the case of an inter-day Regulatory Halt (*i.e.*, a halt which remains in effect from the preceding trading day) such approval may include disseminations of interest before the Exchange opens for business.

(b) Non-Regulatory Halts—A specialist may commence disseminating indications of interest in a stock subject to a Non-Regulatory Halt when an Exchange Official or Floor Governor approves such dissemination, in consultation with a Floor Official when appropriate. In the case of an inter-day Non-Regulatory Halt, such approval may include disseminations of interest before the Exchange opens for business.

(c) Delayed Openings—A specialist may commence disseminating indications of interest in a stock subject to delayed opening other than by reason of an inter-day Regulatory Halt, when an Exchange Official or Floor Governor approves.

(d) ''Regulatory Halt'' Defined—For the purposes of this policy, ''Regulatory Halt'' has the meaning that the CTA Plan assigns to it.

(e) ''Circuit Breaker'' Halts—Dissemination of an indication shall be mandatory prior to the reopening of trading following a ''circuit breaker'' halt under rule 117 if such reopening will result in a price change constituting the lesser of 10% or three points from the last sale reported on the AMEX, or five points if the previous reported last sale is $100 or higher. No indications would be required if the price change is less than one point. If, on any day that rule 117 halt is in effect, trading in a security has not reopened by one-half hour after resumption of trading on the Exchange, the matter should be treated as a delayed opening, and would require an indication as well as a Floor Official's supervision.

(2) Optional Indications

(a) Spin-Offs, IPOs, Etc.—Prior to the commencement of trading in a stock for which there has been no prior public market, the specialist in the stock may disseminate indications of interest for the stock if an Exchange Official or Floor Governor approves. In the case of a spin-off, any Floor Official may approve such dissemination which may include dissemination before the Exchange opens for business.

(b) Other Opening Situations—In any opening situation not specified above, the specialist in the affected stock may disseminate indications of interest for the stock before the Exchange opens for business if an Exchange Official or Floor Governor approves, and thereafter if any Floor Official approves.

(3) Waiting Periods Before (Re)Opening

(a) Periods Specified—The specialist may not (re)open a stock that has been the subject of an indication pursuant to paragraphs (1) and (2) above until:

(i) Ten minutes after an indication is displayed, except that the minimum halt period shall be five minutes after an indication is displayed in the case of an equipment change over halt condition, in each case, unless clause ii applies;

(ii) Five minutes after an indication is displayed if one or more indications preceded it. However, regardless of the number of indications disseminated, the minimum waiting period is ten minutes. For example, if only 3 minutes elapsed from the time of the first indication to the second indication, the minimum waiting period after the second indication would be 7 minutes.

(iii) With respect to a post-opening trading halt, a minimum of five minutes must elapse between the first indication and a stock's reopening. However, where more than one indication is disseminated, a stock may re-open three minutes after the last indication, provided that at least five minutes must have elapsed from the dissemination of the first indication.

In the case of inter-day Non-Regulatory Halts, the Exchange Official or Floor Governor involved may dispense with the waiting period if no unusual situation exists prior to the opening of the affected stock. In the case of indications made pursuant to paragraph 2(b), the Exchange Official or Floor Governor involved may alter the applicable waiting periods to take into account the circumstances of the particular opening situation.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* Release No. 34–38549 (April 28, 1997), 62 FR 24519 (1997).

If during an equipment changeover trading halt in a stock, a significant order imbalance develops or a regulatory condition occurs (*i.e.*, news pending or news dissemination) then the nature of the halt condition shall be changed accordingly, and notice of such change shall be disseminated. The minimum halt period prior to the resumption of trading in this case shall be ten minutes following the first indication after the new halt condition is disseminated.

''Significant Order Imbalance'' Defined—For purposes of this subparagraph, a ''significant order imbalance'' is one which would result in a reopening at a price change constituting two points or more away from the last previous sale in a stock selling at $20 or more, one point or more away from the last previous sale in a stock selling at $10 or more (but less than $20), and one/half point or more away from the last previous sale in a stock selling at less than $10.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 1997, the Commission approved the Exchange's policies regarding indications, openings and re-openings.[4] The Exchange is now proposing to codify these policies as new rule 119 to make them more accessible to members and member organizations. The Exchange also is proposing to update the Exchange's rules on re-openings to conform them to those in effect at the New York Stock Exchange (''NYSE'').

The Exchange's current policy on reopening trading in a stock that has opened and then is halted during a trading day (*i.e.*, a stock that is subject to a ''post-opening'' trading halt) requires a minimum of 10 minutes to elapse between the first price indication and the reopening of the stock, and a minimum of five minutes to elapse after the last indication, provided in all cases that the minimum 10 minutes has elapsed since the first indication. The Exchange is proposing to compress these minimum time periods before reopening a stock that is subject to a post-opening trading halt to five minutes after the first indication, and three minutes after the last indication, provided that a minimum of five minutes has elapsed since the first price indication.

In developing procedures for openings and re-openings over the years, the Exchange has focused on providing a balance between timeliness and achieving a price that reflects market conditions. As the speed of communications has increased, the Exchange believes that it is important to provide the ability to react more quickly if circumstances permit a reopening of trading in a shorter period of time. Management believes that the newly approved NYSE procedures for reopening after a post-opening trading halt strike the appropriate balance between preserving the price discovery process and providing timely opportunities for investors to participate in the market.[5] Thus, at the end of the five-minute period, if equilibrium has been established, there would be no purpose to extending the halt for a longer period. If, however, at the end of the five minute period, more time is needed to bring supply and demand into balance, then the resumption of trading could be further delayed. Trading halts will continue to be overseen by Floor Officials who will use their judgment to see that the stock reopens at an appropriate time.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act[6] in general and furthers the objectives of section 6(b)(5)[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of Amex. All submissions should refer to File No. SR–Amex–2003–34 and should be submitted by June 2, 2003.

[4] *See* n. 3, *supra.*

[5] *See* Release No. 34–47104 (December 30, 2002), 68 FR 597 (January 6, 2003).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–11728 Filed 5–9–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47801; File No. SR–NASD–2003–76]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Restate the Certificate of Incorporation of The Nasdaq Stock Market, Inc.

May 6, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on April 29, 2003, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I, II, and III below, which items have been prepared by Nasdaq. Nasdaq has designated this proposal as one concerned solely with the administration of the self-regulatory organization under section 19(b)(3)(A)(iii) of the Act [3] and rule 19b–4(f)(3) thereunder,[4] which renders the rule effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq is restating (but not substantively amending) its certificate of incorporation. The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.

Restated Certificate of Incorporation of The Nasdaq Stock Market, Inc.

The undersigned, _____, the _____ of The Nasdaq Stock Market, Inc. (''Nasdaq''), a Delaware corporation, does hereby certify:

First: That the name of the corporation is The Nasdaq Stock Market, Inc. The date of the filing of its original Certificate of Incorporation with the Secretary of State of the State of Delaware was November 13, 1979. The name under which Nasdaq was originally incorporated was ''NASD Market Services, Inc.''

Second: That the *Restated* Certificate of Incorporation of Nasdaq *dated June 27, 2000, as previously amended by the Certificate of Designations, Preferences and Rights of Series A Cumulative Preferred Stock dated March 8, 2002, the Certificate of Designations, Preferences and Rights of Series B Preferred Stock dated March 8, 2002, and the Certificate of Amendment dated August 7, 2002,* is hereby [amended and] restated *and integrated* to read in its entirety as follows:

Article First—Article Third

No change.

Article Fourth

A. No change.

B. The Preferred Stock may be issued from time to time in one or more series. The Board of Directors of Nasdaq (the ''Board'') is hereby authorized to provide for the issuance of shares of Preferred Stock in one or more series and, by filing a certificate pursuant to the applicable law of the State of Delaware (hereinafter referred to as ''Preferred Stock Designation''), to establish from time to time the number of shares to be included in each such series, and to fix the designation, powers, preferences and rights of the shares of each such series and the qualifications, limitations and restrictions thereof. The authority of the Board with respect to each series shall include, but not limited to, determination of the following:

(1) The designation of the series, which may be by distinguishing number, letter or title.

(2) The number of shares of the series, which number the Board may thereafter (except where otherwise provided in the Preferred Stock Designation) increase or decrease (but not below the number of shares thereof then outstanding).

(3) The amounts payable on, and the preferences, if any, of shares of the series in respect of dividends, and whether such dividends, if any, shall be cumulative or noncumulative.

(4) Dates at which dividends, if any, shall be payable.

(5) The redemption rights and price or prices, if any, for shares of the series.

(6) The terms and amount of any sinking fund provided for the purchase or redemption of shares of the series.

(7) The amounts payable on, and the preferences, if any, of shares of the series in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of Nasdaq.

(8) Whether the shares of the series shall be convertible into or exchangeable for shares of any other class or series, or any other security, of Nasdaq or any other corporation, and, if so, the specification of such other class or series or such other security, the conversion or exchange price or prices or rate or rates, any adjustments thereof, the date or dates at which such shares shall be convertible or exchangeable and all other terms and conditions upon which such conversion or exchange may be made.

(9) Restrictions on the issuance of shares of the same series or of any other class or series.

(10) The voting rights, if any, of the holders of shares of the series. *Pursuant to the foregoing authority, the Board has previously authorized the issuance of (i) Series A Cumulative Preferred Stock by filing a Certificate of Designations, Preferences and Rights with the Secretary of State of the State of Delaware on March 8, 2002, and (ii) Series B Preferred Stock by filing a Certificate of Designations, Preferences and Rights with the Secretary of State of the State of Delaware on March 8, 2002. The number of shares included in the Series A Cumulative Preferred Stock, the powers, preferences and rights of the shares of such series, and the qualifications, limitations and restrictions thereof are set forth in Annex A hereto, and the number of shares included in the Series B Preferred Stock, the powers, preferences and rights of the shares of such series, and the qualifications, limitations and restrictions thereof are set forth in Annex B hereto.*

C. No change.

Article Fifth—Article Eleventh

No change.

Third: That such Restated Certificate of Incorporation has been duly adopted by Nasdaq in accordance with the applicable provisions of Section[s 242 and] 245 of the General Corporation Law of the State of Delaware [and in accordance with Section 228 of the General Corporation Law of the State of Delaware (by the written consent of its sole stockholder).]*;*

Fourth: That such Restated Certificate of Incorporation only restates and integrates and does not further amend the provisions of Nasdaq's certificate of incorporation as heretofore amended or supplemented, and that there is no discrepancy between those provisions

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78S(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(3).

and the provisions of such Restated Certificate of Incorporation.

In witness whereof, the undersigned has executed this certificate this ____ day of _____, 2003.

The Nasdaq Stock Market, Inc.

By: _____
(signature)

_____
(printed name)

_____
(title)

[Certificate of Designations, Preferences and Rights of Series a Cumulative Preferred Stock of The Nasdaq Stock Market, Inc.]

[Pursuant to section 151 of the Delaware General Corporation Law]

[The Nasdaq Stock Market, Inc., a Delaware corporation (the ''Corporation''), certifies that pursuant to the authority contained in its Restated Certificate of Incorporation (the ''Certificate of Incorporation'') and in accordance with the provisions of section 151 of the General Corporation Law of the State of Delaware, the Board of Directors of the Corporation (the ''Board of Directors''), acting by unanimous written consent, adopted the following resolution, which resolution remains in full force and effect as of the date hereof:]

[Does hereby certify that:]

[Resolved, that there is hereby established a series of authorized preferred stock consisting of 1,338,402 shares, which series shall have the following powers, designations, preferences and relative, participating, optional or other rights, and the following qualifications, limitations and restrictions (in addition to any powers, designations, preferences and relative, participating, optional or other rights, and any qualifications, limitations and restrictions, set forth in the Certificate of Incorporation):]

Annex A

Section 1—Section 13. No change.

[In witness whereof, the undersigned has caused this Certificate of Designations to be executed this _____ day of _____, 2002.]

[The Nasdaq Stock Market, Inc.]

[By: _____]

[Name:]

[Title:]

Schedule A

No change.

[Certificate of Designations, Preferences and Rights of Series B Preferred Stock of The Nasdaq Stock Market, Inc.]

[Pursuant to Section 151 of the Delaware General Corporation Law]

[The Nasdaq Stock Market, Inc., a Delaware corporation (the ''Corporation''), certifies that pursuant to the authority contained in its Restated Certificate of Incorporation (the ''Certificate of Incorporation'') and in accordance with the provisions of Section 151 of the General Corporation Law of the State of Delaware, the Board of Directors of the Corporation (the ''Board of Directors''), acting by unanimous written consent, adopted the following resolution, which resolution remains in full force and effect as of the date hereof:]

[Does hereby certify that:]

[Resolved, that there is hereby established a series of authorized preferred stock consisting of one share, which series shall have the following powers, designations, preferences and relative, participating, optional or other rights, and the following qualifications, limitations and restrictions (in addition to any powers, designations, preferences and relative, participating, optional or other rights, and any qualifications, limitations and restrictions, set forth in the Certificate of Incorporation):]

ANNEX B

Section 1—Section 13. No change.

[In witness whereof, the undersigned has caused this Certificate of Designations to be executed this___day of ___, 2002.]

[The Nasdaq Stock Market, Inc.]

[By: _____]

[Name:]

[Title:]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is restating its certificate of incorporation as a single document. Nasdaq's certificate of incorporation currently comprises the Restated Certificate of Incorporation dated June 27, 2000,[5] the Certificate of Designations, Preferences and Rights of Series A Cumulative Preferred Stock dated March 8, 2002, and the Certificate of Designations, Preferences and Rights of Series B Preferred Stock dated March 8, 2002,[6] and the Certificate of Amendment dated August 7, 2002.[7] It is necessary to make several non-substantive modifications to the wording of several of these documents, to allow their assembly into a single, internally consistent document with appropriate internal cross-references. Under Delaware corporate law, the integration of a certificate of incorporation into a single restated document, but without substantive amendment, is required to be approved by a corporation's board of directors but not its stockholders.[8] On January 29, 2003, the Nasdaq Board of Directors provided the approval required under Delaware law. Nasdaq will file the restated certificate of incorporation with the Secretary of State of the State of Delaware promptly after the submission of this proposed rule change to the Commission.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[9] in general, and with section 15A(b)(2) of the Act,[10] in particular, in that it is consistent with Nasdaq being so organized and having the capacity to be able to carry out the purposes of the Act and to comply with and enforce compliance with the provisions of the Act.

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[5] *See* Securities Exchange Act Release No. 42983 (June 26, 2000), 65 FR 41116 (July 3, 2000) (SR–NASD–00–27).

[6] *See* Securities Exchange Act Release No. 45638 (March 25, 2002), 67 FR 15268 (March 29, 2002) (SR–NASD–2002–36).

[7] *See* Securities Exchange Act Release No. 45135 (December 5, 2001), 66 FR 64327 (December 12, 2001) (SR–NASD–2001–34); Securities Exchange Act Release No. 46060 (June 11, 2002), 67 FR 41558 (June 18, 2002) (SR–NASD–2002–64).

[8] 8 Del. C. 245.

[9] 15 U.S.C. 78o–3.

[10] 15 U.S.C. 78o–(b)(2).

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(iii) of the Act [11] and subparagraph (f)(3) of rule 19b–4 thereunder,[12] because it is concerned solely with the administration of the self-regulatory organization. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change in consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD–2003–76 and should be submitted by June 2, 2003.

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(3).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–11729 Filed 5–9–03; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

Office of International Energy and Commodities Policy

[Public Notice 4362]

Finding of No Significant Impact and Summary Environmental Assessment: PMI Services North America, Inc. Pipeline in Cameron County, TX

The proposed action is to issue a Presidential Permit to PMI Services North America, Inc. (''PMI'') to construct, connect, operate and maintain a 10⅝-inch outer diameter (''OD'') pipeline to convey refined petroleum products and liquid petroleum gas (''LPG'') across the border between Mexico and Cameron County, Texas. On behalf of PMI, URS Corporation of Austin, Texas, prepared a draft environmental assessment under the guidance and supervision of the Department of State (the ''Department''). The Department placed a notice in the **Federal Register**, 67 FR 65168 (2002), regarding the availability for inspection of PMI's Presidential Permit application and the draft environmental assessment.

Numerous Federal and State agencies independently reviewed the draft environmental assessment. They include: the United States Section of the International Boundary and Water Commission, the Department of Transportation, the Department of the Interior, the U.S. Fish and Wildlife Service, the Environmental Protection Agency, the Federal Emergency Management Administration, the Department of Defense, the Department of Commerce, the Department of Homeland Security, the Council on Environmental Quality, the Texas Railroad Commission, the Texas Historical Commission, the Texas Parks and Wildlife Department, and the Texas Commission on Environmental Quality. Some members of the public also reviewed the draft environmental assessment and submitted comments to the Department.

Comments received from the Federal and State agencies and the public were responded to directly or by incorporation in the analysis contained in the revised draft environmental assessment and/or by developing measures to be undertaken by PMI to prevent or mitigate potentially adverse environmental impacts.

This summary environmental assessment, comments submitted by the Federal and State agencies and the public, responses to those comments, and the final environmental assessment, as amended, together constitute the ''Final Environmental Assessment'' of the proposed action by the Department.

[13] 17 CFR 200.30–3(a)(12).

Summary of the Environmental Assessment

I. The Proposed Project

The Department is charged with the issuance of Presidential Permits for the construction, connection, operation and maintenance of pipelines crossing international boundaries. *See* Executive Order 11423 of August 16, 1968, 33 FR 11741 (1968), as amended by Executive Order 12847 of May 17, 1993, 58 FR 29511 (1993). PMI has applied for a Presidential Permit to construct, connect, operate and maintain a bi-directional 10⅝-inch OD pipeline (''the MB Pipeline'') at the U.S.-Mexico border. The MB Pipeline will connect the Transmontaigne terminal at the Port of Brownsville, Brownsville, Texas, with an existing Petróleos Mexicanos (PEMEX) pipeline in the state of Tamaulipas, Mexico. The U.S. portion of the project consists of approximately 17 miles of new pipeline from the Transmontaigne terminal to a location on the Rio Grande west of the unincorporated town of San Pedro, approximately 9 miles northwest of downtown Brownsville. The Mexican portion consists of approximately 11 miles of new pipeline from the Rio Grande crossing to the PEMEX pipeline at the town of Curva, Texas.

A significant portion of the route of the MB Pipeline will follow the Penn Octane (''POCC'') pipeline right of way, for which the Department issued a finding of no significant impact (''FONSI'') in 1999 (64 FR 42163 (1999)). The MB Pipeline follows the POCC right of way until it reaches the area of the Resaca de la Palma State Park west of Brownsville. Instead of following the POCC pipeline south to the US/Mexico border, the MB Pipeline angles west-southwest to cross the Rio Grande at a point approximately 4 miles upriver of the POCC crossing. The routing for the MB Pipeline has been designed to avoid, to the maximum extent possible, populated areas of Cameron County and sensitive environmental features, including existing State park lands and Federal nature preserve lands.

Initially, the MB Pipeline will transport less than 100,000 barrels of refined product (motor gasoline, diesel fuel or jet fuel) per day. It is designed, however, to transport up to 100,000 barrels of refined product and may later be used to transport LPG between the United States and Mexico.

II. Alternatives Considered

The Department considered several alternatives to the proposed MB Pipeline. These are described in detail in the final environmental assessment and in a summary fashion below:

Alternative 1: The ''no action'' alternative would involve continued transportation of refined products to the Brownsville terminal from Matamoros via tanker trucks. While this alternative would avoid the minor or temporary noise and air quality impacts associated with the construction of the MB Pipeline, truck transport is not the better alternative. Up to 50 tanker trucks of refined product might cross the border on a regular basis, resulting in (i) exhaust emissions of NO_X, CO, SO_2, VOC, and particulate matter that exceed that of pipeline transport; (ii) extra loads on busy highways and road bridges, (iii) transportation-related environmental degradation related to operation of a tanker truck fleet, including fueling and maintenance, and (iv) a continuous safety risk in a heavily urbanized area, including increased exposure to emissions, spills, and accidents during truck loading and unloading operations. If, as expected, the demand for cross-border shipments of product were to increase, the need for additional truck transport would result in greater impacts to the transportation infrastructure, public safety, and air quality. The added travel from existing tanker trucks would substantially increase the regional diesel exhaust burden, resulting in 15 to 37.5 tons per year of nitrogen oxides, and smaller amounts of other pollutants compared to the proposed MB Pipeline.

Alternative 2: A second alternative would involve the use of an existing 8⅝-inch OD POCC pipeline to transport refined products. POCC currently transports LPG through this pipeline, which could, however, be used to transport refined products. There is a second POCC pipeline which has a 6⅝-inch outer diameter and which runs parallel to the 8⅝-inch pipeline; this smaller pipeline is not currently being used. Prior to deciding to proceed with its application for authority to construct its own 10⅝-inch OD pipeline, PMI entered into negotiations with POCC on the use of its 8⅝-inch OD pipelines. The parties, however, were unable to reach agreement on a framework for completing due diligence and negotiating a definitive contract.

In addition, PMI has determined that a 10⅝-inch OD pipeline is consistent with and allows for anticipated growth in demand for pipeline transportation in this system. Overall PMI anticipates a need for increased trans-border commerce, to provide better alternatives to manage Mexican product commercial surpluses and shortfalls. In fact, replacement of truck transport with installation of efficient transportation systems such as the proposed MB Pipeline will likely serve to accelerate the increase in trans-border commerce. Thus, the Department has concluded that utilization of the POCC pipeline is not a viable alternative because (i) the parties were not able to reach agreement on commercial terms on its use, and (ii) it would not fulfill the anticipated long-term needs for a more efficient and effective high-volume transportation system.

Other Alternatives: In 1999, the Department issued a FONSI for the POCC pipeline. In that FONSI, the Department considered three alternate routes for the proposed project: Route A ran to the east of Brownsville and Matamoros; Route B ran though downtown Brownsville directly into Matamoros; and Route C ran through the northern and western suburban portions of Brownsville. Each of these alternatives were set aside. Route A was set aside on environmental grounds; Routes B and C were set aside due to their proximity to residences. For these same reasons, these alternate routes are being set aside for the MB Pipeline.

III. Summary of the Assessment of the Potential Environmental Impacts Resulting From the Proposed Action

A. Impacts of Construction and Normal Operation of the Pipeline

i. Environmental Impacts: The final environmental assessment contains detailed information on the environmental effects of the MB Pipeline and the alternatives outlined above. In particular, the final environmental assessment analyzed the impacts of construction and normal operation of the pipeline on air and sound quality, topography, water resources, soils, mineral resources, biological resources, land use, transportation, socioeconomic resources, and recreation and cultural resources. Based on the detailed environmental assessment and information developed by the Department and other Federal and State agencies in the process of reviewing the draft environmental assessment, the Department concluded that there would be (i) no impact to or on, among others, geology and topography, ground water, the Heritage status of the Rio Grande, wetlands, mineral resources, and recreation resources; (ii) insignificant, minor or temporary impact to or on, among others, noise, surface waters and canals, soils, protected biological resources, transportation, and land use; and (iii) net benefits to air quality through the elimination of exhaust emissions of CO, NO_X, VOCs, and particulate matter that are generated when tankers move fuel across the border. A more detailed analysis of each of these factors and their cumulative effects is provided in the final environmental assessment, as amended, to address issues raised by Federal and State agencies and the public.

ii. Environmental Justice/Socio-Economic Concerns: The environmental justice assessment for this project analyzed the impact of the potential human, health, socioeconomic, and environmental effects of the MB Pipeline on minority and low-income populations. The population of Cameron County is heavily minority, with outlying, less dense population areas of the county having higher percentages of minorities than the closer-in suburban areas to Brownsville. To the extent that minority and low-income populations reside in the vicinity of the MB Pipeline, they risk exposure to the insignificant, temporary and/or minor potential human health and environmental effects that are discussed in detail in the final environmental assessment and summarized above. These include temporary, minor construction related noise and threats to human safety due to fire or accidental product release. These risks, however, must be weighed against the benefits that would result from the removal of tanker trucks as the primary mode of refined product transportation. The removal of tanker trucks from roads, particularly border crossings, will increase safety at these highly sensitive locations and route refined products away from more populous areas of town while in transit. Also, emissions of hazardous air pollutants during loading operations within the Brownsville Matamoros airshed will be reduced. It is also worth noting that due to the overall makeup of the Brownsville metropolitan area, all of the alternatives for consideration, including the no-action alternative of tanker truck transport of gasoline and other refined products, will impact primarily low-income and minority

populations. There is no evidence to suggest that minority or low-income populations will experience disproportionate adverse impacts as a result of the construction and operation of the MB Pipeline. To the contrary, since less than 10% of the MB Pipeline will traverse areas where human health and safety could be adversely affected as compared to 50% in the case of truck transport, the MB Pipeline will result in lower risks to the health and safety of minority and low-income populations.

B. Impacts Due to Corrosion of the Pipeline or Damage From an Outside Agent

i. Impacts on Human Health and Safety: Corrosion of the MB Pipeline or damage to it from an outside agent may result in the release of hazardous liquids. Potential human health and safety impacts that may result from such a release include (i) fire or explosion from LPG or refined products, (ii) short-term exposure to hazardous vapors resulting from a refined product or LPG release, (iii) long-term exposure to hazardous vapors resulting from contaminated soils, ground water, or surface water following a release of refined products, and (iv) exposure to toxic constituents of refined product from ingestion.

The potential risks to human health and safety are most concentrated in areas where the MB Pipeline is close to residences, businesses, or transportation corridors. Only three small portions of the MB Pipeline will be located in areas where a pipeline accident could result in risk to nearby residences and businesses. This represents approximately 1¼ miles, or less than 7% of the total pipeline length. These also are the areas—along FM 1847, U.S. 77/83, and U.S. 281—where the greatest potential impact to health and safety of motorists is present.

Any mode of transporting hazardous liquids shares these potential safety impacts. Since accident rates for pipelines on a product mile basis are lower in magnitude (40 to 300 times) than those of rail or tanker transport, the U.S. Department of Transportation considers pipeline transport to be the safest transportation for refined product. As previously discussed, since the MB Pipeline will traverse less areas where impacts to human health and safety are likely to result from a major accident than the no-action alternative, the MB Pipeline should result in substantially lower risks to human health and safety than the ''no action'' alternative.

Expanding on the comparison of the project with the alternatives: (a) On a product mile transport basis, DOT statistics show that pipeline transport is safer than tanker truck transport by orders of magnitude; (B) less than 10% of the pipeline route will be in areas representing a threat to human health and safety, as indicated by proximity of residences or businesses which may be impacted by an accidental release; however more than 50% of the route used by tanker trucks would be in such areas, because of the natural development patterns along public roadways in urban settings. These two factors combine to make pipeline transport of product much safer than the ''no action'' alternative. Moreover, at the level where there is sufficient data to perform risk-analyses, it does not matter from a human health and safety standpoint whether product is transported in the MB Pipeline or in the POCC pipeline.

The MB Pipeline project has incorporated many safety features to address human health and safety concerns. These include specifications and maintenance practices to reduce the probability of outside force (third-party) damage, corrosion, or poor construction practices resulting in a release of product. Drilling or boring below waterways reduces the probability that a pipeline release could contaminate valuable water resources. In addition, leak detection systems coupled with 4 remotely-operated valves provide a means for the operator to rapidly respond to any accidents by shutting down the pipeline and isolating the leaky section.

ii. Environmental Impacts: The air quality impacts from an accidental product release from the MB Pipeline would be short term and would not constitute a significant impact. Brownsville is not close to non-attainment for any of the National Ambient Air Quality Standards, and while a major release could result in an increase in ozone formation, environmental engineers advise it is not likely that even this condition would cause non-attainment conditions.

Groundwater contamination from an accidental release is more likely to occur due to a slow refined products leak that goes undetected for a substantial portion of time, so that product might transport through the soil downward to the local aquifer system. Proper cleanup of contaminated soil should prevent long-term impacts to groundwater. The transportation of soil downward to the local aquifer system, however, may also result in contamination of soils in the vadose zone, and stress local vegetation, a symptom that would be detected during the regular pipeline patrols. If such problems were observed, investigations could be commenced in the vicinity of the pipeline where the release is occurring, and remediation, including soil cleanup, could once again proceed. Given the slow transmission capability of the soil types surrounding the MB Pipeline, it is unlikely that substantial volumes of refined product would reach the local aquifer prior to detection and remediation.

Looking at the potential impacts to drinking water from an accidental release, the proposed MB Pipeline routing crosses the Rio Grande substantially upriver of the POCC crossing. This would place it further away from the diversion for the Olmito Water Supply, and from the Brownsville Diversion Point. This distance would be critical in an accident scenario because of the additional time it would take for product to travel downstream to those diversion points.

Most of the MB Pipeline right of way traverses areas characterized either by sparse grassy areas or by agricultural cultivation. An accidental release of product in either area would result only in minor impacts to biological resources. Emergency response and soil remediation should ensure no long-term impacts to the local vegetation. No threatened or endangered vegetative species were identified which might be critically impacted from a release.

In conclusion, the Department finds that impacts on the environment from an accidental release would not be significant.

iii. Probable Adverse Environmental Effects Which Cannot Be Avoided Due to Associated Cumulative Effects: The cumulative effects from an accidental release of product are discussed in detail in the final environmental assessment. In short, there are two important factors to take into consideration with respect to cumulative impacts analysis on human health and safety for the MB Pipeline. The first is the cumulative effect of risks to the MB pipeline, and correspondingly to those living or working near to the MB Pipeline, due to potential accidents on other pipelines in the vicinity. This particularly applies to the POCC pipeline, which shares a common right-of-way for approximately two thirds of the MB Pipeline route. The second is the cumulative effect of the increased overall risk to surrounding populations from an industrial accident occurring along the right-of-way that results in the release of hazardous liquids from the MB Pipeline, industrial sources or both.

A study of U.S. DOT databases has not revealed any cases where a belowground pipeline has had an

accidental release due to the effects of an accidental release, fire, or explosion of a nearby buried pipeline. There is at least one known event of an accidental fire on a pipeline causing rupture of a fixture (valve rack) on an adjacent pipeline. This distinction is important, because except for the metering station there are only two aboveground fixtures (valves) along the MB Pipeline from the Transmontaigne Terminal to the Rio Grande, and the metering station is not positioned near to the existing POCC pipeline. Therefore, only a very small portion of the proposed MB Pipeline is susceptible to damage from an accident on the POCC line.

There is insufficient incident data on pipelines in the United States to numerically analyze the cumulative risk of two pipelines occupying the same corridor. However, there remains the presumption that it is possible for a catastrophic event on one pipeline to cause damage to a nearby pipeline. If the MB Pipeline route is utilized, it would result in two pipelines running parallel for approximately 60–70% of the length of the MB Pipeline; alternatively, if the 8⅝ inch OD POCC pipeline alternative is utilized, it would result in two pipelines (the 8⅝ and the 6⅝ POCC lines) running parallel for nearly the entire length of the POCC pipelines. Therefore, there is an unquantifiable (and from an engineering perspective, insignificant) reduction in the risk of ''cumulative impacts'' from reducing the amount of ROW that PMI product transport will share with POCC LPG transport if the MB Pipeline is used.

Finally, these potential cumulative risks are smaller in magnitude than the overall reduction in risk that would accrue from transporting the same volume of hazardous liquids in pipelines rather than in tanker trucks.

iv. Possible Conflicts Between the MB Pipeline and the Objectives of Federal, Regional, State and Local Use Plans, Policies and Controls for the Area Concerned: The MB Pipeline supports Brownsville's continued development of the Port of Brownsville for industrial uses, and removes hazardous liquids transport from international bridges and populated areas. PMI will be responsible for ensuring that all applicable environmental and construction permits are obtained prior to the implementation of any portion of this project.

IV. Prevention and Mitigation Measures

In order to control risks associated with outside force damage, corrosion and leaks, PMI has undertaken or will undertake the prevention and mitigation measures listed below. PMI has or will:

- Bury the pipeline a minimum of 3 feet below grade;
- Place and maintain prominent warning markers at all crossings and so that two are always in line-of-sight along the pipeline ROW;
- Require the pipeline operator to participate in all applicable one-call notification systems;
- Conduct regular ROW drive-overs or over flights in order to identify potential pipeline encroachments and unauthorized activities;
- Ensure that a PMI representative is physically present anytime there is construction activity within the pipeline ROW;
- Assign, on a permanent basis, a pipeline operator employee to headquarter in the area;
- Require the pipeline operator to participate in on-going public education initiatives stressing pipeline safety and damage prevention;
- Use factory-applied fusion-bonded epoxy coating on all pipes;
- Use field-applied coating on all welded joints;
- Conduct biennial surveys to determine effectiveness of corrosion control;
- Use a certified impressed current cathodic protection system;
- Use a heavy wall pipe in lieu of cased crossings;
- Use high-resolution internal inspection tools (*i.e.*, pigs) at least as frequently as required by 49 CFR 195;
- X-ray all girth welds completely;
- Use pipe manufactured at an ISO 9000-certified mill;
- Hydro test pipe in place to 125% of its maximum allowable operating pressure for 8 hours;
- Require that material specification, design, and construction meet or exceed all applicable standards and codes established by API, ASME, DOT/OPS, and TRC;
- Perform comprehensive construction and installation inspection;
- Provide continuous 24-hour monitoring of the MB Pipeline from a dispatch and control center;
- Use computers to identify significant operational deviations, and to set off appropriate alarms;
- Remotely monitor pressure at the Rio Grande River and always be capable of remotely blocking valve sites along the MB Pipeline;
- Provide on-going training and performance certification of employees responsible for pipeline operations and maintenance, as required by the Operator Qualification regulation of DOT;
- Install a fiber optic communications cable in the ditch to provide rapid and reliable transmission of signals between the pipeline equipment and the control room;
- Establish block valve spacing of less than 7.5 miles through industrial, commercial, or residential areas, as recommended under ASME/ANSI B31.4 standards for transport of LPG; and
- Install check valves with each block valve set to provide auto blockage of reverse flow prior to LPG transport.

V. Conclusion: Analysis of the Environmental Assessment Submitted by the Sponsor

On the basis of the final environmental assessment, the Department's independent review of that assessment, information developed during the review of the application and draft environmental assessment, comments received by the Department from Federal and State agencies and the public, and measures that PMI has or is prepared to undertake to mitigate or prevent potentially adverse environmental impacts, the Department has concluded that issuance of a Presidential Permit authorizing construction of the proposed MB Pipeline would not have a significant impact on the quality of the human environment within the United States. Accordingly, a Finding of No Significant Impact is adopted and an environmental impact statement will not be prepared.

The Final Environmental Assessment addressing this action is on file and may be reviewed by interested parties at the Department of State, 2200 C Street, NW., Room 3535, Washington, DC 20520 (Attn: Mr. Pedro Erviti, Tel. 202–647–1291).

Dated: May 6, 2003.

Stephen J. Gallogly,

Director, Office of Energy and Commodity Policy, Bureau of Economic and Business Affairs, Department of State.

[FR Doc. 03–11732 Filed 5–9–03; 8:45 am]

BILLING CODE 4710–07–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice With Respect to List of Countries Denying Fair Market Opportunities for Government-Funded Airport Construction Projects

AGENCY: Office of the United States Trade Representative.

ACTION: Notice with respect to a list of countries denying fair market opportunities for products and suppliers

of the United States in airport construction procurements.

SUMMARY: Pursuant to section 533 of the Airport and Airway Improvement Act of 1982, as amended (49 U.S.C. 50104), the United States Trade Representative (''USTR'') has determined not to include any countries on the list of countries that deny fair market opportunities for U.S. products, suppliers, or bidders in foreign government-funded airport construction projects.

DATES: Effective May 1, 2003.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Mélida Hodgson, Associate General Counsel, (202) 395–3582 or Jean Heilman Grier, Senior Procurement Negotiator, (202) 395–5097.

SUPPLEMENTARY INFORMATION: Section 533 of the Airport and Airway Improvement Act of 1982, as amended by section 115 of the Airport and Airway Safety and Capacity Expansion Act of 1987, Pub. L. 100–223, (codified at 49 U.S.C. 50104) (''the Act''), requires USTR to decide by May 1, 2003, whether any foreign countries have denied fair market opportunities to U.S. products, suppliers, or bidders in connection with airport construction projects of $500,000 or more that are funded in whole or in part by the governments of such countries. The list of such countries must be published in the **Federal Register.** For the purposes of the Act, USTR has decided not to include any countries on the list of countries that deny fair market opportunities for U.S. products, suppliers, or bidders in foreign government-funded airport construction projects.

Robert B. Zoellick,

United States Trade Representative.

[FR Doc. 03–11733 Filed 5–9–03; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 5, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 11, 2003 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0195.

Form Number: IRS Form 5213.

Type of Review: Revision.

Title: Election to Postpone Determination as to Whether the Presumption Applies That an Activity is Engaged in for Profit.

Description: This form is used by individuals, partnerships, estates, trusts, and S corporations to make an election to postpone an IRS determination as to whether an activity is engaged in for profit for 5 years (7 years for breeding, training, showing, or racing horses). The data is used to verify eligibility to make the election.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents/Recordkeepers: 10,730.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—6 min.
Learning about the law or the form—10 min.
Preparing the form—9 min.
Copying, assembling, and sending the form to the IRS—20 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 8,370 hours.

OMB Number: 1545–0865.

Form Number: IRS Form 8264.

Type of Review: Revision.

Title: Application for Registration of a Tax Shelter.

Description: Organizers of certain tax shelters are required to register them with the IRS using Form 8264. Other persons may have to register the tax shelter if the organizer doesn't. We use the information to give the tax shelter a registration number. Sellers of interests in the tax shelter furnish the number to investors who report the number on their tax returns.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents/Recordkeepers: 350.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—33 hr., 14 min.
Learning about the law or the form—3 hr., 34 min.
Preparing, copying, assembling, and sending the form to the IRS—4 hr., 16 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 14,382 hours.

Clearance Officer: Glenn Kirkland (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 03–11690 Filed 5–9–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to 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)). Currently, the Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, is soliciting comments concerning the Notices Relating to Payment of Firearms and Ammunition Excise Tax.

DATES: Written comments should be received on or before July 11, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Kristy Colon, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Procedures Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Notices Relating to Payment of Firearms and Ammunition Excise Tax.

OMB Number: 1513–0097.

Abstract: Excise taxes are collected on the sale or use of firearms and

ammunition by firearms or ammunition manufacturers, importers or producers. Taxpayers who elect to pay excise taxes by electronic fund transfer must furnish a written notice upon election and discontinuance. The tax revenue will be protected. The record retention requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 10.

Estimated Total Annual Burden Hours: 1 hour.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 6, 2003.

Theresa McCarthy,

Deputy Chief, Regulations and Procedures Division.

[FR Doc. 03–11709 Filed 5–9–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to 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)). Currently, the Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, is soliciting comments concerning the Applications, Notices, and Permits Relative to Importation and Exportation of Distilled Spirits, Wine and Beer, Including Puerto Rico and Virgin Islands.

DATES: Written comments should be received on or before July 11, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Kristy Colon, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Procedures Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Applications, Notices and Permits Relative to Importation and Exportation of Distilled Spirits, Wine and Beer, Including Puerto Rico and Virgin Islands.

OMB Number: 1513–0100.

Abstract: Beverage alcohol, industrial alcohol, beer and wine are taxed when imported. The taxes on these commodities coming from the Virgin Islands and Puerto Rico are largely returned to these insular possessions. Exports are mainly tax free. These sections ensure that proper taxes are collected and returned according to the law. The record retention requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 20.

Estimated Total Annual Burden Hours: 180.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 6, 2003.

Theresa McCarthy,

Deputy Chief, Regulations and Procedures Division.

[FR Doc. 03–11710 Filed 5–9–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to 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)). Currently, the Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, is soliciting comments concerning the Information Collected in Support of Small Producer's Wine Tax Credit.

DATES: Written comments should be received on or before July 11, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Kristy Colon, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Procedures Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Information Collected in Support of Small Producer's Wine tax Credit.

OMB Number: 1513–0104.

Recordkeeping Requirement ID Number: TTB REC 5120/11.

Abstract: TTB is responsible for the collection of the excise tax on wine. Certain small wine producers are eligible for a credit which may be taken to reduce the tax they pay on wines that they remove from their own premises. The record retention period for all wine premises records is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 280.

Estimated Total Annual Burden Hours: 1.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 6, 2003.

Theresa McCarthy,

Deputy Chief, Regulations and Procedures Division.

[FR Doc. 03–11711 Filed 5–9–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to 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)). Currently, the Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, is soliciting comments concerning the 2000 Floor Stocks Tax Return (Cigarettes) and Recordkeeping Requirements.

DATES: Written comments should be received on or before July 11, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Kristy Colon, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: 2000 Floor Stocks Tax Return (Cigarettes) and Recordkeeping Requirements.

OMB Number: 1513–0105.

Form Number: TTB F 5000.28T.

Abstract: A floor stocks tax has been imposed on cigarettes. Liability for the floor stocks tax is determined on the basis of an inventory of cigarettes held for sale. All persons who hold for sale any cigarettes on January 1, 2000 must take an inventory. Each person will be required to make either a record of the physical inventory or a book or record inventory supported by the appropriate source records.

Current Actions: This information collection is being submitted for an extension. The only change is a reduction in the number of respondents.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 100.

Estimated Total Annual Burden Hours: 1 hour.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 6, 2003.

Theresa McCarthy,

Deputy Chief, Regulations and Procedures Division.

[FR Doc. 03–11712 Filed 5–9–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Electronic Tax Administration Advisory Committee (ETAAC)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of open meeting.

SUMMARY: In 1998 the Internal Revenue Service (IRS) established the Electronic Tax Administration Advisory Committee (ETAAC). The primary purpose of ETAAC is to provide an organized public forum for discussion of electronic tax administration issues in support of the overriding goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. ETAAC offers constructive observations about current or proposed policies, programs, and procedures, and suggests improvements. Listed is a summary of the agenda along with the planned discussion topics.

Summarized Agenda

9 a.m. Meeting Opens
12:30 p.m. Meeting Adjourns

The planned discussion topics are:

(1) Free File Update
(2) Filing Season Update
(3) Tax Exempt and Government Entities Operating Division Update
(4) Preview of Report to Congress

Note: Last-minute changes to these topics are possible and could prevent advance notice.

DATES: There will be a meeting of ETAAC on Tuesday, May 20, 2003. This meeting will be open to the public, and will be in a room that accommodates

approximately 40 people, including members of ETAAC and IRS officials. Seats are available to members of the public on a first-come, first-served basis.

ADDRESSES: The meeting will be held in the One Washington Circle Hotel, Crescent Conference Room, One Washington Circle, NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: To get on the access list to attend this meeting, to have a copy of the agenda faxed to you or to receive general information about ETAAC, contact Kim Logan at (202) 283–1947 by May 15, 2003. Notification of intent should include your name, organization and telephone number. If you leave this information for Ms. Logan in a voice-mail message, please spell out all names. A draft of the agenda will be available via facsimile transmission the week prior to the meeting. Please call Ms. Logan on or after May 13, 2003 to have a copy of the agenda faxed to you. Please note that a draft agenda will not be available until that date.

SUPPLEMENTARY INFORMATION: ETAAC reports to the Director, Electronic Tax Administration, who is the executive responsible for the electronic tax administration program. Increasing participation by external stakeholders in the development and implementation of the Internal Revenue Service's (IRS's) strategy for electronic tax administration will help achieve the goal that paperless filing should be the preferred and most convenient method of filing tax and information returns.

ETAAC members are not paid for their time or services, but consistent with Federal regulations, they are reimbursed for their travel and lodging expenses to attend the public meetings, working sessions, and an orientation each year.

Dated: May 6, 2003.

Susan L. Smoter,

Acting Director, Electronic Tax Administration.

[FR Doc. 03–11766 Filed 5–9–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Ad Hoc Issue Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Ad Hoc Issue Committee of the Taxpayer Advocacy Panel will be conducted in Edwardsville, Illinois.

DATES: The meeting will be held Friday, June 6, 2003 and Saturday, June 7, 2003.

FOR FURTHER INFORMATION CONTACT: Anne Gruber at 1–888–912–1227, or 206–220–6095.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Ad Hoc Issue Committee of the Taxpayer Advocacy Panel will be held Friday, June 6, 2003 from 8:30 a.m. c.d.t. to 4:30 p.m. c.d.t. and Saturday, June 7, 2003 from 8:30 a.m. c.d.t. to 12:30 p.m. c.d.t. Both meetings will be held at B. Barnard Birger Hall on the campus of Southern Illinois University Edwardsville. The public is invited to make oral comments on Friday, June 6 from 1 p.m. c.d.t. to 1:30 p.m. c.d.t. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6095, or write Anne Gruber, TAP Office, 915 2nd Ave, Seattle, WA 98174. Due to limited time and space, notification of intent to participate in the meeting must be made in advance with Anne Gruber. Ms. Gruber can be reached at 1–888–912–1227 or 206–220–6095.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: May 6, 2003.

Tersheia D. Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03–11767 Filed 5–9–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 5 Taxpayer Advocacy Panel (Including the States of Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, and Texas)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Monday, June 9, 2003, at 3 p.m., Central Standard Time.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 5 Taxpayer Advocacy Panel will be held Monday, June 9, 2003, from 3 to 4 p.m. Central standard time via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Stop1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221. Public comments will also be welcome during the meeting. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 297–1604 for more information.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: May 6, 2003.

Tersheia D. Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03–11768 Filed 5–9–03; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Ad Hoc Issue Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Ad Hoc Issue Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Monday, June 2, 2003.

FOR FURTHER INFORMATION CONTACT: Anne Gruber at 1–888–912–1227, or 206–220–6095.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Ad Hoc Issue Committee of the Taxpayer Advocacy Panel will be held Monday, June 2, 2003 from 1 p.m. p.s.t. to 3 p.m. p.s.t. via a telephone conference call. The public is invited to make oral

comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6095, or write Anne Gruber, TAP Office, 915 2nd Ave., Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made in advance with Anne Gruber. Ms. Gruber can be reached at 1–888–912–1227 or 206–220–6095.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: May 6, 2003.

Tersheia D. Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03–11769 Filed 5–9–03; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 4 Taxpayer Advocacy Panel (including the States of Illinois, Indiana, Kentucky, Michigan, Ohio, West Virginia, and Wisconsin)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 4 Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Wednesday, June 4, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 4 Taxpayer Advocacy Panel will be held Wednesday, June 4, 2003, from 11 a.m. central time to Noon Central daylight time via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Stop 1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221. Public comments will also be welcome during the meeting. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 297–1604 for dial-in information.

The agenda will include the following: Various IRS issues

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: May 6, 2003.

Tersheia D. Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03–11770 Filed 5–9–03; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

United States Mint

Deadline Extension for CCAC Membership Applications

AGENCY: United States Mint, Treasury.

ACTION: Deadline extension for CCAC membership applications.

SUMMARY: The United States Mint is accepting applications for appointment to the Citizens Coinage Advisory Committee (CCAC) for two positions—an individual who can represent the interests of the general public and an individual specially qualified to serve on the Committee by virtue of his or her education, training, or experience in American history.

The deadline for submitting applications for appointment to the CCAC has been extended from May 9, 2003, to May 23, 2003.

Application Deadline: May 23, 2003.

Receipt of Applications: Any member of the public wishing to be considered for appointment to the Committee should submit a resume or letter describing his or her qualifications for membership by fax to 202–756–6539, or by mail to the United States Mint, 801 9th Street, NW., Washington, DC 20001, Attn: CCAC Membership. Submissions must be postmarked no later than May 23, 2003.

Dated: May 6, 2003.

Henrietta Holsman Fore,

Director, United States Mint.

[FR Doc. 03–11693 Filed 5–9–03; 8:45 am]

BILLING CODE 4810–37–U

Federal Register

Monday,
May 12, 2003

Part II

Environmental Protection Agency

40 CFR Parts 52 and 81

Air Quality Implementation Plans—State of Missouri, St. Louis Area, and State of Illinois; Final Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 181–1181; FRL–7494–6]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is announcing approval of a revision to the state implementation plan (SIP) for the vehicle inspection and maintenance (I/M) program operating in the Missouri portion of the St. Louis, Missouri, ozone nonattainment area. Missouri made several amendments to the state-adopted I/M rule to improve performance of the program and requested that the SIP be revised. The effect of this action ensures Federal enforceability of the state air program rules and maintains consistency between the state-adopted rules and the approved SIP. EPA proposed approval of this rule in the **Federal Register** on January 30, 2003 (68 FR 4842). This final action is being published to meet our statutory obligation under the Clean Air Act (CAA or the Act).

DATES: This final rule is effective May 12, 2003.

ADDRESSES: A copy of the state submittal is available at the following address for inspection during normal business hours: EPA, Region 7, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Leland Daniels at (913) 551–7651.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a SIP?
What is the Federal approval process for a SIP?
What does Federal approval of a state regulation mean to me?
What is being addressed in this document?
What comments were received on the proposed approval of the I/M SIP revision and what is our response?
What action is EPA taking?
What is the effective date for this rulemaking?

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 national ambient air quality standards that we established. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. 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, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding our proposed action on the state submission. If adverse comments are received, we must address them prior to taking any final action.

All state regulations and supporting information that we approve under section 110 of the CAA are incorporated into the Federally-approved SIP. The record of each SIP approval is maintained in the Code of Federal Regulations (CFR) at Title 40, Part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The actual state regulations which are approved are not reproduced in their entirety in the CFR but are ''incorporated by reference,'' which means that EPA has approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take an enforcement action to return a violator to compliance. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is Being Addressed in This Document?

This rulemaking addresses a number of submissions from Missouri Department of Natural Resources (MDNR) concerning revisions to the I/M SIP for St. Louis. The content of those submissions is described below.

State statutory amendments in 1999 required an interagency agreement between MDNR and the Missouri Highway Patrol for the administration and enforcement of section 307.366, Missouri Revised Statutes (RSMo); established criteria and procedures for the I/M contract; and provided the residents of Franklin County the option of biennial motor vehicle registration. For vehicles sold by a licensed motor vehicle dealer, any inspection and approval within 120 days preceding the date of the sale is considered timely for the purpose of vehicle registration. Costs for repair work performed by a recognized repair technician only may be included toward reaching the waiver amount. The $5.00 fee reduction for any person required to wait for up to 15 minutes before the inspection begins was deleted. Penalties for longer wait times were retained. The I/M amendments contained in the October 25, 2000, submittal reflected these statutory changes.

The October 25, 2000, submission included revisions made to the I/M rule (10 CSR 10–5.380). These changes removed a fee reduction (otherwise known as a wait time penalty) of $5.00 whenever someone had to wait up to 15 minutes for a test; incorporated a transition program from January 1 through April 4, 2000; and provided another test option for residents of Franklin County.

The June 19, 2002, submittal contained a plan for incorporating the On-Board Diagnostic (OBD) test into the I/M program and a commitment to do so. This was in response to our amendment of the Federal I/M rule that changed the implementation date for use of the OBD test from January 1, 2001, to January 1, 2002, and provided options for other implementation dates. We took no action on this plan as Missouri was involved in amending the I/M rule to incorporate the provisions of the plan. This revision is described below.

The December 13, 2002, submittal contained additional amendments made to the I/M rule. In addition to restructuring the rule, a number of amendments were made to: clarify the meaning of vehicles primarily operated

in the area (section 1); clarify existing definitions and include new definitions (section 2); clarify fleet vehicle testing requirements and requirements for Federal facilities, set fee payment methods, station and clean screening testing procedures, emission test standards and waiver requirements (section 3); clarify the vehicle test report requirement for vehicles that fail the OBD test, the clean screening test report requirements and the fleet vehicle reporting requirements (section 4); clarify the test methods for the OBD and the visual test methods; exempt hybrid electric vehicles from tailpipe test methods; include clean screening test methods as valid test methods (section 5), and delete the transition period.

As discussed in the proposed rulemaking (68 FR 4842; January 30, 2003), the state's requirement that the I/M240 test be the deciding test for the retest during the phase-in period for the OBD test is inconsistent with our April 5, 2001, rule which requires only the OBD test be used for the retest. Although the Missouri regulation is not consistent with our requirements for the OBD test during the 2003–2004 phase-in period, the Federal I/M rule (*see* 40 CFR 51.372) provides additional flexibility with regard to as-of-yet unimplemented I/M program elements for basic I/M areas that qualify for redesignation to attainment. Under this additional flexibility, an as-of-yet unimplemented I/M program element may be converted into a contingency measure as part of the area's approved maintenance plan (which, in turn, forms a part of the area's approved redesignation request). We believe that the St. Louis ozone nonattainment area is eligible for redesignation and, in a separate rulemaking today, we are taking final action to find that the area has attained the 1-hour ozone standard and to redesignate the area from nonattainment to attainment for that standard. Thus, the Missouri I/M regulation meets the requirements of 40 CFR 51.372, and we are taking final action to approve the program pursuant to that section.

MDNR's letter of January 17, 2003, informed us that a printing error occurred when the revised rule was first published on November 30, 2002, in the state's official administrative rules publication, the Missouri Code of State Regulations (CSR). Inadvertently, the table containing the final transient emission test standards for Light Duty Vehicles was omitted in subparagraph (3)(G)4.A of the Missouri rule. The table was part of the rule revision which had been adopted by the Missouri Air Conservation Commission (MACC) after notice and public comment. The post-adoption publication of the rule omitted the table, and the December 31, 2002, publication of the Missouri CSR corrected the printing error by reinserting the table. The December 31, 2002, publication was an administrative correction only and did not change the rule as adopted by the MACC nor the effective date of the rule.

Even though MDNR's initial submission did contain an error, which was corrected between our signature of the proposed rule and this final action, we view it as inadvertent and nonsubstantive. In addition, the corrected version of the state rule is the version which was available to the public for comment at the state level and has been included in EPA's docket for this rule since the January 30 publication of the proposal. Therefore, we do not believe that any additional public comment on the corrected rule is necessary and, in this **Federal Register** document, we are taking final action to approve the revisions to the I/M SIP as described in the January 30, 2003, proposed rule.

Elsewhere in today's **Federal Register** publication, we are also taking final action to find that the St. Louis area has attained the 1-hour ozone standard, redesignate the area to attainment, and approve the state's plan for maintaining the 1-hour ozone standard. This final rulemaking on this I/M SIP revision is being done in conjunction with the above rulemaking to fulfill the applicable CAA requirements.

What Comments Were Received on the Proposed Approval of the I/M SIP Revision and What Is Our Response?

Comments were submitted by the Great Rivers Environmental Law Center on behalf of the Sierra Club and the Missouri Coalition for the Environment. Its conclusion was that EPA should disapprove the proposed SIP revision. A summary of the comments and our responses to the comments are provided below.

Comment 1: St. Louis is now a ''serious'' ozone nonattainment area and, as a result, its I/M program must meet the requirements of section 182(c)(3). EPA acknowledges that the I/M program does not meet these requirements. It should, accordingly, be disapproved, or at most partially approved.

Response 1: On November 25, 2002, the Seventh Circuit Court of Appeals vacated a June 26, 2001, rule extending the St. Louis area's attainment date, and remanded to EPA for ''entry of a final rule that reclassifies St. Louis as a serious nonattainment area effective immediately * * *'' (*Sierra Club and Missouri Coalition for the Environment* v. *EPA*, 311 F. 3d 853 (7th Cir. 2002)). In response to the Court's order, and in accordance with section 181(b)(2) of the Act, EPA reinstated the nonattainment determination and reclassification contained in the March 19, 2001, rulemaking (66 FR 15585) in the January 30, 2003, final rule at 68 FR 4838. In addition, the January 30, 2003, final rule established a deadline of January 30, 2004, for submission of SIP revisions to meet the serious nonattainment area requirements. The final rule also explained that EPA was concurrently proposing to redesignate the area to attainment, and that such a redesignation, if done prior to the deadline for submission of the serious area requirements, would eliminate the need for Missouri and Illinois to submit SIP revisions to meet the serious area requirements (68 FR 4836). The final rule, including the serious area submittal deadline, was not challenged within the 60-day period provided in section 307(d) of the CAA. This subsequent rulemaking does not reopen the issue of the submittal deadline or the determination that SIP submissions would not be due should the area be redesignated prior to the due date.

Section 110(k)(3) of the CAA requires EPA to approve a plan submission in full if it meets ''all of the applicable requirements'' of the Act. Under that section a partial approval is appropriate where only a portion of the plan submission meets all of the applicable requirements of the Act. The commenter asserts that the I/M revision cannot be fully approved because it does not meet the I/M program requirements for serious areas under section 182(c)(3). However, under our interpretation of the statute, these requirements are not applicable, because they are not yet due. (*See also* the response to comment 2 concerning the due date for the serious area requirements.) In addition, because the area is today being redesignated to attainment, it is no longer obligated to meet the I/M requirements of section 182(c)(3). (*See* the September 4, 1992, memorandum from John Calcagni, ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' p. 4, n. 3.) Therefore, the fact that the submittal does not include all of the requirements for an I/M program for a serious area does not require EPA to disapprove or partially approve it. Since, as discussed elsewhere in this notice, the submittal meets all of the applicable requirements of the Act, EPA is fully approving the revisions to the Missouri I/M program.

Comment 2: EPA suggests that because Missouri's SIP revisions to conform to the serious requirement are not yet due, the applicable criteria for approval are those pertaining to ''moderate'' ozone nonattainment areas. This determination is erroneous because the ''serious'' SIP submissions have, ''as a matter of law'', become due. EPA's later rulemakings withdrawing these rules was vacated by the Seventh Circuit, effectively reinstating the withdrawn rules, including the May 18, 2002, SIP submission deadline. In addition, if EPA ''had obeyed the law'', the revisions would have been due by June 14, 1998.

Response 2: As explained in response to comment 1, on January 30, 2003, EPA reinstated a rule reclassifying the St. Louis area to ''serious'' nonattainment and established a deadline of January 30, 2004, for the state to submit the serious area requirements. The rationale for the deadline is stated in the January 30, 2003, final rule (68 FR 4838). This redesignation rulemaking does not reopen the January 30 rulemaking, and comments on the appropriate deadline for the serious area requirements are thus beyond the scope of this rule.

With respect to the commenter's assertion that the serious area requirements should have been due by June 14, 1998, this is based on an argument made by the commenter in the U.S. District Court and the Court of Appeals for the District of Columbia that the reclassification of the St. Louis area to serious should have been made retroactive to 1997, with the serious area measures due in 1998. This argument pertaining to the timing of reclassification is not only outside the scope of this rulemaking as explained previously, but it was rejected by both Courts (*See, Sierra Club* v. *Whitman*, 285 F.3d 63, 68 (D.C. Cir.2002)). A detailed discussion of the inapplicability of the serious area requirements to the St. Louis area is also included in the response to comments on the final rule determining the area has attained the ozone national ambient air quality standard (NAAQS) and redesignating the area to attainment, published in today's **Federal Register**.

Comment 3: The proposed revisions, as EPA itself concedes, do not even meet the requirement for a basic I/M program that moderate ozone nonattainment areas must promulgate and implement. Nonetheless, EPA says that ''additional flexibility'' may be extended to the state under 40 CFR 51.372. This is an arbitrary conclusion. First, the cited regulation does not provide for approval of I/M programs that do not meet federal requirements; it merely permits states to treat otherwise approval programs as contingency measures in their maintenance plans. Second, the regulation's flexibility is contingent upon the following: ''A contingency commitment that includes an enforceable schedule for adoption and implementation of the (I/M) program, and appropriate milestones. The schedule shall include the date for submission of a SIP meeting all of the requirements of this subpart. Schedule milestones shall be listed in months from the date EPA notifies the state that it is in violation of the ozone or CO standard or any earlier date specified in the state plan. Unless the state, in accordance with the provisions of the maintenance plan, chooses not to implement I/M, it must submit a SIP revision containing an I/M program no more than 18 months after notification by EPA.'' Missouri's maintenance plan does not include a contingency commitment that meets these requirements.

Response 3: The commenter is incorrect in the assertion that 40 CFR 51.372 does not authorize EPA to approve I/M SIPs that do not meet all EPA requirements. Section 51.372(c) states as follows: ''Any nonattainment area that EPA determines would otherwise qualify for redesignation from nonattainment to attainment *shall receive full approval of a SIP submittal* under sections 182(a)(2)(B) or 182(b)(4)'' if the submittal meets the requirements of section 51.372(c)(1) through (4). (Emphasis added.) As explained in detail in the proposal (68 FR 4842, 4844 January 30, 2003), the revision to the I/M program submitted by Missouri meets all of the applicable Federal I/M requirements, with the exception that Missouri does not require the exclusive use of an OBD test for the retest of vehicles which fail the initial OBD emissions test (during the 2003–2004 phase-in of the Missouri OBD rule). (After the 2003–2004 phase-in period, the Missouri rule requires the appropriate OBD test for both the initial test and the retest, which is consistent with EPA's rule.) Because, as explained below, Missouri has included a commitment to consider adoption of the OBD test for the retest as a contingency measure and has met all other requirements of § 51.372(c), that section authorizes EPA to fully approve the Missouri I/M SIP submittal under section 182(b)(4) of the CAA. This conclusion is consistent with the language of the regulation and with the application of the regulation to other I/M program approvals in conjunction with redesignations (*see* 60 FR 12459; March 7, 1995).

The commenter is also incorrect in its assertion that Missouri's submission does not meet the requirements of 40 CFR 51.372(c)(4), which the commenter quotes in its comment. Section 51.372(c)(4) provides that the state must make the following commitments: (1) An enforceable schedule for adoption, submission to EPA, and implementation of the I/M program element; (2) appropriate milestones in months from EPA notification of the violation (or any earlier trigger date provided in the plan); and (3) a commitment to submit the program to EPA within 18 months of the notification of the violation, unless the state elects not to implement the I/M element of its contingency measures. The commenter does not identify any specific elements of this requirement which it believes are not met, but Missouri's maintenance plan contains provisions meeting all of these elements. The plan commits that the state will adhere to the following schedule (pp. 40–43 of the maintenance plan), if the state selects this contingency measure:

1. Three months from notification by EPA of a violation—the state will propose necessary regulatory changes for adoption by the Missouri Air Conservation Commission.
2. Five months from notification—the state will present proposed revisions for public hearing.
3. Six months from notification—the state will request adoption by the Commission.
4. Ten to eighteen months after notification—the state will submit the adopted regulations to EPA as a SIP revision.
5. Eighteen months after notification—the state will implement the contingency measure.

The commenter has not provided any information indicating that these commitments in Missouri's maintenance plan do not meet the requirements of 40 CFR 51.372(c)(4), and EPA finds that the state has met these requirements.

In the January 30, 2003, proposal on the I/M revisions, EPA discussed how Missouri had met the requirements of section 51.372(c)(1)–(3) (68 FR 4842, 4844–4845). EPA did not receive any comments on its proposal with respect to these other requirements. For the reasons stated in the proposal, EPA finds that the requirements of section 51.372(c)(1)–(3) are met.

What Action Is EPA Taking?

EPA's review of the material submitted indicates that the state has

revised the I/M program in accordance with the requirements of the CAA and the Federal rule except for one. The state's requirement that the I/M240 test be the deciding test for the retest during the phase-in period for the OBD test is inconsistent with our April 5, 2001, rule which requires only the OBD test be used for the retest (*see* Test Procedures and Standards in the January 30, 2003, proposed rule, page 4844 for further discussion). However, since the St. Louis area is being redesignated to attainment with the 1-hour ozone standard elsewhere in today's **Federal Register**, and as provided for in the Federal I/M rule at 40 CFR 51.372, we are fully approving the Missouri SIP revision for the St. Louis I/M program pursuant to that section and incorporate by reference the state I/M rule, 10 CSR 10–5.380, which was submitted on December 13, 2002.

As noted in the January 30, 2003, proposal, Missouri has revised its regulations to require Federal facilities operating vehicles in the I/M program area to report certification of compliance to the state. These requirements appear to be different from those for other non-Federal groups of Missouri registered vehicles. However, at this time we are not requiring states to implement 40 CFR 51.356(a)(4) dealing with Federal installations within I/M areas. The Department of Justice has recommended to us that this Federal regulation be revised since it appears to grant states authority to regulate Federal installations in circumstances where the Federal government has not waived sovereign immunity. It would not be appropriate to require compliance with this regulation if it is not authorized. We will be revising this provision in the future and will review state I/M SIPs with respect to this issue when this new rule is final.

Therefore, for these reasons, we are neither proposing approval nor disapproval of the specific requirements which apply to Federal facilities at this time.

What Is the Effective Date For This Rulemaking?

To fulfill the requirements of the CAA, this rulemaking is being done in conjunction with another rulemaking published today which finds that the St. Louis area has attained the 1-hour ozone standard, redesignates the area to attainment, and approves the state's plan for maintaining the 1-hour ozone standard. Because these rulemakings are linked, in that the redesignation cannot be completed until this I/M rulemaking is completed, EPA finds that there is good cause for this final rule to become effective immediately upon publication as the redesignation will also become effective immediately for good cause shown. See also the discussion in the referenced rulemaking for additional information. The immediate effective date is authorized under 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule ''grants or recognizes an exemption or relieves a restriction.'' In the January 30, 2003, final rule (68 FR 4836), we reclassified the St. Louis area to a ''serious'' nonattainment area and established a schedule for submission of SIP revisions fulfilling the requirements for serious ozone nonattainment areas. Upon the effective date of the rule that finds the area has attained, redesignates the area, and approves the maintenance plan (also published today), the state of Missouri will be relieved of the obligation to develop and submit these SIP revisions. Thus, Missouri will not be required to develop a SIP for the implementation of an enhanced I/M program. EPA finds that good cause exists for this final rule being immediately effective since, in conjunction with the redesignation, it relieves the state of Missouri of certain requirements established as a result of the January 30, 2003, reclassification to a serious nonattainment area.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

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

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the 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 rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the United States Senate, the United States 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 11, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 29, 2003.

William W. Rice,

Acting Regional Administrator, Region 7.

■ Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for Part 52 continues to read as follows:

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

Subpart AA—Missouri

■ 2. In § 52.1320 the table in paragraph (c) is amended by revising the entry for 10–5.380, under Chapter 5, to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
* * *	*	*	*	*
Chapter 5—Air Quality Standards and Air Pollution Control Regulations for the St. Louis Metropolitan Area				
* * *	*	*	*	*
10–5.380	Motor vehicle emissions inspection.	12/30/02	5/12/03	
* * *	*	*	*	*

* * * * *

[FR Doc. 03–11186 Filed 5–9–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[MO 182–1182; FRL–7494–5]

Determination of Attainment of Ozone Standard, St. Louis Area; Approval and Promulgation of Implementation Plans, and Redesignation of Areas for Air Quality Planning Purposes, State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is determining that the St. Louis ozone nonattainment area (St. Louis area) has attained the 1-hour ozone National Ambient Air Quality Standard (NAAQS). The St. Louis ozone nonattainment area includes the counties of Franklin, Jefferson, St. Charles, and St. Louis as well as St. Louis City in Missouri and the counties of Madison, Monroe, and St. Clair in Illinois. This determination is based on three years of complete, quality-assured ambient air quality monitoring data for the 2000 through 2002 ozone seasons that demonstrate that the 1-hour ozone NAAQS has been attained in the area. EPA is also determining that certain ozone attainment demonstration requirements, along with certain other related requirements of part D of title I of the Clean Air Act (CAA), are not applicable to the St. Louis area.

EPA is also approving a request from the state of Missouri, submitted on December 6, 2002, to redesignate the St. Louis area to attainment of the 1-hour ozone NAAQS. In approving this request EPA is also approving the state's plan for maintaining the 1-hour ozone NAAQS through 2014, as a revision to the Missouri State Implementation Plan (SIP). EPA is also finding adequate and approving the state's 2014 Motor Vehicle Emission Budgets (MVEBs) for volatile organic compounds (VOCs) and nitrogen oxide compounds (NO_X) in the submitted maintenance plan for transportation conformity purposes. Refer also to a separate rule published today regarding similar approvals for the state of Illinois.

DATES: This rule is effective May 12, 2003.

ADDRESSES: Relevant documents for this rule are available for inspection at the Environmental Protection Agency, Region 7, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Tony Petruska, (913) 551–7637, (*petruska.anthony@epa.gov*).

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

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II. What actions are we taking and when are they effective?
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V. What comments did we receive and what are our responses?
VI. Statutory and Executive Order Reviews.

I. What Is the Background for This Action?

On January 30, 2003, EPA published a final rule and two proposed rules related to the St. Louis ozone nonattainment area (68 FR 4836, 68 FR 4842 and 68 FR 4847). The final rule found at 68 FR 4836 reinstated and made effective a prior EPA finding that the St. Louis ozone nonattainment area did not attain the 1-hour ozone standard by November 15, 1996 (based on 1994–1996 ozone data) and reinstated a reclassification of the area to a serious nonattainment area. In addition, in the January 30, 2003, final rule, EPA established a schedule for submission of state implementation plan revisions and established November 15, 2004, as the date by which the St. Louis area must attain the ozone standard. A correction to this final rule was published on February 13, 2003, which corrected a table entry (68 FR 7410). In the proposed rule found at 68 FR 4847, EPA proposed to determine that the St. Louis ozone nonattainment area has attained the 1-hour ozone standard based on complete, quality-assured monitoring data for 2000 through 2002. In addition, the proposed rule proposed to approve requests from the states of Missouri and Illinois to redesignate the St. Louis area to attainment with the 1-hour ozone NAAQS, proposed to determine that certain requirements of the CAA are not applicable, proposed to approve the states' maintenance plans as revisions to the SIP, and proposed to find adequate and approve the 2014 motor vehicle emission budgets for volatile organic compounds and nitrogen oxide compounds for transportation conformity purposes. In the proposed rule found at 68 FR 4842, EPA proposed to approve a revision to the state implementation plan for the inspection and maintenance (I/M) program operating in the Missouri portion of the St. Louis area.

This rule is EPA's final action finding that the St. Louis ozone nonattainment area has attained the 1-hour ozone standard, as well as EPA's final action on the January 30, 2003, proposal found at 68 FR 4847 as it relates to the Missouri portion of the St. Louis nonattainment area. As noted in the January 30, 2003, proposed rule on page 4848, EPA received separate requests from Missouri and Illinois to redesignate the St. Louis area to attainment. In the January 30, 2003, proposed rule, EPA proposed actions related to both the Missouri and Illinois portions of the nonattainment area. However, EPA stated that it was considering issuance of two separate rules when it took final action on the redesignation requests. We received no comments on this aspect of the proposal. With the exception of the determination of attainment, EPA is taking final action related to the Missouri portion of the nonattainment area and is taking final action on the Illinois portion of the St. Louis nonattainment area in separate rulemaking actions. Section 107(d)(3)(v) provides, as a prerequisite to redesignation, that: ''the State containing such area has met all requirements applicable to the area under section 110 and part D.'' This section plainly shows that Congress meant for EPA to evaluate whether each state requesting redesignation of an area has met the applicable requirements. In addition, each state has authority only to adopt and submit for approval a maintenance plan and a revision of its SIP that are applicable to its territory. Since each state has the authority only to request redesignation for the portion of the area within its boundaries, and EPA evaluated each states' request for redesignation separately, the final rules redesignating each states' portion of the nonattainment area are being published separately. However, EPA has concluded that in determining whether or not a multistate area has attained the standard based upon complete, quality-assured ambient air quality monitoring data, EPA will consider the attainment status of the area as a whole. Therefore, EPA's finding that the area has attained the NAAQS applies to the entire nonattainment area, and we are publishing that finding in this rule. In another rule published today, EPA references this finding and takes separate action on a similar redesignation request and SIP submission by Illinois. *See* 67 FR 49600, July 31, 2002 (Reinstatement of Redesignation of Kentucky Portion of Cincinnati-Hamilton area) for additional discussion of these issues.

The history for this action has been set forth in detail in the proposed rulemaking published January 30, 2003 (68 FR 4847, 4848–4849), and is summarized below.

The Missouri portion of the St. Louis nonattainment area includes Franklin, Jefferson, St. Charles, and St. Louis Counties and St. Louis City. The Illinois portion of the St. Louis nonattainment area includes Madison, Monroe, and St. Clair Counties (collectively referred to as the Metro-East area).

The St. Louis area was designated as an ozone nonattainment area in March 1978 (43 FR 8962). On November 15, 1990, the CAA Amendments of 1990 were enacted. Under section 107(d)(4)(A) of the CAA, on November 6, 1991 (56 FR 56694), the St. Louis area was designated as a moderate ozone nonattainment area as a result of monitored violations of the 1-hour ozone NAAQS during the 1987–1989 period. On January 30, 2003, EPA reclassified the area to a serious nonattainment area, effective January 30, 2003.

The states adopted and implemented emission control programs required under the CAA to reduce emissions of VOC and NO_X. These emission control programs include stationary source reasonably available control technology (RACT), vehicle I/M programs, transportation control measures (TCMs), and other measures (*see* the analysis and discussion of specific emission control measures at 68 FR 4847). As a result of the emission control programs, ozone monitors in the St. Louis area have recorded three years of ozone monitoring data for the 2000–2002 period showing that the area has attained the 1-hour ozone NAAQS.

On December 6, 2002, the Missouri Department of Natural Resources (MDNR) submitted a Redesignation Demonstration and Maintenance Plan for the Missouri Portion of the St. Louis ozone nonattainment area along with a request to redesignate the Missouri portion of the St. Louis nonattainment area to attainment of the 1-hour ozone NAAQS. Included in the Redesignation Demonstration and Maintenance Plan for the Missouri Portion of the St. Louis nonattainment area is a plan to maintain the 1-hour ozone NAAQS for at least the next 10 years, and the 2014 MVEBs for transportation conformity purposes.

II. What Actions Are We Taking and When Are They Effective?

After consideration of the comments received in response to the January 30, 2003, proposal, as described in section V below, we are taking the following actions:

A. Determination of Attainment

EPA is determining that the St. Louis ozone nonattainment area, consisting of both the Missouri and the Illinois portions of the area, has attained the 1-hour ozone standard.

EPA is also determining that certain attainment demonstration requirements (section 172(c)(1) of the CAA), along with certain other related requirements, of part D of title I of the CAA, specifically the section 172(c)(9) contingency measure requirement (measures needed to mitigate a state's

failure to achieve reasonable further progress toward, and attainment of, a NAAQS), the section 182 attainment demonstration and rate of progress (ROP) requirements, and the section 182(j) multi-state attainment demonstration requirement, are not applicable to the St. Louis area.

On January 30, 2003 (68 FR 4847), EPA proposed that the St. Louis area had attained the standard based on 2000–2002 monitoring data. With this finding, EPA also proposed that certain requirements, including an attainment demonstration, were no longer applicable as the area had attained the standard. EPA has explained at length in other actions its rationale for the reasonableness of this interpretation of the CAA and incorporates those explanations by reference. *See* (67 FR 49600) (Cincinnati-Hamilton, Kentucky, July 31, 2002); (66 FR 53095) (Pittsburgh-Beaver Valley, Pennsylvania, October 19, 2001); (65 FR 37879) (Cincinnati-Hamilton, Ohio and Kentucky, June 19, 2000); (61 FR 20458) (Cleveland-Akron-Lorain, Ohio May 7, 1996); (60 FR 36723) (July 18, 1995) Salt Lake and Davis Counties, Utah); (60 FR 37366) (July 20, 1995), (61 FR 31832–31833) (June 21, 1996) (Grand Rapids, MI). The United States Court of Appeals for the Tenth Circuit has upheld EPA's interpretation. *Sierra Club* v. *EPA,* 99 F. 3d 1551 (10th Cir. 1996).

EPA reiterates the position set forth in its prior rulemaking actions and in the January 30, 2003 (68 FR 4847) proposed rulemaking for the St. Louis area. Subpart 2 of part D of title I of the CAA contains various air quality planning and SIP submission requirements for ozone nonattainment areas. EPA believes it is reasonable to interpret the provisions regarding Reasonable Further Progress (RFP) and attainment demonstrations, along with other certain other related provisions, not to require SIP submissions if an ozone nonattainment area subject to those requirements is monitoring attainment of the ozone standard (*i.e.*, attainment of the NAAQS demonstrated with three consecutive years of complete, quality-assured, air quality monitoring data). EPA interprets the general provisions of subpart 1 of part D of title I (sections 171 and 172) not to require the submission of SIP revisions concerning RFP, attainment demonstrations or section 172(c)(9) contingency measures. As explained in a memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, entitled ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Area Meeting the Ozone National Ambient Air Quality Standard,'' dated May 10, 1995, EPA believes it is appropriate to interpret the more specific attainment demonstration and related provisions of subpart 2 in the same manner. *See Sierra Club* v. *EPA,* 99 F. 3d. 1551 (10th Cir. 1996).

The attainment demonstration requirements of section 182(b)(1) require that the plan provide for ''such specific annual reductions in emissions * * * as necessary to attain the national primary ambient air quality standard by the attainment date applicable under the CAA.'' If an area has, in fact, monitored attainment of the relevant NAAQS, EPA believes there is no need for an area to make a further submission containing additional measures to achieve attainment. This is also consistent with the interpretation of certain section 172(c) requirements provided by EPA in the General Preamble to Title I. As EPA stated in the General Preamble, no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since ''attainment will have been reached'' (57 FR 13564). Upon attainment of the NAAQS, the focus of state planning efforts shifts to the maintenance of the NAAQS and the development of a maintenance plan under section 175A.

Similar reasoning applies to other related provisions of subpart 2. The first of these are the contingency measure requirements of section 172(c)(9) of the CAA. EPA has previously interpreted the contingency measure requirements of section 172(c)(9) as no longer being applicable once an area has attained the standard since those ''contingency measures are directed at ensuring RFP and attainment by the applicable date'' (57 FR 13564).

The state must continue to operate an appropriate network, in accordance with 40 CFR part 58, to verify the attainment status of the area. The air quality data relied upon to determine that the area is attaining the ozone standard must be consistent with 40 CFR part 58 requirements and other relevant EPA guidance and recorded in EPA's Aerometric Information Retrieval System (AIRS).

EPA has reviewed the ambient air monitoring data for ozone (consistent with the requirements contained in 40 CFR part 58 and recorded in EPA's AIRS) for the St Louis ozone nonattainment area from the 2000 to 2002 ozone seasons. EPA has also reviewed the preliminary data collected to date for the 2003 ozone season (for St. Louis, the ozone season is April 1 through October 31 of each year). On the basis of this review, EPA has determined that the area has attained the 1-hour ozone standard during the 2000–2002 period and continues to attain the standard, and therefore is not required to submit an attainment demonstration and a section 172(c)(9) contingency measure plan, nor does it need any other measures to attain the 1-hour ozone standard.

B. Redesignation of Missouri Portion of the St. Louis Area to Attainment

Although EPA is determining that the entire St. Louis nonattainment area has attained the 1-hour ozone standard, EPA has determined that it is appropriate to take final action related to Missouri's request to redesignate the Missouri portion of the St. Louis nonattainment area and take final action related to Illinois' request to redesignate the Illinois portion of the St. Louis nonattainment area in separate rulemaking actions being published today. In the January 30, 2003, proposal, EPA stated that it was considering publishing separate rulemakings for Missouri and Illinois (68 FR 4848). We received one comment in support of publishing separate rulemakings and no adverse comments. In this rulemaking, EPA is taking the following actions with respect to the Missouri portion of the St. Louis nonattainment area:

EPA is approving a request from the state of Missouri to redesignate the Missouri portion of the St. Louis nonattainment area to attainment of the 1-hour ozone NAAQS.

In addition, EPA is taking the following actions:

1. Approving Missouri's plan for maintaining the 1-hour ozone NAAQS through 2014, as a revision to the Missouri SIP;

2. Finding adequate and approving the 2014 MVEBs of 47.14 tons per ozone season weekday for VOC and 68.59 tons per ozone season weekday for NO_X in the submitted maintenance plans for transportation conformity purposes; and,

3. Determining that the attainment demonstration (and related contingency measure requirements) and reasonably available control measure (RACM) requirements of the CAA are not applicable.

C. Effective Date of These Actions

EPA finds that there is good cause for this determination of attainment, redesignation to attainment and SIP revision to become effective immediately upon publication because a delayed effective date is unnecessary due to the nature of a redesignation to attainment which relieves the area from certain CAA requirements that would otherwise apply to it. The immediate

effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule ''grants or recognizes an exemption or relieves a restriction'' and section 553(d)(3) which allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.''

In addition, as indicated above, the January 30, 2003, final rule reclassified the St. Louis area to a ''serious'' nonattainment area and established a schedule for submission of SIP revisions fulfilling the requirements for serious ozone nonattainment areas. Upon the effective date of this rule, the state of Missouri will be relieved of the obligation to develop and submit these SIP revisions. In addition, the Missouri rules adopted to meet the requirements of title V of the CAA, provide that in a ''serious'' area, stationary sources with potential emissions of VOCs and NO_X greater than 50 tons per year are major sources. As such, these major sources are subject to the title V permit program and are required to submit title V permit applications within twelve months of January 30, 2003. Upon the effective date of this rule, stationary sources which are newly subject to the title V permitting program as a result of the January 30, 2003, reclassification to a serious nonattainment area will be relieved of the requirement to submit title V permit applications. In a separate rulemaking, EPA is redesignating the Illinois portions of the St. Louis area to attainment. Additional requirements specific to the Illinois portion of the St. Louis area are described in that separate rulemaking and are also being lifted as a result of that portion's redesignation to attainment. EPA finds that good cause exists for this final rule being immediately effective since it relieves the state of Missouri as well as stationary sources of certain restrictions which would otherwise apply.

III. Why Are We Taking These Actions To Redesignate the Area?

EPA has determined that the St. Louis area has attained the 1-hour ozone standard. In addition, EPA has determined that the state of Missouri has demonstrated that the criteria for redesignation of the Missouri portion of the area from nonattainment to attainment have been met.

In the January 30, 2003, proposed rule at 68 FR 4847, EPA described the applicable criteria for redesignation to attainment. Specifically, section 107(d)(3)(E) allows for redesignation providing that: (1) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and, (5) the state containing such area has met all requirements applicable to the area under section 110 and part D.

EPA has determined that the St. Louis area has attained the applicable NAAQS. EPA has fully approved the applicable implementation plan for the Missouri portion of the St. Louis area under section 110(k). EPA has determined that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions. EPA has fully approved a maintenance plan for the Missouri portion of the area as meeting the requirements of section 175A. Missouri has met all requirements applicable to the Missouri portion of the area under section 110 and part D.

By finding that the maintenance plan provides for maintenance of the NAAQS through 2014, EPA is hereby finding adequate and approving the 2014 MVEBs contained within the maintenance plan. The MVEB for NO_X in the Missouri portion of the St. Louis area is 68.59 tons per ozone season weekday. The MVEB for VOCs in the Missouri portion of the St. Louis area is 47.14 tons per ozone season weekday.

The rationale for these findings is as stated in this rulemaking and the January 30, 2003, proposed rule found at 68 FR 4847.

IV. What Are the Effects of Redesignation to Attainment of the 1-Hour NAAQS?

These actions determine that the area attained the 1-hour ozone standard and that certain other related requirements of part D of title I of the CAA, specifically the section 172(c)(9) contingency measure requirement (measures needed to mitigate a state's failure to achieve reasonable further progress toward, and attainment of, a NAAQS), the section 182 attainment demonstration and rate of progress requirements, and the section 182(j) multi-state attainment demonstration requirement are not applicable to the St. Louis area. EPA's determination that the St. Louis area has met the 1-hour ozone standard relieves the states from the obligation to meet certain additional requirements, which apply to areas not attaining that standard.

EPA notes that the area is likely to be designated nonattainment for the 8-hour ozone standard and would be subject to any additional requirements as a result of such designation. EPA also notes that it is not revoking the 1-hour standard for the St. Louis area.

Approval of the Missouri redesignation request changes the official designation for the 1-hour ozone NAAQS found at 40 CFR part 81 for the Missouri portion of the St. Louis area, including the City of St Louis, and the Counties of Franklin, Jefferson, St. Charles, and St. Louis from nonattainment to attainment. It also incorporates into the Missouri SIP a plan for maintaining the 1-hour ozone NAAQS through 2014. The plan includes contingency measures to remedy any future violations of the 1-hour ozone NAAQS, and includes VOC and NO_X MVEBs for 2014 for the Missouri portion of the St. Louis area.

V. What Comments Did We Receive and What Are Our Responses?

We received five letters regarding the January 30, 2003, proposed rule found at 68 FR 4847. Four of the letters generally supported the rulemaking action. Two of the four letters in support of the rulemaking action raised issues to which EPA is responding in this section. One of the five letters contained adverse comments. A summary of the comments and EPA's responses to them are provided below. This discussion addresses comments relating to the St. Louis area as a whole, and comments specifically relating to the Missouri portion of the area. Comments relating specifically to the Illinois portion of the area are addressed in the final rule for Illinois published elsewhere in this **Federal Register**.

A. Comment Related to Meeting the Criteria for Redesignation to Attainment

Comment 1: The St. Louis area has failed to meet any of the five criteria specified in section 107(d)(3)(E) of the CAA for redesignation to attainment.

Response 1: EPA's determination that the St. Louis area has attained the ozone standard is set forth in section II.A above. EPA has further found that the area has met all of the five criteria

specified in section 107(d)(3)(E) of the CAA for redesignation to attainment. Below are specific comments and responses raised by the commenter regarding each criterion.

B. Comments Related to Criterion 1: The Area Must Be Attaining the 1-Hour Ozone NAAQS

Comment 2: Monitoring data are not representative of air quality conditions. Monitoring data collected on Labor Day weekend in 2002 are ''hopelessly contaminated'' due to voluntary emission reductions undertaken by industry and others.

Response 2: Section 107(d)(3)(E)(i) of the CAA states that one criterion for redesignation to attainment is that EPA must determine that the NAAQS has been attained. The regulations at 40 CFR part 58 specify data collection and quality assurance procedures. For ozone, an area is attaining the 1-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.9 and appendix H. The regulation at 40 CFR 50.9 states ''the standard is attained when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 part per million is equal to or less than 1 as determined by appendix H.'' Appendix H states, ''The basic principle in making this determination is relatively straightforward. . . . In its simplest form, the number of exceedances at a monitoring site would be recorded for each calendar year and then averaged over the past 3 calendar years to determine if this average is less than or equal to 1.'' The monitoring data for the St. Louis nonattainment area demonstrate that the estimated number of exceedances per year averaged over three years (2000 through 2002) is 1.0 or less at all monitoring sites in the area. In the case of St. Louis, all of the data collected are reviewed, quality assured and submitted to EPA's Air Quality System (AQS) database. EPA conducts a number of activities to determine that the data meet the data collection and quality assurance procedures of 40 CFR part 58 including the following:

—EPA ensures that the state (and local agencies) is performing quality assurance/quality control (QA/QC) checks properly through systems audits as required per 40 CFR part 58, appendix A. During these systems audits EPA ensures that states are properly calibrating instruments, properly performing precision and span checks on instruments, and properly conducting audits of the instruments as required in 40 CFR part 58, appendix A.

—EPA chooses several hourly ozone values and tracks those data points from their collection at the monitor through their data handling procedures, including QA/QC procedures, to its final destination in the AQS database.

—To ensure quality data, as required by 40 CFR part 58, appendix A, prior to the start of ozone season each year, EPA certifies at least one primary standard ozone photometer for each of the state and local agencies. These primary ozone photometers stay in the state/local laboratories. Transfer standard photometers are verified against the primary photometer and are used to calibrate the ozone analyzers in the field. Thus, all of the data collected is traceable back to EPA's primary photometer.

—EPA, as well as the quality assurance groups of the state and local agencies, conduct audits on the ozone instruments collecting the data. These audits are required to be performed quarterly as per 40 CFR part 58, appendix A. EPA audits each ozone instrument at least once per ozone season. This ensures that the instrument is operating properly and collecting accurate data, and it also acts as a check on the state and local quality assurance groups to make sure that the audits they have conducted are accurate.

—As required by 40 CFR part 58, appendix A, Precision and Span checks are performed every two weeks by the agency operating the instrument.

EPA believes that any voluntary measures which may have been taken by industry and others over a two- or three-day period in this three-year time period do not render the air quality monitoring data unrepresentative of the air quality. The data would only be ''contaminated'' if there had been an error with respect to collection and quality assurance of the data, which there was not. The commenter offers no information indicating data collection was improper. In addition, even if these activities by the community were relevant to whether the area had attained, there is no evidence that emissions were actually reduced to an extent which would have a significant effect on ozone levels. See response to comment 18 below regarding further discussion on the ''voluntary reductions'' during the Labor Day weekend in 2002. In fact, as explained in the January 30, 2003, proposal at 68 FR 4856–4858, and in section V.D. below, the monitored improvements in air quality were due to permanent and enforceable emission reductions. For example, as explained further in response to comment 19, the Missouri centralized motor vehicle inspection and maintenance program began in April 2000, the first year of the 2000–2002 time period. The use of reformulated gasoline began in 1999 and achieved additional reductions during the 2000–2002 time period. The monitoring data accurately reflected actual air quality conditions. See response to comment 19 below regarding EPA's conclusion that improvements in air quality are attributable to permanent and enforceable reductions in ozone precursor emissions.

Comment 3: EPA's proposal ignores the second component discussed in a September 4, 1992, redesignation guidance document from John Calcagni entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment'' (Calcagni memo) to EPA regional offices, that the determination of attainment should rely not only on monitored values, but on supplemental EPA-approved modeling. For St. Louis, monitored data runs directly counter to air quality modeling. The modeling supported the contention that the NAAQS could be attained only in 2004 after all control measures are adopted. Thus, the monitored attainment is a ''fluke'' explainable by factors other than the success of the pollution control measures. In addition, based on the Calcagni memo the commenter believes that supplemental ozone modeling may be necessary to determine the representativeness of the monitored data. Without such supplemental modeling, the commenter asserts that the January 30, 2003, proposed rule's implicit conclusion that the St. Louis area ozone data are ''representative'' is baseless.

Response 3: The commenter cites a policy memorandum entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment'' dated September 4, 1992 (Calcagni memo), which states that there are two components in determining that an area has met the section 107(d)(3)(E)(i) requirement. This policy states the following:

> The state must show that the area is attaining the applicable NAAQS. There are two components involved in making this demonstration which should be considered interdependently. The first component relies upon ambient air quality data. * * * The second component relies upon supplemental EPA-approved air quality modeling. No such supplemental modeling is required for O_3

(ozone) nonattainment areas seeking redesignation * * * (pages 2 and 3).

This document explains that supplemental modeling may be needed, for example, in sulfur dioxide and carbon monoxide areas, where emissions are localized and a small number of monitors may not be representative of air quality (page 3). In contrast, ozone is not a localized pollutant, and the St. Louis area has an extensive monitoring network consisting of nineteen monitors operating each year from 2000 through 2002 as described in EPA's proposal at 68 FR 4850. Therefore, consistent with the language in the policy and the rationale in calling for modeling in some cases for some pollutants and not in other cases, modeling is not required as part of this redesignation. Neither section 107(d)(3)(E) nor the policy referenced by the commenter requires modeling as a prerequisite to redesignation of an ozone nonattainment area. In addition, no modeling was conducted as part of the redesignation requests submitted by Missouri or Illinois. Therefore, EPA does not believe that the monitored data runs counter to air quality modeling. *See Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001), and the redesignations for Pittsburgh (66 FR 53094, October 19, 2001), and Cincinnati (65 FR 37879, June 19, 2000). See response to comments 10, 19, 21, 23, 24, 26, 37 below regarding further discussion of modeling issues.

Commenter's contention that attainment cannot be reached until at least 2004 is addressed below in response to comments 21 and 24.

In addition, the correlation between air quality improvements and permanent and enforceable emission reductions, demonstrating that monitored attainment is not a ''fluke'' is described in detail in the proposal and section V.D below.

The ozone modeling approaches used do not support any direct comparisons between ozone modeling results and monitored ozone concentrations for years other than a monitored and modeled base period. Although statistical comparisons are made between monitored ozone data and modeled base period ozone concentrations to validate ozone modeling results, ozone models are not designed to explicitly model ozone concentrations at specific locations or to exactly predict future ozone concentrations that can be compared to monitored ozone concentrations on a site-by-site basis. Ozone models are designed to primarily predict the relative impacts of emission changes on future peak ozone levels assuming the same meteorological conditions that are modeled for the base period. Such modeling techniques produce results with considerable uncertainty (relative to time- and location-specific monitored ozone concentrations) when one actually compares future modeled results with monitored ozone concentrations for the same years. The commenter errs in trying to force comparisons not supported by the existing science.

What the modeling results do imply is that, as regional NO_X emission controls are implemented through statewide rules in Illinois, Missouri, and other states, peak ozone levels in the St. Louis area are expected to decrease. This increases the likelihood of maintaining the ozone standard in the St. Louis area, thus supporting the approval of the state's ozone redesignation request. Illinois and Missouri are committed to implement statewide NO_X emission controls regardless of the attainment status of the St. Louis area. Both states are currently implementing statewide NO_X control rules.

Comment 4: The monitored data do not support a conclusion of continued attainment since the trend is toward increases in exceedances because the number of exceedances tripled from 2000 to 2001 and more than doubled from 2001 to 2002 showing an upward trend in peak ozone concentrations. The commenter notes that, if the same number of exceedances that occurred in 2002 occur in 2003 or 2004, the area will again violate the one-hour ozone standard.

Response 4: See response to comment 20 below for our detailed response to the comment relating to air quality trends. The determination of attainment, as explained in the January 30, 2003, proposal, in section II.A. above, and in response to comment 2, is based on the requirements of section 107(d)(3)(E)(i) and EPA's regulation which defines attainment of the ozone standard. The regulatory definition is based on design values over a 3-year period, not on year-to-year trends within the three-year period. It would be inconsistent with the regulation to adopt an additional criterion for determining attainment.

It should be noted that a ''worsening'' ozone trend for the St. Louis area can only be discerned for the 2000–2002 period by combining the annual number of exceedances for all monitoring sites in the area (by totaling the number of exceedances for each year for all monitoring sites combined). This approach is technically flawed. The ozone standard is based on assessing the peak ozone data for each monitoring site individually not by cumulating the data for all sites. Review of the yearly exceedance data for each monitoring site, as given in Table 1 in the January 30, 2003, proposed rule (68 FR 4850) and in response to comment 20 below, shows that no consistent ozone exceedance rate trend can be established for the individual monitoring sites for this period. For example, the West Alton site experienced one ozone exceedance per year with no up or down trend. The Wood River monitor in Illinois increased from zero exceedances in 2000 to one exceedance in 2001 and back down to zero exceedances in 2002. Many monitors continued to record zero exceedances throughout the 2000–2002 period as noted above. Some monitors, which recorded zero exceedances in 2000 and 2001, recorded one or two exceedances in 2002, hardly a consistent, robust trend. Contrary to the commenter's assertion, on a monitor-by-monitor basis, which is the basis for assessing compliance with the 1-hour ozone standard, there is no consistent ''worsening'' trend in peak ozone concentrations.

Comment 5: EPA asserts that the data is ''quality assured'' but provided no explanation. EPA must demonstrate that the data is quality assured. EPA must document the adequacy of the states' quality assurance plan. Also, the commenter questions whether the data relied on for the attainment determination was quality-assured since it was entered in AIRS earlier than usual.

Response 5: As indicated in the response to comment 2 above, the regulations at 40 CFR part 58 specify data collection and quality assurance procedures. The Calcagni memo on page 2 specifies that the data should be collected and quality-assured in accordance with 40 CFR part 58 and recorded in AIRS in order for it to be available to the public for review. The monitoring data for the St. Louis area was quality assured and entered into AIRS in accordance with these requirements.

Appendix A to 40 CFR part 58 specifies the quality assurance requirements for state and local air monitoring stations. The regulation at 40 CFR 58.35(c) requires that the monitoring data be entered into AIRS within 90 days after the end of the calendar quarter in which it is collected. Thus, monitoring data collected through September 2002 must be quality assured and entered into AIRS by December 31, 2002. Monitoring data for October 2002 must be quality assured and entered into AIRS by March 31, 2003.

Monitoring data collected in a calendar quarter can be quality assured and entered into AIRS at any time prior to 90 days after the end of that quarter.

The monitoring data is quality assured and entered into AIRS by the state and local agencies in the St. Louis area. The regulation at 40 CFR 58.20 requires states to adopt and submit to EPA revisions to the SIP which provide for meeting the requirements of appendix A. On September 27, 1984 (49 FR 38103), EPA approved Missouri's Air Quality Monitoring Plan. EPA stated in this September 27, 1984, rulemaking that ''the Missouri Air Quality Monitoring Plan satisfies the requirements of 40 CFR 58.20.'' On March 4, 1981 (46 FR 15136), EPA approved Illinois' Air Quality Surveillance Plan. EPA stated in this March 4, 1981, rulemaking that EPA has reviewed the plan and ''it meets the requirements of * * * EPA regulations in 40 CFR part 58.'' As part of the September 27, 1984, and March 4, 1981, rulemakings the public was provided the opportunity to review and comment on Missouri's and Illinois' quality assurance procedures. Pursuant to the Calcagni memo, page 3, and upheld in *Wall* v. *EPA* (265 F.3d. 426, 437), an EPA action on a redesignation request does not mean that earlier issues with regard to the SIP will be reopened. Thus, there is no requirement to present quality assurance procedures in this rulemaking.

In addition to Missouri's Air Quality Monitoring Plan and Illinois' Air Quality Surveillance Plan, EPA reviewed and approved the States' Quality Management Plans (QMP). Under the states' QMP, the state and local agencies conducting the ambient monitoring develop Quality Assurance Project Plans (QAPP). It is through the QMP and QAPP that EPA reviewed and approved the states' and local agencies' quality assurance procedures. In order to verify that the state and local agencies followed these procedures and that the data meets the data collection and quality assurance procedures of 40 CFR part 58, EPA conducted the actions listed in the response to comment 2 above.

C. Comments Related to Criterion 2: The Area Must Have a Fully Approved SIP Under Section 110(k)

Comment 6: The serious area SIP requirements of the CAA are applicable to the St. Louis area. These requirements have not been promulgated by the states and there is no ''claim'' that they could not have been submitted with the redesignation request. Thus, the SIPs are not ''fully approved.'' In addition, the Calcagni memo includes procedures suggested by EPA for reducing the stringency of the control measures to become part of the contingency measure. The states have not done these procedures.

Response 6: The SIP which is required to be ''fully approved'' under criterion 2 is the ''applicable'' implementation plan (section 107(d)(3)(E)(ii)). This section requires that the SIP must be ''fully approved'' under section 110(k) rather than partial, conditional, or limited approval (Calcagni memo, page 3). Section 107(d)(3)(E)(v) requires the SIP to include ''all requirements applicable to the area under Section 110 and Part D.'' This comment relates to the issue of which requirements are ''applicable,'' rather than whether the SIP is fully approved. The commenter asserts, without explanation, that the statute requires EPA to determine that the ''serious'' area requirements are applicable to its consideration of the redesignation request for the area. However, the CAA is not as prescriptive as the commenter assumes. (*See, Wall* v. *EPA,* 265 F.3d 426,438 (6th Cir. 2001) which states: ''The statute, however, does not describe how the EPA is to decide which Part D requirements are ''applicable'' in evaluating a redesignation request.'')

EPA has established a policy to provide guidance in determining how to apply the statutory criterion with respect to which requirements are applicable in reviewing a redesignation request. As stated in the January 30, 2003, proposed rule (page 4851), the September 4, 1992, Calcagni memo (*see* ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of the section 107(d)(3)(E) requirement. Under this interpretation, states requesting redesignation to attainment must meet the relevant CAA requirements that come due prior to the submittal of a complete redesignation request. Areas may be redesignated even though they have not adopted measures that come due after the submission of a complete redesignation request. A detailed discussion of EPA's rationale for this interpretation is contained in the rule redesignating Detroit-Ann Arbor, 60 FR 12459, 12465–12466 (March 7, 1995). Pursuant to the January 30, 2003, final rule reclassifying the St. Louis area to ''serious'' (68 FR 4836), the serious nonattainment area requirements are due on January 30, 2004. The final rule has not been timely challenged under section 307(b)(1) of the CAA. Thus, the serious nonattainment area requirements due date is January 30, 2004. Since the serious area requirements are not yet due, the SIP is not deficient because the serious area requirements have not been included. EPA policy and a reasonable application of sections 107(d)(3)(E)(ii) and (v) allow for an area to be redesignated even though the area has not adopted measures which are not yet due. EPA has consistently applied this policy and interpretation in other redesignations including the Detroit-Ann Arbor redesignation cited above.

In addition, there is no requirement in section 107(d)(3)(E) that states must ''claim'' (or demonstrate) that they could not have submitted the serious area SIP revisions or any additional revisions at the time of the redesignation requests, if those requirements are not applicable to the area when the request is made. EPA's action to reclassify the area to a serious nonattainment area was published in the **Federal Register** after both states had submitted their redesignation requests to attainment, and it established a deadline for submission of the serious area requirements which had not yet passed, and still remains in the future. Thus, Missouri was not required to include in its request a ''claim'' that the state cannot complete the serious area requirements.

Finally, the Calcagni memo discusses the statutory requirement that the state must implement all measures included in the SIP prior to redesignation (pages 12–13). (In response to comment 32, EPA discusses how this requirement has been met.) This requirement does not expand the universe of requirements which are ''applicable'' for purposes of redesignation. Unless the serious area requirements are applicable to an area, and already contained in a SIP prior to redesignation, the discussion in the Calcagni memo does not relate to the issue raised by the commenter.

Because the serious area requirements are not applicable requirements for St. Louis, for the reasons discussed above, and are not included in the SIP for St. Louis, the guidance in the Calcagni memo and in a memorandum entitled ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992'' dated September 17, 1993 (Shapiro memo), relating to mechanisms for converting part D measures into contingency measures is

not relevant for purposes of this redesignation.

Comment 7: The proposed rulemaking suggests that a SIP meeting the serious area requirements need not be fully approved because such a plan is not yet due. The CAA does not make an exception for SIP revisions that have or have not become due. In fact, the serious area requirements have, as a matter of law, become due. The plans were due by June 14, 1998, and no later than May 18, 2002, pursuant to previous EPA and Court actions. The commenter stated that the May 18, 2002, date was set by EPA in a March 19, 2001, rulemaking, and that the effect of a decision by the Court of Appeals for the Seventh Circuit was to reinstate this submission date.

Response 7: Section 107(d)(3)(E)(ii) requires that the applicable SIP for the area must be fully approved under section 110(k). As discussed in the response to comments 6 and 8, the applicable SIPs for the St. Louis area are fully approved, and the serious area requirements have not yet become due. In making this determination, EPA is not creating an ''exception'' to the statutory requirements for approved SIPs, but is determining that SIP revisions which are not yet due are not ''applicable'' for purposes of section 107(d)(3)(E)(ii) and (v). As stated in the January 30, 2003, final rule at 68 FR 4838, on November 25, 2002, the Seventh Circuit Court of Appeals vacated a June 26, 2001, rule extending the St. Louis area's attainment date, and remanded to EPA for ''entry of a final rule that reclassifies St Louis as a serious nonattainment area effective immediately * * *'' (*Sierra Club and Missouri Coalition for the Environment* v. *EPA,* 311 F. 3d 853 (7th Cir. 2002)). In response to the Court's order, and in accordance with section 181(b)(2) of the CAA, EPA reinstated the nonattainment determination and reclassification contained in the March 19, 2001, rulemaking (66 FR 15585). In the January 30 rule, EPA also established a deadline of 12 months after January 30, 2003, for the states to submit the serious area requirements. The rationale for the deadline is stated in the January 30, 2003, final rule (68 FR 4838). The January 30, 2003, final rule was not challenged and this redesignation rulemaking does not reopen the January 30 rulemaking. Comments on the appropriate deadline for the serious area requirements are beyond the scope of this rule.

With respect to the commenter's assertion that the serious area requirements should have been due by June 14, 1998, this is based on an argument made by the commenter in the U.S. District Court and the Court of Appeals for the District of Columbia that the reclassification of the St. Louis area to serious should have been made retrocative to 1997, with the serious area measures due in 1998. This argument is not only outside the scope of this rulemaking as explained previously, but it was rejected by both Courts (*See, Sierra Club* v. *Whitman,* 285 F.3d, 63, 68 (D.C. Cir. 2002)). The Courts rejected the notion that retroactive SIP submission dates should be imposed because they would have passed before the area had notice and opportunity to meet the deadlines. *See also,* Metropolitan Washington, DC, Maryland and Virginia Determination of Nonattainment (68 FR 3410, January 24, 2003). As explained above, EPA's determination that the serious area requirements are not ''applicable'' with respect to this redesignation because they are not yet due is consistent with the CAA, with the January 30, 2003, final rule, with applicable EPA policy, with relevant judicial decisions, and with a long history of prior redesignation actions.

Comment 8: There is no ''fully approved'' or even a partially approved SIP because the June 26, 2001, rule was vacated by the Court of Appeals for the Seventh Circuit.

Response 8: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is hereby providing a response regarding the Missouri portion of the St. Louis area. See the rulemaking in today's **Federal Register** regarding redesignation of the Illinois portion of the St. Louis area for EPA's response to this comment as it pertains to the Illinois portion of the St. Louis area.

In the January 30, 2003, proposed rule at 68 FR 4850 through 4856, EPA described the actions taken by EPA in the June 26, 2001, rule which were vacated by the Court of Appeals for the Seventh Circuit. Also, in the January 30, 2003, proposed rule at 68 FR 4850 through 4856, EPA reproposed to approve some requirements, and explained that certain additional actions vacated by the Court were no longer applicable requirements since the area has attained the NAAQS. As discussed in the January 30, 2003, proposed rule, the additional actions vacated by the Court which are no longer applicable include the contingency measure requirements of section 172(c), additional RACM requirements of section 172(c)(1) and section 182(b), and the attainment demonstration requirements of section 182(b)(1). That discussion is incorporated herein. *See also* the discussion in section II.A concerning the inapplicability of certain requirements. In the June 26, 2001, rule, EPA took the following relevant actions: approved Missouri's and Illinois' 1-hour ozone attainment demonstration; found that the St. Louis ozone nonattainment area met the RACM requirements of the CAA; found that the contingency measures identified by the states of Illinois and Missouri are adequate; approved the Illinois and Missouri MVEBs; approved an exemption from the oxides of nitrogen (NO_X) emission control requirements for RACT and disapproved an exemption from the NO_X new source review (NSR) and NO_X conformity requirements for the Illinois portion of the St. Louis ozone nonattainment area. EPA has determined, for the reasons stated in this rule and in the proposed rule, that the attainment demonstration, and RACM requirements, are no longer applicable requirements since the area has attained the NAAQS. In this rulemaking, EPA is approving contingency measures as part of Missouri's maintenance plan, and approving MVEBs for 2014, for the Missouri portion of the area. In a separate rulemaking in today's **Federal Register**, EPA is approving revisions to Missouri's I/M rule.

To be considered fully approved pursuant to section 110(k), the SIP must not have partial approval, disapproval, or conditional approval of submittals. EPA is not partially approving, disapproving, nor conditionally approving any of the SIP actions contained in the June 26, 2001, rule vacated by the Court. EPA is fully approving the measures submitted by Missouri which are applicable for purposes of section 107(d)(3)(E)(v), and is determining that the other submissions are not applicable.

Therefore, the SIP is ''fully approved'' for all applicable requirements.

Comment 9: EPA attempted to assert that the Missouri and Illinois SIPs ''can be considered to be approved.'' This is a ''pseudo-approval'' and an attempt by EPA to escape the simple straightforward statutory requirement to have a fully approved SIP. This effort by EPA fails because of the clear language of the CAA, and because EPA must do a rulemaking to approve the SIP. EPA is also avoiding the requirement for judicial review of its actions.

Response 9: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is hereby providing a response regarding the Missouri portion of the St. Louis area. See the rulemaking in today's **Federal Register** regarding redesignation of the

Illinois portion of the St. Louis area for EPA's response to this comment as it pertains to the Illinois portion of the St. Louis area.

The use of the phrase ''can be considered to be approved'' (*see* the January 30, 2003, proposed rule at 68 FR 4851, 4852) was merely a statement the SIPs will meet the section 110 requirements and as such ''can be considered to be approved'' if EPA were to approve certain plan elements, described in the proposed rulemakings. On January 30, 2003, EPA published two proposed rules found at 68 FR 4842 and 68 FR 4847. As part of these proposals, EPA proposed to approve revisions to Missouri's I/M rule. In today's **Federal Register**, EPA is taking final action approving Missouri's I/M rule. By taking these actions, EPA now concludes that Missouri's SIP is approved. The use of the quoted phrase was not intended to escape a statutory requirement. In fact, it recognized EPA's obligation to complete rulemakings in order to approve SIPs, and it recognized that EPA could not determine that the SIP was fully approved until it took final action to approve the remaining SIP elements. All of the SIP elements which are applicable to the St. Louis area for purposes of redesignation have either been approved in previous rulemakings (*see* response to comments 6, 7, 8, 13, 14, 15, and 16 for a discussion of these prior rulemakings) or are approved in rulemakings published today.

The proposed rule at 68 FR 4851 states that on November 25, 2002, the U.S. Court of Appeals for the Seventh Circuit (Court) issued a decision in *Sierra Club and Missouri Coalition for the Environment* v. *EPA,* 311 F. 3d 853 (7th Cir. 2002). In this decision, the Court vacated the June 26, 2001, rule and remanded to EPA for entry of a final rule that reclassifies St Louis as a serious nonattainment area for ozone. Although the Court's opinion addressed only EPA's action extending the attainment date for St. Louis, the Court's order vacated the other EPA actions in the rulemaking as well. EPA has approved all SIP elements that are applicable to the St. Louis area and is determining that certain others are not applicable. This is not a ''pseudo-approval'' of the SIP elements, but a determination that because certain requirements (*e.g.*, the attainment demonstration and RACM) are not applicable, they need not be approved. (*See* response to comment 8 for more discussion of the requirement for a fully approved SIP.) The applicable requirements which were approved prior to the June 26, 2001, action (*e.g.*, VOC RACT, NO_X RACT, the ROP Plan) were subject to notice and comment rulemaking and judicial review. The measures approved today (the maintenance plan and contingency measures, MVEBs, I/M program revisions) have been subject to notice and comment rulemaking and EPA's action is subject to judicial review. EPA's determination that certain requirements are not applicable has been subject to notice and comment rulemaking and is subject to judicial review. The public has had full opportunity to comment on all of EPA's actions, as evidenced by the numerous comments submitted by the commenter. Therefore, EPA has not avoided any requirement for public comment or judicial review.

In acting upon a redesignation request, EPA may rely on any prior SIP approvals plus any additional approvals it may perform in conjunction with acting on the redesignation. EPA has already taken final action to approve all required SIP elements or is approving them in conjunction with this final action on the redesignation. Therefore, the St. Louis area has a fully approved SIP. *See* ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' John Calcagni, Director, Air Quality Management Division, September 4, 1992, page 3 (Calcagni memo). The Calcagni memo allows for approval of SIP elements and redesignation to occur simultaneously, and EPA has frequently taken this approach in its redesignation actions. *See* (66 FR 53096) (Pittsburgh-Beaver Valley, Pennsylvania, October 19, 2001); (65 FR 37879) (Cincinnati-Hamilton, Ohio, June 19, 2000); (61 FR 20458) (Cleveland-Akron-Lorain, Ohio May 7, 1996); (60 FR 37366) (July 20, 1995), (61 FR 31832–31833) (June 21, 1996) (Grand Rapids, MI).

Comment 10: The SIPs fail to meet the section 110 requirements because the ''inapplicable ''moderate'' area'' requirements contained in the SIPs do not provide for implementation, maintenance, and enforcement of the NAAQS because modeling shows that the plan does not provide for attainment until 2004. Furthermore, Missouri has failed to meet the section 110(a)(2)(D) requirements related to the NO_X SIP call.

Response 10: EPA finds that the Missouri SIP meets the section 110 requirements. See the January 30, 2003, proposal and the responses to comments 8 and 9 for further discussion.

Submissions under the NO_X SIP call are not applicable requirements for purposes of evaluating a redesignation request.

At this time, Missouri is not subject to the NO_X SIP call. As explained in the proposal, EPA's determination that Missouri significantly contributes to downwind nonattainment was vacated by the Court of Appeals for the District of Columbia Circuit. EPA is not relying on a SIP to predict attainment but is relying on air quality monitoring data to show that the area has attained. With respect to the assertion that the area must have an approved attainment demonstration SIP in order to meet the requirements of section 110, EPA has addressed this issue in its response to comments on the lack of an approved attainment demonstration for the area. Section 110(a)(1) does not add any additional requirements for compliance with the NAAQS other than those included in section 172(c) and 182, and the commenter does not identify any specific additional requirements. See the responses to comments 3, 21, and 24 with respect to the assertion that the modeling for the area shows that it cannot attain until 2004.

The SIP call budget for Missouri was proposed on February 22, 2002 (67 FR 8396), but has not yet been finalized. For this reason alone, it is not an applicable requirement. In addition, the NO_X SIP call requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. The NO_X SIP call submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state.

Thus, we do not agree that the NO_X SIP call submission should be construed to be an applicable requirement for purposes of redesignation. The section 110 and part D requirements, which are linked with a particular area's designation and classification, are the relevant measures to evaluate in reviewing a redesignation request. This policy is consistent with EPA's existing conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. See Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Lorain, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking at (60 FR 62748, December 7, 1995). See also the discussion on this issue in the Cincinnati redesignation (65 FR 37890, June 19, 2000), and in the

Pittsburgh redesignation (66 FR 50399, October 19, 2001).

Comment 11: The state SIPs fail to meet the part D requirements of the CAA. EPA asserts that certain requirements of part D are not applicable because monitoring data shows the area has attained. EPA relies on the case of *Sierra Club* v. *EPA* for this conclusion. However, this case has no application here because it was not a ''redesignation case.'' Given the attainment demonstration modeling, it would be impossible to conclude that any of the ''part D requirements are not necessary.'' All part D requirements are applicable unless, prior to redesignation, EPA formally exempts the St. Louis area from the part D requirements.

Response 11: Section II.A of this document, discussing the rationale for EPA's determination of attainment and suspension of certain requirements, addresses the applicability of the part D requirements. The part D requirements specifically include the requirements of sections 172(c) and 176 as well as the applicable requirements of subpart 2. The section 172(c) requirements include General Plan Requirements which to the extent applicable, must provide for the implementation of all RACM as expeditiously as practicable (at a minimum this requires RACT for stationary source), RFP, emissions inventory, identification and quantification of allowable emissions for major new or modified stationary sources, permits for new and modified major stationary sources, other emission control measures needed to assure attainment of the NAAQS, section 110(a)(2) requirements, and contingency measures. Section 110(a)(2) requirements include submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; provisions for establishment and operation of appropriate apparatus, methods, systems, and procedures needed to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD)); provisions for the implementation of part D requirements (nonattainment area NSR permit programs); provisions for stationary source emission control measures, source monitoring, and source reporting; provisions for air pollution modeling; and provisions for public and local agency participation in planning and emission control rule development. Subpart 2 requirements include attainment demonstration, 1990 base year inventory and periodic emissions inventories updates, emission statements, rate-of-progress plans, VOC RACT, RACM, stage II vapor recovery, I/M, and NO_X emission controls.

As stated in the response to comment 8 above, the Missouri SIP meets all applicable requirements including section 110 and part D requirements. As stated in the January 30, 2003, proposed rule at 68 FR 4852 and 4853, EPA has approved each state's RFP, permitting programs, and VOC RACT rules as meeting the requirements of part D. Missouri's SIP has regulations requiring annual emission statements from major sources. Missouri has submitted complete emission inventories. Missouri has approved general conformity rules pursuant to section 176. In addition, Missouri has approved transportation conformity rules. EPA is approving in this action Missouri's maintenance plan which includes adequate contingency measures. Thus, Missouri has met the applicable part D requirements of the CAA. Note that also as stated in the response to comment 8, by finding that the St. Louis area has attained the standard, the attainment demonstration and RACM requirements are no longer applicable requirements. *See* also the final rule for Illinois describing how the Metro-East St. Louis area has met the applicable requirements.

As indicated in comment 3 above, neither section 107(d)(3)(E) nor EPA policy referenced by the commenter requires modeling as a prerequisite to redesignation of an ozone nonattainment area. In addition, no modeling was conducted as part of the redesignation requests submitted by Missouri or Illinois. Thus, there is no modeling basis for EPA to make any conclusions regarding the necessity for the part D requirements. (Modeling is not a required element of a redesignation request. *See,* 65 FR 37879—Cincinnati redesignation for additional discussion of this issue. *See, Wall* v. *EPA,* 265 F.3d. 426 upholding this interpretation.) However, as explained in detail in comment 3, the monitoring data collected over the 2000 through 2002 period show that the area has in fact attained the ozone standard. EPA finds no need for further controls to bring about attainment.

With respect to the commenter's assertion that the Tenth Circuit *Sierra Club* case is not applicable because it is not a ''redesignation'' case, the commenter misses the point of the case as it relates to St. Louis. The Tenth Circuit's endorsement of the interpretation of the CAA in the Seitz memo (that certain ''statutory'' requirements relating to attainment are not applicable to an area which has attained the standard) was not dependent on the fact that the area was not being redesignated. The case involved a determination by EPA that Salt Lake and Davies Counties, Utah, had attained the standard, and that, therefore, certain additional requirements relating to attainment (such as an attainment demonstration) would not apply so long as the area continued to attain. The Court expressly recognized that the area could be redesignated without having met those requirements, even though the action at issue there was an attainment determination and not a redesignation. The Court stated: ''Recall that the Environmental Protection Agency's determination to exempt the Counties from limited ozone requirements is really no more than a suspension of those requirements for so long as the area continues to attain the standard or until the area is formally redesignated to attainment.'' (*Sierra Club* v. *EPA,* 99 F.3d 1551, 1558 (10th Cir. 1996)). (*See also,* 66 FR 53095 for EPA's redesignation of the Pittsburgh area.) The Court did not say, as the commenter would have it, that the area would have to adopt those measures which had been determined to be unnecessary in order to be redesignated. As it did for the Utah counties, in which EPA redesignated those counties without requiring that they meet the suspended requirements, EPA is here determining that the St. Louis area is attaining the standard and that certain requirements are suspended and do not apply because the area is being redesignated. The basis for this determination and the suspension of certain requirements for the area was explained in detail in the proposal found at 68 FR 4850–4858 and further explained in this response to various comments on the issue. The determination is based on monitored data, not modeling, for reasons explained in this document. Nothing in the Tenth Circuit case prohibits EPA from simultaneously suspending the requirements and redesignating an area, which is what this rulemaking accomplishes. EPA has taken this dual action in a number of areas including Louisville (66 FR 53665), Cincinnati (65 FR 37879), Grand Rapids (61 FR 31831), and Pittsburgh (66 FR 53094). Upon redesignation to attainment, the suspended nonattainment area requirements will no longer apply at all since the area is no long a designated nonattainment area.

Comment 12: EPA asserts that the RACM requirements of section 172(c)(1) need not be adopted because the area has attained the NAAQS, thus, these

measures would not accelerate attainment. This is confoundingly circular reasoning which erases the ''fully approved'' requirements of the CAA. EPA's assertion is not relevant here.

Response 12: The April 16, 1992, General Preamble (57 FR 13560) states that EPA interprets section 172(c)(1) such that the RACM requirements are a ''component'' of an area's attainment demonstration. Thus, since the attainment demonstration is not an applicable requirement, RACM is also no longer an applicable requirement. See response to comment 8 for further discussion. Also, EPA has been consistent in this interpretation. See the final rulemaking for Pittsburgh, 66 FR 53096 (October 19, 2001) for additional discussion of this interpretation.

EPA believes that its policy is not ''confoundingly circular reasoning'' but rather straightforward reasoning. It is reasonable to conclude that states need not develop an attainment demonstration showing how they will attain a NAAQS that they have already attained. Similarly, states need not adopt additional reasonably available control measures as necessary to accelerate attainment when attainment has already been achieved.

As stated in the response to comments 8 and 9, SIPs must be ''fully approved'' as required by section 107(d)(3)(E)(ii), only with respect to the ''applicable'' requirements of section 110 and part D, as addressed in section 107(d)(3)(E)(v). If requirements are not ''applicable'' with respect to those sections, they need not be fully approved.

Comment 13: The RACM and RACT requirements of the CAA are not tied to reasonable further progress but are required by the CAA to be implemented as expeditiously as practicable. This is supported by H.R. Rep. No. 101–490, Part 2, 101st Cong., 2d Sess. at p. 223; *Sierra Club* v. *EPA,* 99 F.3d 1551, 1557 (10th Cir. 1996); *Wall* v. *EPA,* 265 F.3d 426, 441 (6th Cir. 2001); and, EPA's Seitz memo, page 4. EPA's contention that any additional RACM and RACT measures need not be adopted directly repudiates the plain language of the CAA.

Response 13: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is hereby providing a response regarding the Missouri portion of the St. Louis area. See the rulemaking in today's **Federal Register** regarding redesignation of the Illinois portion of the St. Louis area for EPA's response to this comment as it pertains to the Illinois portion of the St. Louis area.

EPA has previously addressed the rationale for its determination that additional RACM is not required for an area attaining the standard. (*See, e.g.*, section II and response to comment 12.) The RFP requirement under section 172(c)(2) is defined as progress that must be made toward attainment. Section 182(b)(1)(A) sets forth the specific requirements for RFP for a moderate nonattainment area which includes a reduction in VOC emissions of at least 15 percent from baseline emissions. As stated in the January 30, 2003, proposed rule at 68 FR 4854, 4855, EPA approved Missouri's 15 percent ROP plan.

RACM is a general requirement of section 172(c)(1) which calls for SIPs to contain ''all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology and shall provide for attainment of the national primary ambient air quality standards.'' EPA has consistently interpreted this provision to require only implementation of potential RACM measures that could contribute to reasonable progress or attainment. (*See* General Preamble 57 FR 13498, April 16, 1992.) Thus, where an area has already met all applicable requirements for progress and has attained the relevant standard, no additional RACM measures are required.

Section 182(b)(2) specifies the SIP requirements for RACT in moderate nonattainment areas. These requirements include implementation of RACT at each source of VOCs covered by Control Technology Guidelines (CTGs) and all other major sources of VOCs. EPA has never indicated that the area could avoid implementing VOC RACT requirements because the area has attained the standard.

As stated in the January 30, 2003, proposed rule at 68 FR 4855, Missouri has adopted and implemented all required VOC RACT rules. In addition, section 182(f) establishes NO_X RACT requirements for major stationary sources. EPA approved Missouri's NO_X RACT rule into the SIP on May 18, 2000 (65 FR 31482).

The commenter states that H.R. Rep. No. 101–490, Part 2, 101st Cong., 2d Sess. at p. 223 does not tie RACM and RACT measures to RFP. This document is a recitation of the statute, but does not address tying RACM and RACT to RFP.

With respect to the commenter's contention that EPA's position regarding additional RACM and RACT measures was rejected in the Tenth Circuit *Sierra Club* case and in *Wall*, the commenter is incorrect. The *Wall* case involved VOC RACT, which is not an issue here, because, as discussed previously, and in response to comment 14 below, Missouri has adopted all applicable VOC RACT measures. Missouri has also adopted NO_X RACT measures. The Tenth Circuit *Sierra Club* case upheld EPA's determination that RACT was not tied to reasonable further progress, and that case did not address EPA's interpretation of RACM at all. The commenter's Seventh Circuit brief, which it relies on to support its position that RACM requirements must be met for an area to be redesignated, argued that EPA's interpretation of the RACM requirement (that section 172(c)(1) requires only implementation of all RACM which would expedite attainment) is an improper reading of the CAA. That issue was not addressed or decided by the Seventh Circuit. However, the issue of EPA's interpretation of the RACM requirement was raised and upheld in the 5th Circuit (*Sierra Club* v. *EPA*, 314 F.3d 735, 743–745 (5th Cir. 2002)) and the District of Columbia Circuit (*Sierra Club* v. *EPA*, 294 F.3d 155, 162–163 (D.C. Cir. 2002)). Both circuits found that EPA's interpretation that the statute only required implementation of RACM measures that would advance attainment was reasonable.

Comment 14: The rulemaking should identify each VOC RACT rule implemented by the states and identify whether the states have met the VOC RACT requirements.

Response 14: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is hereby providing a response regarding the Missouri portion of the St. Louis area. See the rulemaking in today's **Federal Register** regarding redesignation of the Illinois portion of the St. Louis area for EPA's response to this comment as it pertains to the Illinois portion of the St. Louis area.

The January 30, 2003, proposed rule states at 68 FR 4855 that both states have adopted and implemented all required VOC RACT rules. In addition, the proposed rule provided the following web sites which contain the content of these rules, and references to EPA's rulemakings approving these rules. The Web site for Missouri is: *http://www.epa.gov/region07/programs/artd/air/rules/missouri/chap5.htm.*

The VOC RACT rules listed on this Web site and EPA's rulemakings approving these rules include the following:

10 CSR 10–5.070 Open Burning Restrictions, 37 FR 10842 (5/31/72)

10 CSR 10–5.220 Control of Petroleum Liquid Storage, Loading and Transfer, 37 FR 10842 (5/31/72)
10 CSR 10–5.295 Control of Emissions From Aerospace Manufacturing and Rework Facilities, 65 FR 31489 (5/18/2000)
10 CSR 10–5.300 Control of Emissions from Solvent Metal Cleaning, 45 FR 24140 (4/9/80) and 45 FR 56806 (7/11/80) (correction)
10 CSR 10–5.310 Liquefied Cutback Asphalt Paving Restricted, 45 FR 24140 (4/9/80) and 45 FR 46806 (7/11/80) (correction)
10 CSR 10–5.320 Control of Emissions from Perchloroethylene Dry Cleaning Installations, 46 FR 20172 (4/3/81)
10 CSR 10–5.330 Control of Emissions from Industrial Surface Coating Operations, 45 FR 24140 (4/9/80) and 45 FR 46806 (7/11/80) (correction)
10 CSR 10–5.340 Control of Emissions from Rotogravure and Flexographic Printing Facilities, 46 FR 20172 (4/3/81)
10 CSR 10–5.350 Control of Emissions from Manufacture of Synthesized Pharmaceutical Products, 46 FR 20172 (4/3/81)
10 CSR 10–5.360 Control of Emissions from Polyethylene Bag Sealing Operations, 49 FR 40164 (10/15/84)
10 CSR 10–5.370 Control of Emissions from the Application of Deadeners and Adhesives, 55 FR 7712 (3/5/90)
10 CSR 10–5.390 Control of Emissions from Manufacture of Paints, Varnishes, Lacquers, Enamels and Other Allied Surface Coating Products, 50 FR 14925 (4/16/85)
10 CSR 10–5.410 Control of Emissions from the Manufacture of Polystyrene Resin, 55 FR 7712 (3/5/90)
10 CSR 10–5.420 Control of Equipment Leaks from Synthetic Organic Chemical and Polymer Manufacturing Plants, 53 FR 12417 (4/14/88)
10 CSR 10–5.440 Control of Emissions from Bakery Ovens, 65 FR 8060 (2/17/2000)
10 CSR 10–5.442 Control of Emissions From Offset Lithographic Printing Operations, 65 FR 8060 (2/17/00)
10 CSR 10–5.450 Control of VOC Emissions from Traffic Coatings, 65 FR 8060 (2/17/00)
10 CSR 10–5.451 Control of Emissions from Aluminum Foil Rolling, 65 FR 8060 (2/17/00)
10 CSR 10–5.455 Control of Emissions from Solvent Cleanup Operations, 65 FR 8060 (2/17/00)
10 CSR 10–5.490 Municipal Solid Waste Landfills, 63 FR 20320 (4/24/98)
10 CSR 10–5.500 Control of Emissions From Volatile Organic Liquid Storage, 65 FR 31489 (5/18/00)
10 CSR 10–5.520 Control of Volatile Organic Compound Emissions From Existing Major Sources, 65 FR 31489 (5/18/2000)
10 CSR 10–5.530 Control of Volatile Organic Compound Emissions From Wood Furniture Manufacturing Operations, 65 FR 31489 (5/18/00)
10 CSR 10–5.540 Control of Emissions From Batch Process Operations, 65 FR 31489 (5/18/00)
10 CSR 10–5.550 Control of Volatile Organic Compound Emissions From Reactor Processes and Distillations Operations Processes in the Synthetic Organic Chemical Manufacturing Industry, 65 FR 31489 (5/18/00)

The rationale for approval of each of these rules is described in the respective **Federal Register** document approving each rule. As stated previously, in the response to comment 5, this redesignation rulemaking does not reopen rulemakings regarding prior SIP approvals.

Comment 15: Missouri has not adopted all appropriate NO_X and NO_X RACT rules. Thus, the SIP is not approvable.

Response 15: Missouri has adopted and EPA has approved into Missouri's SIP a NO_X RACT rule meeting the requirements of section 182(f). The Missouri NO_X RACT rule can be found at 10 CSR 10–5.510. *See* comment 13 for further discussion on Missouri's NO_X RACT rule. As described in response to previous comments, pursuant to the Calcagni Memo page 3, and upheld in the *Wall* case cited previously, an EPA action on a redesignation request does not mean that earlier issues with regard to the SIP will be reopened. *See also, Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984 (6th Cir. 1998). Thus, EPA is not reopening Missouri's NO_X RACT rule as part of this redesignation.

Missouri has adopted and EPA has approved into the SIP a state-wide NO_X rule (10 CSR 10–6.350 Emissions Limitations and Emissions Trading of Oxides of Nitrogen, 65 FR 82285 (12/28/00)).

As stated in comment 10 above, EPA believes that submissions under the NO_X SIP call are not applicable requirements for purposes of evaluating Missouri's redesignation request.

EPA has determined that Missouri has adopted all applicable NO_X and NO_X RACT rules.

Comment 16: The Missouri I/M rule being approved in a separate rulemaking does not meet the requirements for an I/M program. EPA needs to explain how it can approve an I/M rule since it does not meet the I/M requirements for a serious area.

Response 16: EPA is responding to comments regarding Missouri's I/M program in a separate rulemaking published in today's **Federal Register**. EPA's response to comments included in that rulemaking are incorporated here.

The Federal rule at 40 CFR 51.372(c) states that ''Any nonattainment area that EPA determines would otherwise qualify for redesignation from nonattainment to attainment shall receive full approval of a SIP submittal under Sections 182(a)(2)(B) or 182(b)(4) if the submittal contains the following elements: (1) Legal authority to implement a basic I/M program (or enhanced if the State chooses to opt up) as required by this subpart. The legislative authority for an I/M program shall allow the adoption of implementing regulations without requiring further legislation. (2) A request to place the I/M plan (if no I/M program is currently in place or if an I/M program has been terminated) or the I/M upgrade (if the existing I/M program is to continue without being upgraded) into the contingency measures portion of the maintenance plan upon redesignation. (3) A contingency measure consisting of a commitment by the Governor or the Governor's designee to adopt or consider adopting regulations to implement the required I/M program to correct a violation of the ozone or CO standard or other air quality problem, in accordance with the provisions of the maintenance plan. (4) A contingency commitment that includes an enforceable schedule for adoption and implementation of the I/M program, and appropriate milestones. The schedule shall include the date for submission of a SIP meeting all of the requirements of this subpart. Schedule milestones shall be listed in months from the date EPA notifies the State that it is in violation of the ozone or CO standard or any earlier date specified in the State plan. Unless the State, in accordance with the provisions of the maintenance plan, chooses not to implement I/M, it must submit a SIP revision containing an I/M program no more than 18 months after notification by EPA.''

Regarding item (1) above, as indicated in the response to comment 35, Missouri has the authority to implement an I/M program. Regarding item (2) above, the maintenance plan contains ''High Enhanced I/M'' as a contingency measure. The plan was accompanied by a request from an authorized Missouri official for EPA to approve the maintenance plan. Regarding item (3) above, section 7.1 of the maintenance plan contains a commitment to adopt or consider adopting the I/M program listed as a contingency measure.

Regarding item (4) above, the SIP contains an enforceable schedule for adoption and implementation of the I/M program. Section 7.1 of the maintenance plan sets for a schedule with milestones for promulgation and implementation of a program meeting the requirements.

This meets the condition imposed by the Federal rule at 40 CFR 51.372(c). Thus, EPA is approving the I/M program in a separate rulemaking. This satisfies the basic I/M requirements for moderate ozone areas. Since EPA is taking final action to approve the redesignation of the St. Louis area prior to the date that the serious area requirement for enhanced I/M would be due, EPA can approve the I/M program as meeting the moderate rather than the serious area I/M requirement, as fully explained in this final rule and in the separate I/M approval action taken elsewhere in today's **Federal Register**.

D. Comments Related to Criterion 3: The Improvement in Air Quality Must Be Due to Permanent and Enforceable Reductions in Emissions

Comment 17: The area cannot meet this requirement since there is not an approved SIP meeting the ''serious'' area requirements, and there is no applicable implementation plan.

Response 17: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is hereby providing a response regarding the Missouri portion of the St. Louis area. See the rulemaking in today's **Federal Register** regarding redesignation of the Illinois portion of the St. Louis area for EPA's response to this comment as it pertains to the Illinois portion of the St. Louis area.

As described in the response to comments for Criterion 2 above, the SIPs meet the applicable CAA requirements. The applicable SIP requirements are described in the January 30, 2003, proposed rulemaking (68 FR 4850–4856). EPA's approval of previous SIP submittals, this rulemaking and today's rulemaking approving Missouri's I/M rule render Missouri's SIP ''fully approved'' for all applicable SIP requirements. As stated in response to comments relating to Criterion 2, above, since the serious area requirements are not yet due, the SIP is not deficient because the serious area requirements have not been included.

In any event, this criterion is not dependent on which requirements are applicable or have been approved or implemented. The requirement is that air quality improvements be attributable to permanent and enforceable reductions in emissions which is a separate inquiry from the question of the requirements applicable to the area. Missouri's submission contains a detailed analysis of the air quality improvements in St. Louis and their relation to the permanent and enforceable control measures which are in place in the area. (*See* response to comment 19 for further discussion.) These measures are listed in the proposal at 68 FR 4856–4858. These measures are all part of the applicable SIP. Thus, the commenter is incorrect in its assertion that there is no applicable SIP.

Comment 18: It is impossible to demonstrate that monitored concentrations on the 2002 Labor Day weekend resulted from permanent and enforceable reductions. The reductions were due to voluntary curtailment of operations by large industrial operations.

Response 18: The monitoring data for the St. Louis nonattainment area demonstrate that the estimated number of exceedances per year averaged over three years is 1.0 or less at all monitoring sites in the area. EPA believes that any voluntary measures taken by industry and others over a two- or three-day period in this three-year time period does not render the air quality monitoring data unrepresentative of the air quality. As explained in more detail in response to comment 19 below, ozone levels monitored during 2000–2002 are due to permanent and enforceable measures which are in place (*e.g.*, I/M programs, RACT on VOC and NO_X stationary sources).

In the event that some sources did voluntarily reduce emissions over this two- or three-day period, EPA has no basis to conclude that these voluntary reductions had an effect on the monitored air quality. As the commenter points out, ozone formation occurs through ''complex chemistry and meteorology.'' Voluntary reductions over a short time period may or may not have had an impact on the monitored air quality. (We note that ''voluntary'' reductions are always a factor, since total emissions at a given point in time depend, for example, on how many people decide to drive on a given day or weekend.) However, the state's demonstration that air quality improvements are due to permanent and enforceable emission reductions is based on its analysis of emission reductions over a ten-year period (*see* response to comment 19), consistent with the CAA requirements and EPA policy including the Calcagni memo at page 4. Also, see the response to comment 2 above for further discussion on this issue. Note that in general, EPA encourages voluntary reductions to reduce emissions. EPA supports programs such as the Air Quality Index which encourages people to voluntarily reduce ozone forming activities such as filling gas tanks, painting, mowing, etc. at times when ozone formation is expected to be high. Although these measures are not enforceable nor measurable, they are encouraged.

Comment 19: EPA cannot demonstrate that permanent and enforceable reductions are responsible for any alleged improvement of air quality. The only way to demonstrate this point is through photochemical grid modeling. No such modeling has been presented. Without modeling, EPA's claim is pure speculation. Emission reductions attributable to the emission controls ''could just as easily lead to increases in ozone concentrations.'' The attainment demonstration modeling shows that attainment was ''impossible'' in 2003.

Response 19: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is hereby providing a response regarding the Missouri portion of the St. Louis area. See the rulemaking in today's **Federal Register** regarding redesignation of the Illinois portion of the St. Louis area for EPA's response to this comment as it pertains to the Illinois portion of the St. Louis area.

EPA's response to this and other comments on the attainment demonstration modeling is included in the response to comments 21 and 24. In addition, see the response to comment 23 for further discussion regarding the use of modeling in demonstrating maintenance of the NAAQS.

Neither Section 107(d)(3)(E)(iii) nor the Calcagni memo referenced by the commenter require modeling as a prerequisite to redesignation of an ozone nonattainment area. Thus, modeling is not required to demonstrate that the improvement in air quality is due to permanent and enforceable reductions. *See* General Preamble for the Interpretation of Title I of the CAA Amendments of 1990 at 57 FR 13496 (April 16, 1992), supplemented at 57 FR 18070 (April 28, 1992); ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' John Calcagni, Director, Air Quality Management Division, September 4, 1992; ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992,'' Michael H.

Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993; and ''Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,'' D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993. Our guidance provides that an area may meet this requirement by showing how its ozone precursor emissions changed due to permanent and enforceable emissions reductions from when the area was not monitoring attainment of the 1-hour ozone NAAQS to when it reached attainment. See the rationale set forth in the Cincinnati redesignation (65 FR 37879, 37886–37889, June 19, 2000) and the Pittsburgh redesignation (66 FR 53094, October 19, 2001). The Sixth Circuit has recently upheld EPA's interpretation in *Wall* v. *EPA* (265 F.3d 426, 435).

In the January 30, 2003, proposed rule at 68 FR 4856–4858, EPA explained the basis for concluding that the observed air quality improvements are due to the implementation of permanent and enforceable emission reductions. The reasons include, analysis of the emission controls which have resulted in emission reductions, an analysis of meteorological conditions showing a trend toward the reduction of ozone concentrations while the number of days conducive to forming ozone showed no significant trend, and an assessment of emissions in 1990 and 2000 which have shown a substantial decrease in emissions of VOCs and NO_X.

Annual days conducive to ozone formation (those days with relatively clear skies, low wind speeds and southerly wind directions, high peak temperatures exceeding 85 degrees Fahrenheit, and little or no precipitation) have shown no noticeable trend up or down, only yearly variations. The number of conducive days have stayed between approximately 20 and 50 days per year with no increasing or decreasing trend. Meanwhile, exceedances have decreased from over 120 in 1978, over 100 in 1983, over 60 in 1988, to a total of 11 in the three-year period of 2000 to 2002. In addition, year-to-year fluctuation of conducive days cannot be correlated with higher or lower exceedance levels over the last few years. Since 1989, as the number of conducive days fluctuated from year to year, the number of exceedances demonstrated no similar trend. This indicates a disassociation between monitored exceedances and meteorological effects.

During the 1990–2000 period, as the area-wide ozone design values in the St. Louis area were decreasing, the VOC and NO_X emissions in the St. Louis area were also significantly decreasing (see response to comment 20 for further discussion on the area's design values). The following tables list VOC and NO_X emissions in 1990 and 2000 for the Missouri and Illinois portions of the St. Louis ozone nonattainment area. These tables show that the entire nonattainment area experienced a downward trend in VOC and NO_X emissions. This downward trend in emissions and ozone design values, along with no significant trend in the number of days conducive to ozone formation shows that the observed improvements in air quality are due to the implementation of permanent and enforceable emission control measures.

1990 AND 2000 MISSOURI PORTION OF THE ST. LOUIS NONATTAINMENT AREA VOC AND NO_X EMISSIONS

[Emissions in tons per ozone season weekday]

Source category	VOC	NO_X
1990		
Point Sources	81.97	347.61
Area Sources	87.74	29.47
On-Road Mobile Sources	135.42	135.00
Off-Road Mobile Sources	64.30	114.32
1990 Totals	369.43	626.40
2000		
Point Sources	46.59	165.96
Area Sources	57.38	32.27
On-Road Mobile Sources	103.79	181.75
Off-Road Mobile Sources	40.59	73.16
2000 Totals	248.35	453.14

1990 AND 2000 METRO-EAST AREA VOC AND NO_X EMISSIONS

[Emissions in tons per ozone season weekday]

Source category	VOC	NO_X
1990		
Point Sources	74.05	95.85
Area Sources	33.84	1.66
On-Road Mobile Sources	43.27	45.13
Off-Road Mobile Sources	23.49	23.99
1990 Totals	174.65	166.63
2000		
Point Sources	17.91	61.91
Area Sources	28.32	1.18
On-Road Mobile Sources	26.57	54.71
Off-Road Mobile Sources	21.31	23.85
2000 Totals	94.11	141.64

Reductions in ozone precursor (VOC and NO_X) emissions have brought many areas across the country into attainment. EPA has approved many ozone redesignations showing decreases in ozone precursor emissions resulting in attainment of the ozone standard. See redesignations for Pittsburgh (66 FR 53094, October 19, 2001), Cincinnati (65 FR 37879, June 19, 2000), Charleston (59 FR 30326, June 13, 1994; 59 FR 45985, September 6, 1994), Greenbrier County (60 FR 39857, August 4, 1995), Parkersburg (59 FR 29977, June 10, 1994); (59 FR 45978, September 6, 1994), Jacksonville/Duval County (60 FR 41, January 3, 1995), Miami/Southeast Florida (60 FR 10325, February 24, 1995), Tampa (60 FR 62748, December 7, 1995), Lexington (60 FR 47089, September 11, 1995), Owensboro (58 FR 47391, September 9, 1993), Indianapolis (59 FR 35044, July 8, 1994; 59 FR 54391, October 31, 1994), South Bend-Elkhart (59 FR 35044, July 8, 1994; 59 FR 54391, October 31, 1994), Evansville (62 FR 12137, March 14, 1997; 62 FR 64725, December 9, 1997), Canton (61 FR 3319, January 31, 1996), Youngstown-Warren (61 FR 3319, January 31, 1996), Cleveland-Akron-Lorain (60 FR 31433, June 15, 1995; 61 FR 20458, May 7, 1996), Clinton County (60 FR 22337, May 5, 1995; 61 FR 11560, March 21, 1996), Columbus (61 FR 3591, February 1, 1996), Kewaunee County (61 FR 29508, June 11, 1996; 61 FR 43668, August 26, 1996), Walworth County (61 FR 28541, June 5, 1996; 61 FR 43668, August 26, 1996), Point Coupee Parish (61 FR 37833, July 22, 1996; 62 FR 648, January 6, 1997), and Monterey Bay (62 FR 2597, January 7, 1997). Most of the areas that have been redesignated to attainment for the 1-hour ozone standard have continued to attain it. Areas that are not maintaining the 1-hour ozone standard have a maintenance plan to bring them back into attainment.

Between 1990 and 2000, area-wide VOC and NO_X emissions in the St. Louis area decreased by 37 percent and 25 percent, respectively. In Missouri, the VOC and NO_X emissions during this time period decreased by 33 percent and 28 percent, respectively. (*See* the rulemaking redesignating the Illinois portion of the St. Louis area published in today's **Federal Register** for NO_X and VOC reductions for the Metro-East area.) These emissions reductions were due to the implementation of Missouri's 15 percent rate-of-progress plan, including its implementation of a centralized motor vehicle inspection and maintenance program and stationary source controls. Additional reductions

were due to tighter Federal standards for new vehicles, and some were due to requirements for reformulated and low Reid Vapor Pressure (RVP) gasoline for motor vehicles. In addition, Title IV of the CAA resulted in reduced NO_X emissions from utility sources.

The commenter claims that the combination of NO_X and VOC emissions reductions could just as easily have led to increases in ozone. However, the actual monitoring data collected in the area shows that ambient ozone concentrations have dropped when this combination of ozone precursor reductions occurred. In other metropolitan areas, other levels of VOC and NO_X reductions have also resulted in attainment. *See* the areas listed above in first part of this response. The St Louis area's decrease in ozone levels is consistent with what other areas have experienced. The commenter has not provided data showing that decreases in ozone precursor emissions have led to higher levels of ozone.

EPA's conclusion that improvements in air quality are attributable to permanent and enforceable reductions in precursors is not ''speculation'' but is based on a careful review of the various technical analyses conducted by the states and described above. EPA believes it is reasonable not to require photochemical grid modeling. Three-year averaging addresses variations in meteorological conditions, an analysis of meteorological conditions showed no significant trend in the number of days conducive to ozone formation, and the commenter has presented no evidence that the three-year attainment period was unusually favorable. It is important to note that redesignation is not intended as an absolute guarantee that the area will never monitor future violations. This is what maintenance plan contingency measures are designed to address and correct. *See* the Cincinnati redesignation (65 FR 37879, 37886–37889, June 19, 2000) and the Pittsburgh redesignation (66 FR 53094, October 19, 2001) for additional discussion of this issue.

Comment 20: If improvements in St. Louis air quality were due to permanent and enforceable reductions, the trend in monitored concentrations would be to go down. However, exceedances tripled from 2000 to 2001 and more than doubled from 2001 to 2002.

Response 20: As stated in response to comment 2 above, a violation of the 1-hour ozone NAAQS occurs when the estimated number of exceedances per year averaged over three years is greater than 1.0 at any monitoring site in the area or its downwind environs, using conventional rounding techniques. Although there was an increase in the number of exceedances between 2000 and 2001 as well as between 2001 and 2002, year-to-year trends in exceedances are not used to determine attainment, but rather an average over three years is used. For reasons stated previously, EPA has determined that the St. Louis area is in attainment with the NAAQS.

As indicated in the January 30, 2003, proposal at 68 FR 4850, Table 1 Summarizes the number of expected exceedances at each monitor in the area.

TABLE 1.—1-HOUR OZONE NAAQS EXCEEDANCES IN THE ST. LOUIS, ILLINOIS-MISSOURI AREA FROM 2000 TO 2002

Site name	County or city and state	Estimated exceedances			Average number of estimated exceedances 2000–2002
		2000	2001	2002	
Jerseyville	Jersey, IL	0.0	1.0	1.0	0.7
Alton	Madison, IL	0.0	0.0	0.0	0.0
Maryville	Madison, IL	0.0	0.0	1.0	0.3
Edwardsville	Madison, IL	0.0	0.0	0.0	0.0
Wood River	Madison, IL	0.0	1.0	0.0	0.3
Houston	Randolph, IL	0.0	0.0	0.0	0.0
East St. Louis	St. Clair, IL	0.0	0.0	0.0	0.0
Arnold	Jefferson, MO	0.0	0.0	0.0	0.0
West Alton	St. Charles, MO	1.0	1.0	1.0	1.0
Orchard Farm	St. Charles, MO	0.0	0.0	2.0	0.7
Bonne Terre	St. Genevieve, MO	0.0	0.0	0.0	0.0
South Lindbergh	St. Louis, MO	0.0	0.0	2.0	0.7
Queeny	St. Louis, MO	0.0	0.0	0.0	0.0
Hunter	St. Louis, MO	0.0	0.0	0.0	0.0
Flo Valley	St. Louis, MO	0.0	0.0	0.0	0.0
St. Ann (old)	St. Louis, MO	0.0	n/a	n/a	[1] 0.0
St. Ann (new)	St. Louis, MO	n/a	0.0	0.0	[1] n/a
Broadway	St. Louis City, MO	0.0	0.0	0.0	0.0
Clark	St. Louis City, MO	0.0	0.0	0.0	0.0
Margaretta	St. Louis City, MO	0.0	0.0	0.0	0.0

[1] The owner of the property on which the old St. Ann monitor was located terminated the lease agreement with the Missouri Department of Natural Resources. The new site is 0.7 miles east of the old site. In general, ambient monitors should remain at the same location for the duration of the monitoring period required for demonstrating attainment. However, when three complete, consecutive calendar years of data is not available for a monitoring site, adjustments are made consistent with EPA monitoring criteria, in determining the average number of estimated exceedances per year. The average number of estimated exceedances for 2000–2002 for the old St. Ann monitor is the estimated exceedances for 2000, or 0.0. In addition, where a monitor has been in operation less than three years, the average estimated number of exceedances cannot be determined. Since the new St. Ann monitor has been in operation less than three years, the average number of estimated exceedances for 2000–2002 was not determined.

The area has monitored attainment for the three-year period from 2000–2002. This demonstrates that the current level of emissions is adequate to keep the area in attainment during weather conditions as in past years associated with higher levels of ozone. In addition, the CAA does not presume that the area will always be in attainment. The CAA provides that if the area were to violate the 1-hour ozone standard, then the contingency measures in the maintenance plan would be triggered. This would reduce the ozone precursor emissions and bring the area back into attainment.

One exceedance in the area was monitored in 2000, three in 2001, and

seven in 2002. EPA notes that when dealing with numbers as small as one exceedance in 2000, any subsequent increase in the number of exceedances will result in the number of exceedances being at least doubled. In other words, when dealing with a number as small as one, any increase will be at least double that value. Thus, citing a doubling or tripling of exceedances is not necessarily an indicator of significant changes in air quality.

The one-hour ozone NAAQS is based upon a three-year average. For a violation, the estimated number of exceedances per year must exceed 1.0 at any monitoring site. Under this standard, a monitor may record up to three exceedances over a three-year period without causing a violation of the standard. The fourth highest monitored level at a monitor over a three-year period can be used as an indicator of potential violations of the NAAQS. (Note that since other factors, such as missing data, can affect the calculation of the estimated number of exceedances, the fourth highest monitored value is not solely used to determine a violation. See the discussion in the January 30, 2003, proposed rule at 68 FR 4849 and 4850 for an example of how the number of estimated exceedances is determined.) The term ''design value'' is used to refer to the fourth highest monitored value in a three-year period. For an individual monitor, the design value is the fourth highest monitored value in a three-year period. For an area such as the St. Louis area, the highest of the individual monitor design values over a three-year period is referred to as the ''area's design value.'' The lower an area's design value the more likely the area will meet the standard. Also, an area's design value which decreases over time indicates that the monitored ozone concentrations are generally lowering and the air quality is improving.

The St. Louis area's design value reduced as follows: 0.156 parts per million (ppm) in 1987–1989 (*see* 52 FR 13385–13386 dated March 18, 1999); 0.136 ppm in 1994–1996 (*see* 53 FR 15581 dated March 19, 2001); 0.131 ppm in 1996–1998 (*see* 53 FR 15583 dated March 19, 2001); 0.127 ppm in 1998–2000 (*see* 53 FR 15584 dated March 19, 2001); and, 0.123 ppm in 2000–2002.

This indicates that the monitored air quality improved over this time period.

In the January 30, 2003, proposed rule at 68 FR 4856–4858, and in the response to comment 19, EPA explains the basis for concluding that the observed air quality improvements are due to the implementation of permanent and enforceable emission reductions. The reasons cited include emission controls which have resulted in emission reductions, an analysis of meteorological conditions which has shown a trend in the reduction of ozone from 1989 to the present while the number of days conducive to forming ozone showed no significant trend, and an assessment of emissions in 1990 and 2000 which have shown substantial decreases in emissions of VOCs and NO_X.

Finally, it is noted that the commenter errs in combining the exceedance data from many monitors and concluding, on the basis of the exceedance totals that a worsening ozone trend has occurred. Referring to Table 1 in the January 30, 2003, proposed rule (68 FR 4850) (repeated above), one can see that many monitors, including the worst-case monitor at West Alton, show no consistent trend in exceedance numbers in the 2000–2002 period. The ''sudden'' increase in exceedances from zero to two at the Orchard Farm and South Lindbergh monitoring sites, although implying a worsening ozone trend, simply point to the instability of considering year-to-year changes within a small time period.

Comment 21: The only modeling which the commenter is aware of was relied upon in the June 26, 2001, rulemaking. This modeling shows that it is impossible to attain the NAAQS in St. Louis in 2002. The significant factor is long-range transport. This suggests that variations in out-of-state transport may account for the monitored improvements in air quality.

Response 21: Previous modeling referred to by the commenter was conducted as part of the attainment demonstration approved by EPA in the June 26, 2001, rulemaking (66 FR 33995). (This approval was vacated by the U.S. Court of Appeals for the Seventh Circuit, as explained previously.) This modeling demonstrated that utilizing planned controls and measures the area will attain the standard by no later than November 15, 2004. EPA disagrees with the commenter's assertion that the modeling demonstrated it was impossible to attain the standard in 2002. The purpose of the modeling was to determine the likelihood of attainment. EPA's approval of the states' attainment demonstrations did not include a determination that attainment or maintenance of the standard prior to 2004 was impossible.

The assumptions used in the modeling for the attainment demonstration approved in the June 26, 2001, rulemaking are described in an April 3, 2001, proposal (66 FR 17649–17652). In this discussion, EPA noted that the states incorporated corrections to the 1996 base year emissions inventory, an assessment of the model's performance by applying statistical tests, and assumptions regarding which states are affected by the NO_X SIP call including NO_X limits on facilities.

As discussed in the April 2001 document, the states had taken measures to revise the emissions inventory to reflect the most current data inputs available. In addition, an evaluation of the model was performed as a measure of the ''likelihood'' that the standard will be achieved. The June 26, 2001, rulemaking at 66 FR 17652 states:

> The states conclude, and EPA concurs, that the revised modeling system performs at an acceptable level because it satisfactorily reproduces peak ozone concentrations relative to the monitored peak ozone concentrations. The modeling system adequately simulates the observed magnitude and spatial and temporal patterns of monitored ozone concentrations. Furthermore, the modeling results accurately differentiate between days with marginal ozone levels and days with elevated ozone concentrations. Therefore, based on the revised modeling and WOE results presented by the states which confirm the adequacy of the adopted emission control strategy, EPA is approving the states' attainment demonstrations.

The conclusions made regarding the likelihood of attainment based upon the attainment demonstration modeling were the best that could be drawn from the available information. And, it is likely that different conclusions regarding attainment would be drawn if the states were required to conduct modeling as part of the maintenance demonstration. For example, if a prospective maintenance demonstration were performed with an ozone photochemical model following EPA guidance, the modeling would be allowed to use episode days from the 2000–2002 period, not 1991 and 1995 as was used in the attainment demonstration modeling. In addition, the modeling would use a more current base-year inventory (1999 or 2000) rather than the 1996 base-year inventory used in the attainment demonstration modeling. It is highly likely, if not certain, that the outcome would be a conclusion that attainment will be preserved through the required 10-year period.

Ozone models are designed to primarily predict the relative impacts of emission changes on future ozone levels. Thus, it is not uncommon to observe that actual monitored ozone concentrations are different from

modeled values at certain locations. The commenter's assertion that attaining the standard in 2002 is impossible is not supported by the existing science.

The commenter does not provide data to support its hypothesis that variations in out-of-state transport may account for the improvement in air quality. The commenter only speculates that out-of-state transport may account for the improvement in air quality. As described in the response to comments 19 and 20 above, the states demonstrated that improvements in air quality are due to permanent and enforceable emission controls which have resulted in emission reductions, an analysis of meteorological conditions which has shown no significant decrease in the annual number of days conducive to ozone formation, while there has been a significant reduction in monitored ozone concentrations, and an assessment of emissions in 1990 and 2000 which has shown decreased emissions of VOCs and NO_X. Thus, the states have demonstrated the improvements in the St. Louis area are due to permanent enforceable reductions in the St. Louis area.

E. Comments Related to Criterion 4: The Area Must Have a Fully Approved Maintenance Plan Meeting the Requirements of Section 175A

Comment 22: Section 175A(a) of the CAA requires that state maintenance plans must be SIP revisions. Section 110(a)(2)(A) of the CAA requires a SIP to contain enforceable emission limitations. The maintenance plans for each state do not include any enforceable emission limitations. For example, Missouri NO_X controls have not yet been promulgated.

Response 22: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is hereby providing a response regarding the Missouri portion of the St. Louis area. See the rulemaking in today's **Federal Register** regarding redesignation of the Illinois portion of the St. Louis area for EPA's response to this comment as it pertains to the Illinois portion of the St. Louis area.

In this rulemaking, EPA is approving Missouri's maintenance plan as a SIP revision.

The CAA requires the area to have a fully approved SIP and to have met all of the applicable requirements of the CAA. The area's SIP satisfies these requirements as described in this final rule and in EPA's proposed rulemaking published on January 30, 2003 (68 FR 4847). The measures that the states are relying on to maintain the 1-hour ozone standard have been approved into the SIPs and are state and Federally enforceable. This includes Missouri's NO_X RACT rule found at 10 CSR 10–5.510 and the statewide NO_X rule found at 10 CSR 10–6.350. (*See* response to comment 10 above regarding the NO_X SIP Call.) The states must continue to implement these measures as provided for in the Federally-approved SIPs.

The CAA does not require a separate level of enforcement for a maintenance plan as a prerequisite to redesignation. The enforcement program approved for and applicable to the SIPs as a whole also applies to the maintenance plan. See discussion in the Cincinnati redesignation (65 FR 37879, 37881–37882), and the Sixth Circuit decision in *Wall* v. *EPA,* 265 F. 3d at 438, upholding EPA's interpretation of the requirement. As explained below in the response to comment 26, Missouri has committed to continue to implement the measures included in the approved SIP and relied on for maintenance of the standard.

All of the control measures which the states relied upon are SIP-approved measures. EPA cannot withhold its approval of the maintenance plan submitted by the states because of concerns that the states may, at some future time, either submit a SIP revision to amend or remove a program, or that the states may fail to implement these programs in the St. Louis area. The Federally-approved SIP requirements remain in place and enforceable until such time as EPA takes action to approve SIP revisions to amend or remove them. This can only be done via Federal rulemaking, which includes procedures for public comment and review.

Comment 23: Section 182(j), 40 CFR 51.112(b), the Calcagni memo, and the General Preamble require the use of photochemical modeling to demonstrate maintenance. EPA is overruling Congress, EPA regulations and common sense by proposing to predict maintenance for ten years without any modeling. Monitoring is more accurate to show past concentrations, but modeling is required to predict future concentrations. The commenter cites *Ober* v. *U.S.E.P.A.,* 84 F.3d 304 (9th Cir. 1996) in support of its assertion.

Response 23: EPA disagrees with the commenter's assertion that the use of photochemical modeling to demonstrate maintenance is required by the CAA, EPA policy or EPA regulations. The EPA is not overruling Congress, or EPA regulations.

Section 175A requires states to develop and submit, as a SIP revision, a plan for maintaining the NAAQS for at least 10 years after redesignation. The plan shall contain such additional measures, if any, as the Administrator deems necessary to ensure such maintenance. Section 175A does not require modeling.

Section 182(j) contains no reference to maintenance plans. Section 182(j)(1) requires that each state in a multi-state ozone nonattainment area shall ''* * * (A) take all reasonable steps to coordinate, substantively and procedurally, the revisions and implementation of State implementation plans applicable to the nonattainment area concerned; and (B) use photochemical grid modeling or any other analytical method determined by the Administrator, in his discretion, to be at least as effective.'' The language in this section clearly refers to ''nonattainment'' areas. Thus, EPA believes that Section 182(j) is applicable to attainment demonstrations, not maintenance plans.

Even if the commenter is correct in its assertion that section 182(j) applies to maintenance plans, this section does not necessarily require modeling. EPA has the discretion to use other analytical methods determined to be at least as effective. In the Calcagni memo on page 9 EPA stated ''A State may generally demonstrate maintenance of the NAAQS by either showing that future emissions of a pollutant or its precursors will not exceed the level of the attainment inventory, or by modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS.'' By this policy, EPA has, in effect, expressed how its discretion will be utilized regarding the use of emissions in lieu of modeling in demonstrating maintenance. In addition, the Sixth Circuit in *Wall* v. *EPA* (265 F.3d 426, 435) determined that ''EPA's actions are completely consistent with its own interpretive memorandum, which allows for NAAQS maintenance to be demonstrated by showing that the future emissions of a pollutant's precursors will not exceed the level that allowed the area to achieve attainment in the first place.'' *See also* EPA's discussion in its brief in the *Wall* case. The *Ober* case cited by the commenter deals with modeling requirements for approval of a SIP revision in a nonattainment area for particulate matter, and has no relevance to the ozone maintenance plan at issue here.

The regulation at 40 CFR 51.112(a) requires the SIP to demonstrate that the measures, rules and regulations contained in the plan are adequate to provide for the timely attainment and maintenance of the NAAQS. The regulation at 40 CFR 51.112(b) specify

what the demonstration required in 40 CFR 51.112(a) must include. The Sixth Circuit in *Wall* v. *EPA* (265 F.3d 426, 435) determined that EPA's position that the regulation at 40 CFR 51.112(a) applies only to attainment demonstrations and not maintenance plans is ''neither impermissible nor in conflict with a statutory mandate * * *. Moreover, EPA's actions are completely consistent with its own interpretive memorandum, which allows for NAAQS maintenance to be demonstrated by showing that the future emissions of a pollutant's precursors will not exceed the level that allowed the area to achieve attainment in the first place.''

Lastly, the proposed rule at 68 FR 4858 states that projected emissions of NO_X in Illinois will be reduced from 141.64 to 96.67 tons per ozone season weekday from 2000 to 2014 and in Missouri, they will be reduced from 453.14 to 317.58 tons per ozone season weekday from 2000 to 2014. Projected emissions of VOCs in Illinois will be reduced from 94.11 to 75.98 tons per ozone season weekday from 2000 to 2014 and in Missouri, they will be reduced from 248.35 to 182.57 tons per ozone season weekday from 2000 to 2014. A ''common sense'' conclusion is that further emission reductions are projected to occur through 2014. Based on past trends of emissions decreases, reduced peak ozone levels will continue from 2000 to 2014. Further modeling would continue to demonstrate attainment. The commenter has not provided any data to indicate that these reductions in ozone precursors would lead to modeled increases in ozone concentrations.

Comment 24: EPA and the states have stated in testimony provided to courts and the public that maintenance of the NAAQS in 2003 is not possible. EPA and the states have stated that, due to upwind emissions, attainment of the NAAQS cannot be achieved until 2004. EPA's modeling demonstrates that it is not possible to assure that the NAAQS would be maintained in 2003.

Response 24: The Commenter uses the same arguments in this comment to state that the attainment of the NAAQS cannot be maintained as were used in comment 21 above to claim that the area cannot attain the NAAQS. See the response to comment 21 for further discussion.

EPA disagrees with the commenter's assertion that the modeling demonstrated it was impossible to maintain the standard in 2003. The purpose of the modeling is to predict the likelihood of attainment. EPA's approval of the states' attainment demonstrations did not include a determination that attainment or maintenance of the standard prior to 2004 was impossible.

The commenter refers to documents submitted by EPA and the states, as well as to language used in various rulemakings stating, in effect, that reductions in upwind emissions are necessary for attainment of the standard and that the earliest attainment date is projected to be November 15, 2004. At the time these documents were developed, EPA and the states were basing their conclusions on the attainment demonstration and the accompanying modeling. The statements made were the best conclusions that could be drawn from the available information.

The conclusion that the maintenance plan will provide for maintenance of the NAAQS for the next ten years as required by section 175A is based, in part, on more recent information than what was relied upon in the attainment demonstration which included the modeling referred to by the commenter. The maintenance plan includes an emission inventory which is more recent than the inventory used in the attainment demonstration. See the response to comment 36 for further discussion.

EPA has no data to support the commenter's hypothesis that variations in out-of-state transport may account for the improvement in air quality. The commenter only speculates that out-of-state transport solely account for the improvement in air quality. EPA concludes that the plan demonstrates maintenance through 2014.

Comment 25: The SIP must provide assurance that the states have adequate personnel, funding and authority to carry out the SIP. The record for this action must provide real evidence of this assurance.

Response 25: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is hereby providing a response regarding the Missouri portion of the St. Louis area. See the rulemaking in today's **Federal Register** regarding redesignation of the Illinois portion of the St. Louis area for EPA's response to this comment as it pertains to the Illinois portion of the St. Louis area.

EPA disagrees with the commenter that this action must include in the record further evidence of resource commitments. The analysis has already been performed in prior rulemakings and need not be reopened here. See the redesignation of Cincinnati (65 FR 37881–37882), Pittsburgh (66 FR 53102), and Cleveland (65 FR 77308, 77315) for additional examples in which EPA has taken this position. *See also, Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984 (6th Cir. 1998).

In a final rulemaking action published on April 9, 1980 (45 FR 24146), EPA approve Missouri's SIP as meeting the financial and manpower resource commitments of the CAA.

The Sixth Circuit in *Wall* v. *EPA* (265 F.3d 426, 437) determined regarding resource and authority commitments for enforcement that ''there is no language in the CAA or in the EPA's regulations that specifically requires that a separate commitment be made within the maintenance plans themselves * * *. Morever, this decision is in accord with the interpretation given to the CAA under the Calcagni Memorandum, advising that 'an EPA action on a redesignation request does not mean that earlier issues with regard to the SIP will be reopened,' an interpretation that has been upheld by this court.''

EPA also notes that more recent resource commitment reviews have been performed. For example, in the February 17, 2000, proposed rule at 65 FR 8099 EPA noted that in proposing to approve Missouri's I/M program, the ''the SIP includes a detailed budget plan that describes the source of funds for personnel, program administration, program enforcement, and purchase of equipment. * * * The SIP meets the Federal requirements for evidence of adequate tools and resources under 40 CFR.51.372 and 51.354.''

Comment 26: EPA policy states that a state may not relax existing controls upon redesignation. However, the states are moving LAER, offsets and NO_X RACT to the contingency plan without a modeling demonstration showing that these control measures are not needed for attainment, contrary to EPA policy.

Response 26: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is hereby providing a response regarding the Missouri portion of the St. Louis area. *See* the rulemaking in today's **Federal Register** regarding redesignation of the Illinois portion of the St. Louis area for EPA's response to this comment as it pertains to the Illinois portion of the St. Louis area.

Missouri has a commitment on page 29 of the maintenance plan which states ''The department provides assurance that all of the control measures adopted by state rules and listed in the ROP plan or this document will be enforced to ensure maintenance of the one-hour ozone NAAQS.''

The commenter refers to the Calcagni memo at page 10 which states that ''the

State will be expected to maintain its implemented control strategy despite redesignation to attainment, unless such measures are shown to be unnecessary for maintenance or are replaced with measures that achieve equivalent reductions.''

Section 175A requires that maintenance plans shall contain contingency provisions deemed necessary to assure that the states will promptly correct any violation of the standard which occurs after redesignation of the area as an attainment area. These provisions shall include a requirement that the state will implement ''all measures with respect to the control of the air pollutant concerned which were contained in the SIP for the area before redesignation of the area as an attainment area.'' On page 6 of an October 14, 1994, memorandum entitled, ''Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment'' from Mary D. Nichols, assistant Administrator for Air and Radiation, EPA stated its interpretation on the term ''measures'' used in section 175A does not include part D NSR permitting programs. In accordance with this interpretation, EPA believes that lowest achievable emission rate (LAER) and offsets, which are components of Missouri's part D NSR permitting program, are not required to be retained following redesignation of the St. Louis area as an attainment area.

LAER and offsets are specified in part D and subpart 2 of the CAA applicable to nonattainment areas. Upon redesignation to attainment, these requirements are no longer applicable. Removing the LAER and offsets provision in the states' permitting programs is not contrary to the above-mentioned policy. Upon redesignation to attainment, the LAER requirements included in stationary source permits and the offsets which were obtained by stationary sources at the time when the LAER and offset provisions were in effect, will remain in effect for those facilities. Thus, the LAER and offset measures which were relied upon to attain the NAAQS will remain in effect following redesignation.

Following redesignation, any new facilities subject to the state's permitting requirements will be subject, as a minimum, to the Prevention of Significant Deterioration (PSD) requirements of Part C of Title I of the CAA. (In Missouri, the LAER and offset requirements remain in effect, unless the NSR rules are revised by the state and the revision is approved by EPA.) Under the PSD requirements, the states must ensure that such new facility will not cause a significant deterioration of air quality to the extent that it causes or contributes air pollution in excess of the NAAQS (Section 165). As part of the PSD program sources are required to perform a source-specific air quality demonstration to show no adverse impact on the NAAQS. Thus, maintenance of the NAAQS is an inherent feature of the PSD program, should Missouri choose not to retain its current program for new source permitting in the future.

As for NO_X RACT, Missouri has an approved NO_X RACT rule which will remain in effect following redesignation. Thus, there will be no relaxation of NO_X RACT in Missouri following redesignation.

Regarding modeling, the Shapiro Memo at page 6 states that ''States may be able to move SIP measures to the contingency plan upon redesignation if the State can adequately demonstrate that such action will not interfere with maintenance of the standard.'' As stated above, for Missouri, all control measures established prior to redesignation as a result of the LAER and offset requirements are being retained following redesignation and NO_X RACT is being retained.

Comment 27: The contingency provision of the maintenance plan fall short of those required. All serious area requirements of Section 182(c) of the CAA must be included in the contingency plan and implemented promptly in case of a violation. Virtually none of these provisions are included in the contingency plan and thus cannot be approved.

Response 27: EPA disagrees with the commenter's assertion that all the serious area requirements of section 182(c) are required to be included in the contingency plan and implemented in case of a violation.

The requirements for maintenance plans and contingency measures are set forth in section 175A(d). Section 175A(d) states:

> Each plan revision submitted under this section shall contain such contingency provisions as the Administrator EPA deems necessary to assure that the State will promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area. Such provisions shall include a requirement that the State will implement all measures with respect to the control of the air pollutant concerned which were contained in the State implementation plan for the area before redesignation of the area as an attainment area.

None of the serious area requirements was an applicable requirement that was contained in the SIP prior to redesignation. The plan must contain contingency measures that the Administrator deems appropriate to assure that the states ''will promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area.'' As described in response to comment 28 below, EPA believes that this requirement has been met. The statute does not require that all serious area requirements be included in the maintenance plan as contingency measures but rather that all measures included in the SIP prior to redesignation be included in the maintenance plan as contingency measures. As explained previously, certain serious area requirements need not be met in the case of St. Louis since they are not yet due. Since these provisions are not applicable in St. Louis, they do not need to be included in the maintenance plan as contingency measures.

The commenter's assertion that ''there is no implementation plan applicable to this 'serious area' '' is addressed in other responses in this rulemaking. *See, e.g.*, response to comment 17.

Comment 28: 42 U.S.C. 7505a(d) requires that the states will promptly correct any violation of the standard which occurs after redesignation. However, there is nothing in either contingency plan which assures prompt correction of future violations. The plans contain no adopted measures, and no schedule to adopt specific measures. The plans offer to adopt an unspecified measure within eighteen months of notification of a violation. This is an unreasonably long period. The plans should require adoption in much less than eighteen months and immediate implementation.

Response 28: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is hereby providing a response regarding the Missouri portion of the St. Louis area. See the rulemaking in today's **Federal Register** regarding redesignation of the Illinois portion of the St. Louis area for EPA's response to this comment as it pertains to the Illinois portion of the St. Louis area.

EPA disagrees that Missouri's maintenance plan lacks adequate contingency provisions should the area violate the standard. As stated in the January 30, 2003, proposed rule at 68 FR 4859, the contingency plan portion of the maintenance plans delineated Missouri's planned actions in the event of future 1-hour ozone standard violations, increasing ozone levels threatening a subsequent violation of the ozone standard, and unanticipated

increases in ozone precursor emissions threatening a subsequent violation of the ozone standard. Missouri has developed a contingency plan with several levels of triggered actions depending on whether the ozone standard has actually been violated after the redesignation of the area to attainment or whether a subsequent violation of the ozone standard is threatened on the basis of increased ozone concentrations approaching the standard or unanticipated significant increases in ozone precursor emissions. Missouri has also committed to continue to implement all control measures included in the SIP prior to redesignation consistent with section 175A(d) of the CAA.

The action trigger levels and planned corrective actions in the contingency plan are the following:

A Level I Trigger will be exceeded if: (1) The monitored ambient ozone levels exceed 124 parts per billion, one-hour averaged, more than once per year at any monitoring site in the St. Louis maintenance area (the current St. Louis ozone nonattainment area), or more than two exceedances in any two- or three-year period; or (2) the St. Louis maintenance area's VOC or NO_X emissions for 2005 or 2008 increase more than 5 percent above the 2000 attainment levels. In the event one of these action trigger levels are exceeded, Illinois and Missouri will work together to evaluate the situation and determine if adverse emissions trends are likely to continue. If so, the states will determine what and where emission controls may be required to avoid a violation of the 1-hour ozone NAAQS. A study shall be completed within nine months of the determination of the action trigger exceedance.

A Level II Trigger will be exceeded if a violation of the 1-hour ozone NAAQS at any monitoring site in the St. Louis ozone maintenance area is recorded after the area is redesignated to attainment of the standard. If this trigger is exceeded, Illinois and Missouri will work together to conduct a thorough analysis to determine appropriate measures, from those listed below, to address the cause of the ozone standard violation.

The contingency plan for Missouri lists a number of possible contingency measures. The plan calls for the appropriate contingency measures to be adopted and implemented within 18 months of a Level I or Level II trigger being exceeded. The list of possible contingency measures in Missouri's contingency plan include the following:

Point Source Measures

- NO_X SIP Call Phase II (non-utility)
- Apply RACT to smaller existing sources
- Tighten RACT for existing sources covered by EPA Control Techniques Guidelines
- Expanded geographic coverage of current point source measures
- MACT for industrial sources
- New source offsets and Lowest Achievable Emission Rates
- Other measures to be identified

Mobile Source Measures

- Transportation Control Measures, including, but not limited to, area-wide rideshare programs, telecommuting, transit improvements, and traffic flow improvements.
- High Enhanced I/M (OBDII)
- California Engine Standards
- Other measures to be identified

Area Source Measures

- California Architectural/Industrial Maintenance (AIM)
- California Commercial and Consumer Products
- Broader geographic applicability of existing measures
- California Off-road Engine Standards
- Other measures to be identified

As stated in the September 4, 1992, Calcagni memo, page 12, ''For purposes of section 175A, a State is not required to have fully adopted contingency measures that will take effect without further action by the State in order for the maintenance plan to be approved. However, the contingency plan is considered to be an enforceable part of the SIP and should ensure that the contingency measures are adopted expediently once they are triggered.'' Thus, EPA has long interpreted section 175A not to require that contingency measures have already been adopted.

On July 21, 1983 (48 FR 33265), EPA approved Missouri rule 10 CSR 10–1.010, General Organization which set forth the organization, powers and duties of the Missouri Air Conservation Commission. The rule contained a new section (3) which described procedures to be followed by the Air Pollution Control Program for providing public notice and public participation in the rulemaking process.

In order to comply with 10 CSR 10–1.010, and the underlying statute by which Missouri is authorized by the legislature to adopt regulations, Missouri requires time to evaluate potential controls and provide public notice and public participation in the rulemaking process when adopting contingency measures. In addition, selected controls would require a period of time for sources to install the controls (*e.g.*, RACT on smaller sources) or for an implementing agency to fund and establish the new program (*e.g.*, transportation control measures). The commenter provided no rationale for its assertion that an outside date of 18 months for adoption of measures is unreasonable. The statute affords EPA discretion to determine whether the timeframe for implementation of contingency measures is reasonable. EPA finds that 18 months as described in the maintenance plan to adopt and implement contingency measures is a reasonable time period for Missouri to meet its regulatory obligations while meeting the requirement under section 175A to promptly correct any violation of the standard. In addition, this 18-month period to adopt and implement contingency measures is consistent with other redesignations such as Pittsburgh (66 FR 53102) in which a 12- to 24-month time period was specified to adopt and implement contingency measures. See also the Louisville redesignation (66 FR 53665, October 23, 2001) approving an 18-month schedule for implementation of contingency measures, and Northern Kentucky (Cincinnati-Hamilton) (65 FR 37879, June 19, 2000) and (67 FR 49600, July 31, 2002).

Comment 29: Neither maintenance plan provides any procedure for quantifying the reductions needed to correct violations.

Response 29: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is hereby providing a response regarding the Missouri portion of the St. Louis area. *See* the rulemaking in today's **Federal Register** regarding redesignation of the Illinois portion of the St. Louis area for EPA's response to this comment as it pertains to the Illinois portion of the St. Louis area.

As indicated in the response to comment 28 above, the maintenance plan refers to a violation of the NAAQS as a level II trigger. In the event of a violation, Illinois and Missouri have committed to work together to conduct a thorough analysis to determine appropriate measures to address the cause of the ozone standard violation. It is impossible for a state to determine, before a violation, what reductions are necessary to correct a violation. For example, if Missouri would select tightening RACT for existing sources as a contingency measure, the amount of reductions by implementing this measure is dependent upon the number of sources subject to RACT rules in the

area at the time of the violation. Since the state has no control over when a source ceases operating, it is impossible to determine, at this time, how many sources will be affected by a tightening of RACT which may be implemented at some unspecified time in the future. Thus it is impossible to determine beforehand how much of a reduction will be achieved by implementing this measure. *See* the discussion in the Cuyohoga and Jefferson Counties, Ohio, redesignation for particulate matter (65 FR 77308, December 11, 2000).

The approach taken in the maintenance plan is to conduct a thorough analysis to determine the magnitude of the reductions needed to correct the violation, the types of sources from which reductions must be made (*e.g.*, point, area, or mobile sources), and the mechanisms for achieving the reductions. The list of contingency measures includes a reasonable mix of measures from which to select the measures most suited to address a future violation (a level II trigger), if one occurs, or to alleviate an unanticipated decline in air quality (a level I trigger). EPA finds that this is a reasonable approach which will assure prompt correction of the violation. In addition, consistent with the Calcagni memo, the maintenance plan includes a Level I trigger in which Missouri will evaluate and determine if adverse emissions trends are likely to continue. If so, Missouri will determine what and where emission controls may be required to avoid a violation of the 1-hour ozone NAAQS.

Comment 30: The contingency measures in the maintenance plans are vague and open ended. Neither plan identifies any measures to be adopted. No firm schedule for adoption and implementation is included.

Response 30: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is hereby providing a response regarding the Missouri portion of the St. Louis area. See the rulemaking in today's **Federal Register** regarding redesignation of the Illinois portion of the St. Louis area for EPA's response to this comment as it pertains to the Illinois portion of the St. Louis area.

EPA disagrees with the commenter's assertion that the contingency measures are vague and open ended. In response to comments 28 and 29 above, EPA addressed the procedures contained in the maintenance plan for evaluating which measures are necessary to promptly correct a violation.

In addition, in response to comment 28 above, EPA identified the list of potential contingency measures contained in Missouri's maintenance plan along with a schedule of 18 months to adopt and implement selected contingency measures in the event of a violation (a level II trigger) or a decline in air quality (a level I trigger). EPA has concluded that the maintenance plan satisfies statutory requirements and EPA guidance regarding adoption and implementation of contingency measures consistent with EPA guidance and the CAA. The commenter acknowledges this 18-month time period to adopt and implement contingency measures in the comments.

Comment 31: Each maintenance plan contains inadequate provisions to respond to anticipated violations of the NAAQS. Anticipated violations are based upon inventories exceeding the 2000 inventory or two exceedances at any monitoring site. There is no commitment to adopt any additional controls to address anticipated violations.

Response 31: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is hereby providing a response regarding the Missouri portion of the St. Louis area. *See* the rulemaking in today's **Federal Register** regarding redesignation of the Illinois portion of the St. Louis area for EPA's response to this comment as it pertains to the Illinois portion of the St. Louis area.

As indicated above, a Level I Trigger will be exceeded if: (1) The monitored ambient ozone levels exceed 124 parts per billion, one-hour average, more than once per year at any monitoring site in the St. Louis maintenance area (the current St. Louis ozone nonattainment area), or more than two exceedances in any two-or three-year period; or (2) the St. Louis maintenance area's VOC or NO_X emissions for 2005 or 2008 increase more than 5 percent above the 2000 attainment levels. In the event one of these action trigger levels is exceeded, Illinois and Missouri will work together to evaluate the situation and determine if adverse emissions trends are likely to continue. If so, the states will determine what and where emission controls may be required to avoid a violation of the 1-hour ozone NAAQS. The emission controls will be selected from a list of measures included in the contingency plan. A study shall be completed within nine months of the determination of the action trigger exceedance, and Missouri's maintenance plan contains a commitment to adopt and implement the necessary contingency measures within 18 months of a Level I trigger consistent with the discretion afforded EPA by the statute. The contingency plan meets the requirement of section 175A(d) and the applicable guidance in the Calcagni memo.

Comment 32: The maintenance plans contain no commitment to implement measures in the SIP. EPA cannot approve the maintenance plan without this commitment.

Response 32: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is hereby providing a response regarding the Missouri portion of the St. Louis area. See the rulemaking in today's **Federal Register** regarding redesignation of the Illinois portion of the St. Louis area for EPA's response to this comment as it pertains to the Illinois portion of the St. Louis area.

The commenter is incorrect in its statement that the maintenance plan does not contain a commitment to implement measures in the SIP. Such a commitment was included in Missouri's maintenance plan. Section 5.4 of Missouri's maintenance plan states the following: ''The department provides assurance that all of the control measures adopted by state rules and listed in the ROP plan or this document will be enforced to ensure maintenance of the one-hour ozone NAAQS. Any revisions to the control measures included as part of the maintenance plan will be submitted as a SIP revision to EPA for approval.'' As described in response to comment 28, Missouri is retaining all of the measures contained in its SIP prior to redesignation.

Comment 33: The maintenance plans do not address expected growth in areas adjacent to the nonattainment area such as Ste. Genevieve County. An assessment of this growth should be included. Also, the plan is based on the ''irrational assumption'' that ''if there is no increase in emissions, and no decrease in controls, the standard will be maintained.''

Response 33: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is hereby providing a response regarding the Missouri portion of the St. Louis area. See the rulemaking in today's **Federal Register** regarding redesignation of the Illinois portion of the St. Louis area for EPA's response to this comment as it pertains to the Illinois portion of the St. Louis area.

The commenter's characterization of the ''basic premise'' of the maintenance plan is incorrect. The plan does not simplistically assume that there will be no increase in emissions. The plan carefully projects the growth in emissions which will occur in various source sectors, and the reductions which will occur based on emission

control programs which are in place, in order to determine the net change in emissions from 2000–2014. The states are required to and have applied the appropriate techniques to estimate and account for potential emissions changes in the area. These techniques are necessarily based on sector-based growth indicators (positive and negative), *i.e.*, sector-specific economic factors, because the states have no way of predicting specific changes which take place within the emissions inventory.

Specific projects, such as those cited by the commenter, are addressed through mechanisms other than maintenance plans. Missouri implements Prevention of Significant Deterioration and NSR permitting regulations. These regulations address the air quality impacts of new sources and modifications of existing sources both inside and outside the boundaries of the nonattainment area. They are designed to prevent new source construction or existing source expansion which would adversely affect an area's ability to attain or maintain a national standard. The anticipated plant referenced by the commenter is a potential source in Missouri and the state is currently in the process of reviewing construction permit applications under state permitting requirements. This plant has not received the preconstruction permit necessary for construction and operation. Before any such project can be permitted, a permit applicant would be required, among other requirements, to identify specific emission increases and decreases associated with a particular project and demonstrate that the project would not have a significant adverse impact on an ambient air quality standard. Missouri regulation 10 CSR 10–6.060, Missouri's construction permitting rule, is part of the Federally-approved SIP.

EPA believes that it is the function of the state's air permitting rules, rather than the maintenance plan, to ensure that specific potential new sources do not create emissions which would interfere with the maintenance of the ozone standard.

Comment 34: The emission estimates are unreliable. A recent study of flares throws doubt into the St. Louis emission inventory. EPA must consider the significant underestimation of flare emissions in the emission inventory.

Response 34: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is hereby providing a response regarding the Missouri portion of the St. Louis area. See the rulemaking in today's **Federal Register** regarding redesignation of the Illinois portion of the St. Louis area for EPA's response to this comment as it pertains to the Illinois portion of the St. Louis area.

EPA believes that the states used the appropriate emission estimates in developing the emission inventory. The commenter cites a study of emissions from flares reported by the Bay Area Management District which the commenter alleges shows that the states greatly underestimated emissions from flares. EPA does not agree that the study cited by the commenter renders the emission estimates unreliable.

The Bay Area Management Study referenced by the commenter is a draft document and specifically states on the first page ''Do not cite or quote.'' This document is currently undergoing scientific review. Therefore, no conclusions or comparisons should be drawn from this study until it becomes final. This study specifically addresses refinery flare emissions. However, no refineries are located in the Missouri side of the non-attainment area. Further review of the document has shown that methane was included in the emission factor that was used to derive emissions for this study. Methane is not an ozone precursor, and the inclusion of this pollutant could significantly alter the preliminary findings. The study targets the control efficiencies of the flares and states that ''efficiency drops approximately by the cube of the speed (wind)''. This would suggest that on high wind event days the control efficiencies would be at their lowest. However, in the St. Louis area, high ozone days have been characterized by low wind conditions, which would produce minimal impact on flare control efficiencies during the periods of concern. Lastly, NO_X and VOC emissions from all flares constitute less than one-tenth of one percent of the total inventory for the Missouri side of the St. Louis area. Therefore, any potential changes in calculation methodology from this source category, even if changes were warranted based on this draft study, would still likely produce an insignificant change to the total inventory.

Comment 35: Missouri states that it operates an enhanced I/M program but this has never been authorized by the Missouri legislature.

Response 35: The Missouri Legislature authorized MDNR to develop an I/M program, including a centralized test only program, as necessary to provide for attainment and maintenance of the national ambient air quality standard. That authority is codified in the Missouri Revised Statutes, Sections 643.300—643.355. Missouri's I/M program has incorporated most of the features of an enhanced program, described in our 2000 rulemakings (65 FR 8097, February 17, 2000 and 65 FR 31480, May 18, 2000).

The I/M program operated in the St. Louis, Missouri, area is known as the Gateway Clean Air Program. The Gateway Clean Air Program utilizes transient emission testing, the IM240 test, at centralized testing stations. These features are commonly thought of as being associated with an ''enhanced'' I/M program, as compared with decentralized, idle test programs. The IM240 test measures the vehicle under various operating conditions, measures NO_X, and makes these measurements in terms of grams per mile, all of which the idle test cannot. Additionally, the Gateway Clean Air Program includes gas cap testing, which addresses evaporative hydrocarbon emissions that a tailpipe test cannot. Thus, Missouri often refers to the Gateway Clean Air Program as an Enhanced I/M program. As seen in Missouri's December 2002 program evaluation, this program is achieving emission reductions beyond those which would be achieved through a decentralized, idle test program. The descriptive terminology is irrelevant in any event. Missouri has assumed emissions reductions for the program it has in place (whatever label is used to describe the program), and the commenter does not provide any information indicating that the assumed reductions are not appropriate.

Comment 36: The emission inventory submitted by Missouri is not an inventory of emissions during the attainment period but is projected emissions drawn from Missouri's old attainment demonstration. EPA cannot conclude that keeping emissions no higher than these projected inventory amounts will ensure maintenance of the NAAQS.

Response 36: Missouri did not use the same inventories in the attainment demonstration as was used in the maintenance plan. Missouri used a 1995/1996 inventory for the attainment demonstration and a 1999 inventory for the maintenance plan.

In the maintenance plan, Missouri selected 2000 as ''the attainment year'' for purposes of demonstrating attainment of the 1-hour ozone NAAQS. Both point and area source inventories were grown from 1999 emission inventories. To demonstrate maintenance of the ozone standard through a ten-year maintenance period, Missouri projected VOC and NO_X emissions for the St. Louis area to 2007

and 2014 and compared these projected emissions to the 2000 attainment year emissions. The 2007 emission estimates were generated to test a midpoint in the ten-year maintenance period.

In the April 17, 2000, proposed rule at 65 FR 20411 for the attainment demonstration, EPA noted that ''The state submittals describe in detail the procedures used to develop, and then project, the base year emission inventories to the 1995/1996 period and to project emission to account for growth and control through 2003.'' The maintenance plan does not rely on these inventories.

As stated in response to comment 23 above, keeping emissions no higher than those projected in the inventory will ensure maintenance of the NAAQS. The Sixth Circuit in *Wall* v. *EPA* (265 F.3d 426, 435) determined that ''EPA's actions are completely consistent with its own interpretive memorandum, which allows for NAAQS maintenance to be demonstrated by showing that the future emissions of a pollutant's precursors will not exceed the level that allowed the area to achieve attainment in the first place.''

Comment 37: Neither maintenance plan provides a technical analysis demonstrating that maintenance of the 2000 emission levels will assure maintenance of the NAAQS. Such a demonstration requires photochemical grid modeling.

Response 37: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is hereby providing a response regarding the Missouri portion of the St. Louis area. See the rulemaking in today's **Federal Register** regarding redesignation of the Illinois portion of the St. Louis area for EPA's response to this comment as it pertains to the Illinois portion of the St. Louis area.

EPA disagrees that modeling is required to demonstrate maintenance of the NAAQS. EPA reiterates its response to other comments including comments 23 and 36 in that the Court of Appeals for the Sixth Circuit in *Wall* v. *EPA* (265 F.3d 426, 435) determined that ''EPA's actions are completely consistent with its own interpretive memorandum, which allows for NAAQS maintenance to be demonstrated by showing that the future emissions of a pollutant's precursors will not exceed the level that allowed the area to achieve attainment in the first place.''

Missouri's maintenance plan includes a technical analysis as described in the response to comment 28 above that demonstrates maintenance of the NAAQS, based on a comparison of base year (attainment year) and projected VOC and NO_X emissions. This analysis meets the requirements of the CAA, is consistent with EPA guidance, and demonstrates maintenance of the NAAQS.

Comment 38: The maintenance plan must include RACM and RACT, for the reasons stated in comment 13 above.

Response 38: EPA incorporates its response to comment 13 in response to this comment.

F. Comments Related to Criterion 5: The Area Must Have Met All Applicable Requirements Under Section 110 and Part D

Comment 39: Neither state has met all the requirements applicable to the area. The serious area requirements of section 182(c) are applicable but none of these requirements have been met. Some of the requirements are applicable and enforceable now, such as the 50 ton per year threshold for permitting and enforcement and paragraphs 7, 8, and 10 of section 182(c).

Response 39: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is hereby providing a response regarding the Missouri portion of the St. Louis area. See the rulemaking in today's **Federal Register** regarding redesignation of the Illinois portion of the St. Louis area for EPA's response to this comment as it pertains to the Illinois portion of the St. Louis area.

As stated in the response to comments 6 through 11 above, the SIPs meet the applicable requirements and the serious area requirements are not applicable for purposes of this redesignation. States requesting redesignation to attainment must meet the relevant CAA requirements that come due prior to the submittal of a complete redesignation request. Areas may be redesignated even though they have not adopted measures that come due after the submission of a complete redesignation request. Upon completion of today's actions, the SIP is fully approved for all applicable regulations. SIP revisions addressing the serious area requirements were required to be submitted by January 30, 2004.

Section 182(c) paragraphs 7 and 8 refer to special rules for modifications of major sources while paragraph 10 refers to 1.2 to 1 offset requirements for serious nonattainment areas. Missouri rule 10 CSR 10–6.020 defines the Missouri portion of the St. Louis area as a moderate ozone nonattainment area. A SIP revision would be required to redefine the Missouri portion of the St. Louis area to a serious nonattainment area. As stated in response to comment 7, EPA established a future date for submission of the serious area requirements, including section 182(c)(7),(8), and (10), and the requirements are not now applicable for purposes of this redesignation.

G. Comments Related to Implementation of Contingency Measures

Comment 40: One commenter requested that in the final rule, EPA expressly state that in the event of a future violation of the NAAQS, Illinois and Missouri will not necessarily be required to evaluate any particular contingency measure nor be required to submit further attainment demonstrations.

Response 40: As stated above, the contingency plan portion of each state's maintenance plans delineate the states' planned actions in the event of future 1-hour ozone standard violations, increasing ozone levels threatening a subsequent violation of the ozone standard, and unanticipated increases in ozone precursor emissions threatening a subsequent violation of the ozone standard. In the event of a level I trigger, Illinois and Missouri will work together to evaluate the situation and determine if adverse emissions trends are likely to continue. If so, the states will determine what and where emission controls may be required to avoid a violation of the 1-hour ozone NAAQS. A study shall be completed within nine months of the determination of the action trigger exceedance. In the event of a Level II trigger, Illinois and Missouri will work together to conduct a thorough analysis to determine appropriate contingency measures. EPA expects that through this process, the states will identify the appropriate measures to implement to maintain the NAAQS. Redesignated areas are not subject to an obligation to meet additional nonattainment area requirements such as attainment demonstrations since they are no longer designated nonattainment areas. Instead, they must implement the contingency measures, which is what Congress provided for in the CAA.

H. Comments Related to Redesignation of a Portion of the St. Louis Area

Comment 41: One commenter requested that in the event the EPA is unable to finalize Missouri's I/M program, as proposed in a separate rulemaking on January 30, 2003, EPA should proceed with the redesignation for the Illinois portion of the St. Louis area.

Response 41: In today's **Federal Register**, EPA is approving Missouri's revised I/M rule. In addition, as explained above, EPA is finalizing its actions on the Missouri and Illinois

redesignation requests in separate rulemakings.

I. Comments Related to Interstate Transport

Comment 42: EPA must ensure that the CAA requirements of Section 110(a)(2)(D) pertaining to interstate transport impacts are actively and adequately met through the states' SIPs and through federal control programs such as the NO_X SIP call.

Response 42: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is hereby providing a response regarding the Missouri portion of the St. Louis area. *See* the rulemaking in today's **Federal Register** regarding redesignation of the Illinois portion of the St. Louis area for EPA's response to this comment as it pertains to the Illinois portion of the St. Louis area.

As stated above, EPA believes that submissions under the NO_X SIP call should not be considered applicable requirements for purposes of evaluating a redesignation request. The NO_X SIP call requirements are not linked with a particular nonattainment area's designation and classification. EPA believes that the requirements linked with a particular nonattainment area's designation and classification are the requirements that are the relevant measures to evaluate in reviewing a redesignation request. The NO_X SIP call submittal requirements continue to apply to a state regardless of the designation of any one particular area in the state.

Thus, we do not believe that the NO_X SIP call submission should be construed to be an applicable requirement for purposes of redesignation. The section 110 and part D requirements, which are linked with a particular area's designation and classification, are the relevant measures to evaluate in reviewing a redesignation request. This policy is consistent with EPA's existing conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. *See* Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Lorain, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking (60 FR 62748, December 7, 1995). *See also* the discussion on this issue in the Cincinnati redesignation (65 FR 37890, June 19, 2000).

Missouri has adopted and EPA has approved into the SIP a state-wide NO_X rule (10 CSR 10–6.350 Emissions Limitations and Emissions Trading of Oxides of Nitrogen (65 FR 82285, December 28, 2000). This rule will remain as a SIP requirement following redesignation of the area to attainment. EPA is also determining in a separate rulemaking (proposed at 67 FR 8396) whether or not the eastern part of Missouri is to be subject to the NO_X SIP call in response to a court remand.

Comment 43: The expected NO_X emission control programs and emission reductions for the St. Louis area should not be jeopardized due to the absence of continued federal enforceability of the SIPs.

Response 43: The SIPSs will remain Federally enforceable following redesignation of the St. Louis area to attainment. In addition, all of the NO_X emission controls measures which are currently in place will remain as SIP requirements following redesignation to attainment. These emission control measures include NO_X RACT, and the state-wide NO_X rule in Missouri. Any revisions to SIP requirements would have to meet the applicable provisions of the CAA and be approved by EPA.

Comment 44: The redesignation of the St. Louis area to attainment should not weaken the impetus to rapidly address NO_X transport to downwind areas. These efforts are critical to addressing the 8-hour and 1-hour ozone NAAQS in the St. Louis and downwind areas.

Response 44: The St. Louis redesignation to attainment will not delay EPA's decision as to whether or not the eastern portion of Missouri is to be included in the NO_X SIP call. EPA will closely review any proposed changes to the NO_X emission control programs which are currently in place in the St. Louis area to ensure that the proposed changes will not adversely affect the maintenance of the NAAQS.

VI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

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

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the 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 rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a

report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 11, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

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

Dated: April 29, 2003.

William W. Rice,

Acting Regional Administrator, Region 7.

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart AA—Missouri

■ 2. In § 52.1320(e) the table is amended by adding an entry at the end of the table to read as follows:

§ 52.1320 Identification of Plan.

* * * * *

(e) * * *

EPA APPROVED MISSOURI NONREGULATORY SIP PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
* * *	* *	*		*
Maintenance Plan for the Missouri Portion of the St. Louis Ozone Nonattainment Area including 2014 On-Road Motor Vehicle Emission Budgets.	St. Louis	12/06/02	5/12/03	

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 § 81.326 the table entitled ''Missouri—Ozone (1–Hour Standard)'' is amended by revising the entry for St. Louis Area to read as follows:

§ 81.326 Missouri.

* * * * *

MISSOURI—OZONE

[1-Hour Standard]

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * *	*	*	*	*
St. Louis Area:				
Franklin County	5/12/03	Attainment.		
Jefferson County	5/12/03	Attainment.		
St. Charles County	5/12/03	Attainment.		
St. Louis	5/12/03	Attainment.		
St. Louis County	5/12/03	Attainment.		

[1] This date is October 18, 2000, unless otherwise noted.

* * * * *

[FR Doc. 03–11187 Filed 5–9–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[IL 216–2;FRL–7496–4]

Approval and Promulgation of Implementation Plans, and Designation of Areas for Air Quality Planning Purposes; State of Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA has determined, in a separate rule published in today's **Federal Register**, that the St. Louis ozone nonattainment area (St. Louis area) has attained the one-hour ozone National Ambient Air Quality Standard (NAAQS). The St. Louis ozone nonattainment area includes the Counties of Madison, Monroe, and St. Clair in Illinois and the Counties of Franklin, Jefferson, St. Charles, and St.

Louis and St. Louis City in Missouri. Based on the determination of attainment, EPA has also determined, in today's separate rule, that certain ozone attainment demonstration requirements along with certain other ozone planning requirements of part D of title I of the Clean Air Act (CAA or Act) are not applicable for the St. Louis ozone nonattainment area.

The EPA is approving a request from the State of Illinois, submitted on December 26, 2002, to redesignate the Metro-East St. Louis area (Madison, Monroe, and St. Clair Counties, Illinois) (the Illinois portion of the St. Louis ozone nonattainment area) to attainment of the one-hour ozone NAAQS. In approving this request, the EPA is also approving the State's plan for maintaining the one-hour ozone NAAQS through 2014 as a revision to the Illinois State Implementation Plan (SIP); and finding as adequate and approving the State's 2014 Motor Vehicle Emission Budgets (MVEBs) for Volatile Organic Compounds (VOC) and Oxides of Nitrogen (NO_X), as contained in the maintenance plan, for transportation conformity purposes. Refer also to a separate rule published today (the attainment determination rule) regarding similar approvals for the State of Missouri.

The EPA is approving an exemption from certain NO_X emission control requirements, as provided for in section 182(f) of the Clean Air Act, for the Metro-East St. Louis area. Because the St. Louis area is currently attaining the one-hour ozone NAAQS, the EPA is granting the Metro-East St. Louis area an exemption from NO_X Reasonably Available Control Technology (NO_X RACT) requirements. However, all NO_X emission controls previously adopted by the State must continue to be implemented.

DATES: For good cause as explained below, this rule is effective May 12, 2003.

ADDRESSES: Copies of the documents relevant to this rule are available for inspection at the offices of the Environmental Protection Agency, Region 5, Regulation Development Section, Air Programs Branch (AR–18J), 77 West Jackson Boulevard, Chicago, Illinois 60604. Interested persons wanting to examine these documents should make an appointment with the appropriate EPA office at least 24 hours in advance before visiting the office. The reference file number is IL 216.

FOR FURTHER INFORMATION CONTACT: Edward Doty, Environmental Scientist, U.S. Environmental Protection Agency, Region 5, Air and Radiation Division (AR–18J), Air Programs Branch, Regulation Development Section, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6057, (doty.edward@epa.gov).

SUPPLEMENTARY INFORMATION: In the following, whenever ''we,'' ''us,'' or ''our'' are used, we mean the U.S. Environmental Protection Agency.

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I. What Is the Background for This Rule?

On January 30, 2003, EPA published a final rule and two proposed rules related to the St. Louis ozone nonattainment area (68 FR 4836, 68 FR 4842, and 68 FR 4847). The final rule (the January 30, 2003 final rule), 68 FR 4836, reinstated and made effective EPA's prior finding that the St. Louis nonattainment area failed to attain the one-hour ozone NAAQS (one-hour ozone standard) by November 15, 1996 (based on 1994–1996 ozone data) and reinstated a reclassification of the area to a serious nonattainment area. In addition, in the January 30, 2003 final rule, EPA established a schedule for submission of SIP revisions for Illinois and Missouri to meet the CAA requirements for a serious ozone nonattainment area and established November 15, 2004 as the date by which the St. Louis area must attain the ozone standard. A correction to this final rule was published on February 13, 2003 (68 FR 7410) which corrected a table entry.

In a January 30, 2003 proposed rule, 68 FR 4847 (the January 30, 2003 proposed rule), EPA proposed to determine that the St. Louis area has attained the one-hour ozone standard (clean air determination) based on complete, quality-assured ozone monitoring data for the period of 2000 through 2002. In addition, in the same proposed rule, EPA proposed to: (a) approve the requests from the States of Missouri and Illinois to redesignate the St. Louis area to attainment of the one-hour ozone NAAQS; (b) determine that certain planning requirements of the CAA are not applicable to the St. Louis area based on the clean air determination; (c) approve an exemption from NO_X RACT requirements in the Metro-East St. Louis area; and (d) find adequate and approve Missouri's and Illinois' 2014 MVEBs for VOC and NO_X, as contained in the States' maintenance plans, for transportation conformity purposes.

In the proposed rule found at 68 FR 4842, EPA proposed to approve a revision to the Missouri SIP for the vehicle inspection and maintenance (I/M) program operating in the Missouri portion of the St. Louis nonattainment area.

This rule is EPA's final action on the January 30, 2003 proposed rule as it relates to the Illinois portion of the St. Louis nonattainment area. A separate rule in today's **Federal Register** is EPA's final action finding that the St. Louis area has attained the 1-hour ozone standard along with EPA's final action on the January 30, 2003 proposed rule as it relates to the Missouri portion of the St. Louis nonattainment area. As noted in the January 30, 2003 proposed rule on page 4848, EPA received separate requests from Missouri and Illinois to redesignate the St. Louis area to attainment. In the January 30, 2003 proposed rule, EPA proposed actions related to both the Missouri and Illinois portions of the nonattainment area. However, EPA stated that it was considering issuance of two separate rules when it took final action on the redesignation requests. We received no comments on this aspect of the proposal. With the exception of the determination of attainment, EPA is taking final action related to the Missouri portion of the nonattainment area, and is taking final action on the Illinois portion of the St. Louis nonattainment area in separate rulemaking actions. Section 107(d)(3)(v) provides, as a prerequisite to redesignation, that: ''the State containing such area has met all requirements applicable to the area under section 110 and part D.'' This section plainly shows that Congress meant for EPA to evaluate whether each State requesting redesignation of an area has met the applicable requirements. In addition, each state has authority only to adopt and submit for approval a maintenance plan and a revision of its SIP that are applicable to its territory. Since each state has the authority only to request redesignation for the portion of the area within its boundaries, and EPA evaluated each states' request for redesignation separately, the final rules redesignating each states' portion of the nonattainment area are being published separately. However, EPA has concluded that in determining whether or not a multistate area has attained the standard based upon complete, quality-assured ambient air quality monitoring data, EPA will consider the attainment status of the area as a whole. Therefore,

EPA's finding that the area has attained the NAAQS applies to the entire nonattainment area, and we are publishing that finding in a separate rule today. See 67 FR 49600, July 31, 2002 (Reinstatement of Redesignation of Kentucky Portion of Cincinnati-Hamilton area) for additional discussion of these issues.

The history for this action has been set forth in detail in the January 30, 2003 proposed rule (68 FR 4847, 4848–4849), and is summarized below.

The St. Louis area was designated as an ozone nonattainment area in March 1978 (43 FR 8962). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Under section 107(d)(4)(A) of the Act, on November 6, 1991 (56 FR 56694), the St. Louis area was designated as a moderate ozone nonattainment area as a result of monitored violations of the one-hour ozone NAAQS during the 1987–1989 period. On January 30, 2003, EPA reclassified the area to a serious ozone nonattainment area, effective January 30, 2003.

Illinois and Missouri adopted and implemented emission control programs required under the Act to reduce emissions of VOC and NO_X. These emission control programs include stationary source RACT (VOC and NO_X in Missouri and VOC only in Illinois), vehicle inspection and maintenance (I/M), transportation control measures (TCMs), and other emission control measures (see the analysis and discussion of specific emission control measures at 68 FR 4847). As a result of the emission control programs, ozone monitors in the St. Louis area have recorded three years of ozone monitoring data for the 2000–2002 period showing that the area has attained the one-hour ozone NAAQS.

On December 26, 2002, the Illinois Environmental Protection Agency (IEPA) submitted an ozone redesignation request and ozone maintenance plan for the Metro-East St. Louis area along with a request for an exemption from NO_X RACT requirements for the Metro-East St. Louis area. Included in this State submittal is a plan to maintain the one-hour ozone NAAQS through 2014 and 2014 VOC and NO_X MVEBs for transportation conformity purposes. The January 30, 2003 proposed rule, in part, addressed this State submittal.

II. What Actions Are We Taking?

Considering the comments on the January 30, 2003 proposed rule, as discussed below and in the separate determination of attainment rule published in today's **Federal Register**, we conclude that it is appropriate to finalize the actions proposed in the January 30, 2003 proposed rule with regard to the Metro-East St. Louis area.

A. Determination of Attainment

In a separate rule in today's **Federal Register**, EPA has determined that the St. Louis ozone nonattainment area, consisting of both the Missouri and the Illinois portions of the area, has attained the one-hour ozone standard. See section II.A of today's determination of attainment rule for further discussion regarding EPA's attainment determination.

Also, in the separate rule in today's **Federal Register**, EPA has determined that certain attainment demonstration requirements (section 172(c)(1) of the Act) along with certain other related requirements of part D of title I of the Act, specifically the section 172(c)(9) contingency measure requirement (measures needed to mitigate a state's failure to achieve reasonable further progress toward, and attainment of, a NAAQS), the section 182 attainment demonstration and Rate-Of-Progress (ROP) requirements, and the section 182(j) multi-state attainment demonstration requirement, are not applicable to the St. Louis area. The discussion contained in the separate rule pertaining to the CAA requirements which are no longer applicable to the St. Louis area is hereby incorporated into this rule.

B. Redesignation of the Metro-East St. Louis Area to Attainment

Although EPA is determining that the entire St. Louis ozone nonattainment area has attained the one-hour ozone standard, EPA has concluded that it is appropriate to take final action related to Illinois' request to redesignate the Metro-East St. Louis area and to Missouri's request to redesignate the Missouri portion of the St. Louis nonattainment area in separate rulemaking actions published today. In this rule, EPA is taking the following actions with respect to the Metro-East St. Louis area:

1. EPA is approving a request from the State of Illinois to redesignate the Metro-East St. Louis area to attainment of the one-hour ozone NAAQS;

2. EPA is approving Illinois' plan for maintaining the one-hour ozone NAAQS through 2014, as a revision to the Illinois SIP;

3. EPA is finding as adequate and approving the 2014 MVEBs for VOC and NO_X in Illinois' ozone maintenance plan for the purposes of transportation conformity; and

4. EPA is approving an exemption (waiver) from NO_X RACT requirements for the Metro-East St. Louis area.

C. Effective Date of These Actions

EPA finds that there is good cause for this redesignation to attainment, SIP revision, and exemption from NO_X RACT requirements to become effective immediately upon publication because a delayed effective date is unnecessary due to the nature of a redesignation to attainment which relieves the area from certain Clean Air Act requirements that would otherwise apply to it. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule ''grants or recognizes an exemption or relieves a restriction'' and section 553(d)(3) which allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule''. As indicated above, in the January 30, 2003 final rule, EPA reclassified the St. Louis area to a ''serious'' nonattainment area and established a schedule for submission of SIP revisions fulfilling the requirements for serious ozone nonattainment areas. Upon the effective date of this rule, the State of Illinois will be relieved of the obligation to develop and submit these SIP revisions. In addition, the Illinois rules adopted to meet the requirements of title V of the CAA, provide that in a ''serious'' area, stationary sources with potential emissions of VOC and NO_X greater than 50 tons per year are major sources. As such, these major sources are subject to the title V permit program and are required to submit title V permit applications within twelve months of January 30, 2003. Upon the effective date of this rule, stationary sources which are newly subject to the title V permitting program as a result of the January 30, 2003 reclassification of the St. Louis area to a serious nonattainment area will be relieved of the requirement to submit title V permit applications to the State of Illinois. EPA finds that good cause exists for this final rule being immediately effective since it relieves the State of Illinois as well as stationary sources of certain requirements established as a result of the January 30, 2003 reclassification to a serious nonattainment area.

III. Why Are We Taking These Actions?

EPA has determined, in a separate rule published in today's **Federal Register**, that the St. Louis area has attained the 1-hour ozone standard. In

this rule, we have concluded that Illinois has fully met the requirements for redesignation found at sections 107(d)(3)(E) and 175A of the CAA for redesignation of an area from nonattainment to attainment for ozone. In addition, EPA believes that the State of Illinois has demonstrated that the area has attained, and that the criteria for redesignation have been met.

In the January 30, 2003 proposed rule at 68 FR 4847, EPA described the applicable criteria for redesignation to attainment. Specifically, section 107(d)(3)(E) allows for redesignation providing that: (1) the Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable emission reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and, (5) the state containing such area has met all requirements applicable to the area under section 110 and part D of the Act.

EPA has determined that the St. Louis area has attained the applicable NAAQS. EPA has fully approved the applicable implementation plan for the Illinois portion of the St. Louis area under section 110(k). EPA has determined that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions. EPA has fully approved a maintenance plan for the Illinois portion of the area as meeting the requirements of section 175A. Illinois has met all requirements applicable to the Metro-East St. Louis area under section 110 and part D of the Act.

By finding that the maintenance plan provides for maintenance of the NAAQS through 2014, EPA is hereby finding adequate and approving the 2014 VOC and NO_X MVEBs contained within the maintenance plan. The MVEB for NO_X in the Metro-East St. Louis area is 18.72 tons per ozone season weekday. The MVEB for VOC in the Metro-East St. Louis area is 10.13 tons per ozone season weekday.

The rationale for these findings is as stated in this rulemaking and the January 30, 2003 proposed rule found at 68 FR 4847.

IV. What Are the Effects of These Actions?

In a separate rule published in today's **Federal Register**, EPA has determined that the St. Louis area attained the 1-hour ozone standard and that certain attainment demonstration requirements (section 172(c)(1) of the Act) along with certain other related requirements of part D of title I of the Act, specifically the section 172(c)(9) contingency measure requirement (measures needed to mitigate a state's failure to achieve reasonable further progress toward, and attainment of, a NAAQS), the section 182 attainment demonstration and ROP requirements, and the section 182(j) multi-state attainment demonstration requirement, are not applicable to the St. Louis area. EPA's determination that the St. Louis area has met the one-hour ozone standard relieves Illinois and Missouri from the obligation to meet certain additional Clean Air Act requirements, which apply to areas not attaining that standard.

EPA notes that the area is likely to be designated nonattainment for the 8-hour ozone standard, and would be subject to any additional requirements as a result of such designation. EPA also notes that it is not revoking the one-hour standard for the St. Louis area.

Approval of the Illinois redesignation request changes the official designation for the one-hour ozone NAAQS found at 40 CFR part 81 for the Illinois portion of the St. Louis area, including Madison, Monroe, and St. Clair Counties, from nonattainment to attainment. It also incorporates into the Illinois SIP a plan for maintaining the one-hour ozone NAAQS through 2014. The plan includes contingency measures to remedy any future violations of the one-hour ozone NAAQS, and includes VOC and NO_X MVEBs for 2014 for the Illinois portion of the St. Louis area.

Approval of an exemption from NO_X RACT requirements for the Metro-East St. Louis area means that Illinois is no longer obligated by the Clean Air Act to adopt and submit NO_X RACT regulations for applicable NO_X stationary sources. This also means that the Illinois SIP can be judged to be complete despite the lack of such regulations in the Metro-East St. Louis area.

V. What Comments Did We Receive and What Are Our Responses?

We received 5 letters containing comments regarding the January 30, 2003 proposed rule. Four of the letters supported the proposed rulemaking action. Two of the four letters in support of the proposed rulemaking action raised issues to which we are responding in this section. One of the five letters contained adverse comments and opposed the proposed rulemaking actions. A summary of the comments and EPA's responses to them are provided below. This discussion addresses comments relating to the St. Louis area as a whole and comments specifically relating to the Illinois portion of the area. Comments relating specifically to the Missouri portion of the area are addressed in a separate final rule for Missouri also published today.

A. Comments Related to Meeting the Criteria for Redesignation to Attainment

Comment 1: The St. Louis area has failed to meet any of the five criteria specified in section 107(d)(3)(E) of the CAA for redesignation to attainment.

Response 1: EPA's determination that the St. Louis area has attained the one-hour ozone standard is contained in a separate rule published in today's **Federal Register**. Further, EPA has found that the area has met all five of the criteria specified in section 107(d)(3)(E) of the CAA for redesignation to attainment. Below are specific comments and responses raised by the commenter regarding each criterion. It should be noted that, although the commenter generally directed comments at issues for both States, Illinois and Missouri, this final rulemaking focuses on the Illinois portion of St. Louis ozone nonattainment area. To that extent, most responses given here focus on that portion of the nonattainment area. For our responses relative to the Missouri portion of the area, please refer to the separate final rulemakings for the State of Missouri also published in today's **Federal Register**.

B. Comments Related to Criterion 1: The Area Must Be Attaining the 1-Hour Ozone NAAQS

Comment 2: Monitoring data are not representative of air quality conditions. Monitoring data collected during the Labor Day weekend in 2002 are ''hopelessly contaminated'' due to voluntary emission reductions undertaken by industry and others.

Response 2: See the response to comment 2 in the separate rule in today's **Federal Register** regarding the determination of attainment for the St. Louis area. See also the responses to comments 18 and 19 below.

Comment 3: Monitored data run directly counter to air quality modeling.

The modeling supported the contention that the NAAQS could be attained only in 2004 after all control measures are adopted. Thus, the monitored ozone standard attainment during the 2000–2002 period is a ''fluke'' explainable by factors other than the success of the pollution control measures. In addition, based on a September 4, 1992 EPA policy memorandum (''Procedures for Processing Requests to Redesignate Areas to Attainment,'' from John Calcagni) (the Calcagni Memo), the commenter believes that supplemental ozone modeling may be necessary to determine the representativeness of the monitored data. Without such supplemental modeling, the commenter asserts that the January 30, 2003 proposed rule's implicit conclusion that the St. Louis area ozone data are ''representative'' is baseless.

Response 3: See the response to comment 3 in the separate rule in today's **Federal Register** regarding the determination of attainment for the St. Louis area. See also the responses to comments 19, 21, 23, and 24 below.

Comment 4: The monitored data do not support a conclusion of continued attainment since the number of exceedances tripled from 2000 to 2001 and more than doubled from 2001 to 2002, showing an upward trend in peak ozone concentrations. The commenter notes that, if the same number of ozone standard exceedances that occurred in 2002 occur in 2003 or 2004, the area will again violate the one-hour ozone standard.

Response 4: See the response to comment 4 in the separate rule in today's **Federal Register** regarding the determination of attainment for the St. Louis area. See also the response to comment 20 below.

Comment 5: EPA asserts that the data are ''quality assured'' but provided no explanation. EPA must demonstrate that the data are quality-assured. EPA must document the adequacy of the states' quality-assurance plans. In addition, the commenter questions whether the ozone data relied on for the attainment determination were quality-assured since they were entered into AIRS faster than usual.

Response 5: See the response to comment 5 in the separate rule in today's **Federal Register** regarding the determination of attainment for the St. Louis area. See also the response to comment 2 in the separate rule concerning EPA's actions taken to insure the proper monitoring and quality-assurance of ozone data.

C. Comments Related to Criterion 2: The Area Must Have a Fully Approved SIP Under Section 110(k)

Comment 6: The serious area SIP requirements of the CAA are applicable to the St. Louis area. These requirements have not been met by the States, and there is no ''claim'' that they could not have been submitted with the redesignation request. Thus, the SIPs are not ''fully approved''. In addition, the Calcagni Memo includes procedures suggested by EPA for reducing the stringency of the control measures by requiring them to become part of the contingency plan. The states have not done these procedures.

Response 6: The SIP, which is required to be ''fully approved'' under criterion 2, is the ''applicable'' implementation plan (section 107(d)(3)(E)(ii)). This section requires that the SIP must be ''fully approved'' under section 110(k) rather than partially, conditionally, or limitedly approved (Calcagni Memo page 3). Section 107(d)(3)(E)(v) requires the SIP to include ''all requirements applicable to the area under section 110 and Part D''. The commenter asserts, without explanation, that the statute requires EPA to determine that the ''serious'' area requirements are applicable to its consideration of the redesignation request for the area. However, the Act is not as prescriptive as the commenter assumes. *See, Wall* v. *EPA,* 265 F.3d 426,438 (6th Cir. 2001) which states ''The statute, however, does not describe how the EPA is to decide which Part D requirements are 'applicable' in evaluating a redesignation request.''

EPA has established a policy to provide guidance in determining how to apply the statutory criterion with respect to this issue. As stated in the January 30, 2003 proposed rule (68 FR 4851), the Calcagni Memo describes EPA's interpretation of the section 107(d)(3)(E) requirement. Under this interpretation, states requesting redesignation to attainment must meet the relevant CAA requirements that come due prior to the submittal of a complete redesignation request. Areas may be redesignated even though they have not adopted measures that come due after the submission of a complete redesignation request. Pursuant to the January 30, 2003 final rule (68 FR 4836), the emission control measures and plans resulting from serious nonattainment area requirements for the St. Louis area are due on January 30, 2004. Since these emission control measures and plans are not yet due, the Illinois SIP is not deficient. EPA policy and a reasonable application of sections 107(d)(3)(E)(ii) and (v) allow for an area to be redesignated without the area adopting measures which are not yet due. EPA has consistently applied this policy and interpretation in other redesignations, including the Detroit-Ann Arbor redisgnation discussed at 60 FR 12465–12466.

In addition, there is no requirement in section 107(d)(3)(E) that indicates that States must ''claim'' that they could not have submitted the serious area SIP revisions or any additional revisions at the time of the redesignation requests if those requirements are not applicable to the area when the requests are made. EPA's action to reclassify the St. Louis area to a serious nonattainment area was published in the **Federal Register** after Illinois had submitted its redesignation request, and it established a deadline for submission of the serious area requirements which has not yet passed. Thus, Illinois is not required to include in its request a ''claim'' that the State cannot complete the serious area requirements.

Finally, the Calcagni Memo (pages 12–13) discusses the statutory requirement that the State must implement all measures included in its SIP prior to redesignation. (In our response to comment 26 below, we discuss how this requirement has been met.) This requirement does not expand the universe of requirements which are ''applicable'' for purposes of redesignation. Unless the serious area requirements are applicable, and already contained in the SIP prior to redesignation, the discussion in the Calcagni Memo does not relate to the issue raised by the commenter. Because the serious area requirements are not applicable requirements for the Metro-East St. Louis area and Illinois, the guidance in the Calcagni Memo relating to mechanisms for converting part D measures into contingency measures is not applicable for the purposes of this redesignation and assessment of Illinois' ozone maintenance plan.

Comment 7: The January 30, 2003 proposed rule suggests that a SIP meeting the serious area requirements need not be fully approved because such a plan is not yet due. The commenter believes that the CAA does not make an exception for SIP revisions that have or have not become due. In fact, the serious area requirements have, as a matter of law, become due. The plans were due by June 14, 1998, and no later than May 18, 2002 pursuant to previous EPA and Court actions. The commenter stated that the May 18, 2002 date was set by EPA in a March 19, 2001 rulemaking, and that the effect of a

decision by the Court of Appeals for the Seventh Circuit was to reinstate this submission due date.

Response 7: Section 107(d)(3)(E)(ii) of the Act requires that the applicable SIP for the area must be fully approved under section 110(k) of the Act as one of the criteria for redesignation to attainment. As discussed in comments 6 above and 8 below, the applicable SIP for the Illinois portion of the St. Louis area is fully approved, and the serious area emission control measure and plan requirements are not yet due. In making this determination, EPA is not creating an ''exception'' to the statutory requirements for approved SIPs, but is determining that SIP revisions which are not yet due are not ''applicable'' for purposes of sections 107(d)(3)(E)(ii) and (v) of the Act (for purposes of assessing the State's ozone redesignation request). As noted in the January 30, 2003 proposed rule at 68 FR 4838, on November 25, 2002, the Court of Appeals for the Seventh Circuit vacated a June 26, 2001 final rule extending the St. Louis area's attainment date to November 15, 2004, and remanded to EPA for ''entry of a final rule that reclassifies St Louis as a serious nonattainment area effective immediately * * *'' (*Sierra Club and Missouri Coalition for the Environment* v. *EPA,* 311 F. 3d 853 (7th Cir. 2002)). In response to the Court's order, and in accordance with section 181(b)(2) of the Act, EPA reinstated the nonattainment determination and reclassification contained in the March 19, 2001 rulemaking (66 FR 15585), but did not reinstate the state plan revision and regulation due date established in that rulemaking. In the January 30, 2003 final rule, EPA established a deadline of 12 months after January 30, 2003 for the States to submit the serious area requirements. The rationale for the deadline is stated in the January 30, 2003 final rule (68 FR 4838). Today's final redesignation rule does not reopen the January 30, 2003 final rule, and comments on the appropriate deadline for the serious area requirements are beyond the scope of this rule.

With respect to the commenter's assertion that the serious area requirements should have been due by June 14, 1998, this is based on an argument made by the commenter in the U.S. District Court and in the Court of Appeals for the District of Columbia that the reclassification of the St. Louis area to serious should have been made retroactive to 1997, with the serious area measures due in 1998. This argument is not only outside of the scope of this rulemaking as explained previously, but it was also rejected by the Court. (*See, Sierra Club* v. *Whitman,* 285 F.3d, 68 (D.C. Cir. 2002)). As explained above, EPA's determination that the serious area requirements are not ''applicable'' with respect to this redesignation is consistent with the Act, with the January 30, 2003 final rule, with applicable EPA policy, and with relevant judicial decisions. Additionally, note that the decision made by the Court on November 25, 2002 required the EPA to rulemake to reclassify the St. Louis area to serious nonattainment effective immediately on the date of the rulemaking. The Court did not order the EPA to reinstate the reclassification with an effective date contained in the March 19, 2001 rulemaking, and the Court did not order the EPA to reinstate the May 18, 2002 State plan due date set forth in the March 19, 2001 rulemaking.

Comment 8: There is no ''fully approved'' or even partially approved SIP because the June 26, 2001 rule was vacated by the Court of Appeals for the Seventh Circuit.

Response 8: This comment refers to both the Missouri and Illinois portions of the St. Louis area. In this rule, EPA is providing a response regarding only the Illinois portion of the St. Louis area. See the separate rule in today's **Federal Register** regarding redesignation of the Missouri portion of the St. Louis area for EPA's response to this comment as it pertains to the Missouri portion of the St. Louis area.

In the January 30, 2003 proposed rule at 68 FR 4850 through 4856, EPA described the actions taken by EPA in the June 26, 2001 rule which were vacated by the Court of Appeals for the Seventh Circuit. Also, in the January 30, 2003 proposed rule at 68 FR 4850 through 4856, EPA reproposed to approve some requirements, and explained that certain additional actions vacated by the Court were no longer applicable requirements since the area has attained the NAAQS. As discussed in the January 30, 2003 proposed rule, the additional actions vacated by the Court which are no longer applicable include the contingency measure requirements of section 172(c), additional RACM requirements of section 172(c)(1) and section 182(b), and the attainment demonstration requirements of section 182(b)(1). That discussion is incorporated by reference herein. See also the discussion in section II.A of the separate rulemaking in today's **Federal Register** concerning the inapplicability of certain requirements.

In the June 26, 2001 rule, EPA took the following applicable actions: approved Missouri's and Illinois' 1-hour ozone attainment demonstration; found that the St. Louis ozone nonattainment area met the reasonably available control measures (RACM) requirements of the Act; found that the contingency measures identified by the States are adequate; approved the Illinois and Missouri motor vehicle emissions budgets (MVEBs); and approved an exemption from the NO_x RACT requirements for and disapproved an exemption from the NO_x new source review (NSR) and NO_x conformity requirements for the Illinois portion of the St. Louis ozone nonattainment area. EPA has determined, for the reasons stated in the proposed rule, that the attainment demonstration, and RACM requirements, are no longer applicable requirements since the area has attained the NAAQS. In this final rule, EPA is approving contingency measures as part of Illinois' maintenance plan, granting an exemption from the NO_x RACT emission control requirements, and approving MVEBs for 2014, for the Illinois portion of the area.

To be considered fully approved pursuant to section 110(k), the SIP must not have partial approval, disapproval, or conditional approval of submittals. EPA is not partially approving, disapproving, nor conditionally approving any of the SIP actions contained in the June 26, 2001 rule vacated by the Court. EPA is fully approving the measures submitted by Illinois which are applicable for purposes of section 107(d)(3)(E)(v), and is determining that the other submissions are not applicable. Therefore, the Illinois SIP is ''fully approved'' for all applicable requirements.

Comment 9: EPA attempted to assert that the Illinois and Missouri SIPs ''can be considered to be approved''. This is a ''pseudo-approval'' and an attempt by EPA to escape the simple straightforward statutory requirement for a fully approved SIP. This effort by EPA fails because of the clear language of the CAA, and because EPA must do a rulemaking to approve the SIPs. EPA is also avoiding the requirement for judicial review of its actions.

Response 9: This comment refers to both the Missouri and Illinois portions of the St. Louis area. In this rule, EPA is providing a response regarding only the Illinois portion of the St. Louis area. See the separate rule in today's **Federal Register** regarding redesignation of the Missouri portion of the St. Louis area for EPA's response to this comment as it pertains to the Missouri portion of the St. Louis area.

The use of the phrase ''can be considered to be approved'' (See the

January 30, 2003 proposed rule at 68 FR 4851–4852) was merely a statement that the SIP will meet the section 110 requirements and, as such, ''can be considered to be approved'' if EPA approves certain plan elements, described in the proposed rulemakings. In the January 30, 2003 proposed rule, EPA proposed to grant an exemption to the State of Illinois from the NO_X RACT requirements in the Illinois portion of the St. Louis area under section 182(f) of the Act. In today's final rule, EPA is taking final action exempting the State of Illinois from the NO_X RACT requirements in the Metro-East St. Louis area. By taking this action, EPA now concludes that the Illinois SIP is fully approved. The use of the quoted phrase was not intended to escape a statutory requirement. In fact, it recognized EPA's obligation to complete rulemaking in order to approve the SIP, and it recognized that EPA could not determine that the SIP was fully approved and complete the redesignation of the Illinois portion of the St. Louis area to attainment of the one-hour ozone NAAQS until it took final action to approve the remaining SIP element (an exemption from a RACT requirement, as approved today, eliminates the CAA requirement for NO_X RACT and moots this SIP element). All of the SIP elements which are applicable to the Metro-East St. Louis area for purposes of redesignation have either been approved in previous rulemakings or are approved in today's rule.

The proposed rule at 68 FR 4851 states that on November 25, 2002, the U.S. Court of Appeals for the Seventh Circuit (Court) issued a decision in *Sierra Club and Missouri Coalition for the Environment* v. *EPA,* 311 F.3d. 853 (7th Cir. 2002) (''Sierra Club''). In this decision, the Court vacated the June 26, 2001 final rule and remanded to EPA for entry of a final rule that reclassifies St. Louis as a serious nonattainment area for ozone. Although the Court's decision extensively addressed only EPA's action extending the attainment date for St. Louis providing its rationale for vacating this action, the Court's order also vacated the other EPA actions in the June 26, 2001 final rule. EPA has approved all SIP elements that are applicable to the Metro-East St. Louis area, and is today determining that others are not applicable. This is not a ''psuedo-approval'' of the SIP elements, but a determination that because certain requirements are not applicable (*e.g.*, the ozone attainment demonstration and RACM), they need not be approved. (See response to comment 8 for more discussion.) The applicable requirements which were approved prior to the vacated June 26, 2001 action (*e.g.*, VOC RACT and the 15 percent ROP plan) were subject to notice and comment rulemaking and judicial review. The measures approved today (the ozone maintenance plan and contingency measures, MVEBs, and NO_X RACT exemption) have been subject to notice and comment rulemaking and this action is subject to judicial review. Our determination that certain requirements are not applicable has been subject to notice and comment rulemaking and is subject to judicial review. The public has had full opportunity to comment on all of our actions, as evidenced by the numerous comments submitted by the commenter. Therefore, EPA has not avoided any requirement for public comment or judicial review.

In acting on a redesignation request, EPA can rely on any prior SIP approvals plus any additional approvals it may perform in conjunction with acting on the redesignation. EPA has already taken final action to approve all required SIP elements or is approving them in conjunction with this final action on the redesignation. Therefore, the Metro-East St. Louis area has a fully approved SIP. See the Calcagni Memo, page 3. The Calcagni Memo allows for approval of SIP elements and redesignation to attainment to occur simultaneously, and EPA has frequently taken this approach in its redesignation actions. See (66 FR 53096) (Pittsburgh-Beaver Valley, Pennsylvania, October 19, 2001); (65 FR 37879) (Cincinnati-Hamilton, Ohio, June 19, 2000); (61 FR 20458) (Cleveland-Akron-Lorain, Ohio, May 7, 1996); (60 FR 37366) (July 20, 1995); and (61 FR 31832–31833) (Grand Rapids, Michigan, June 21, 1996).

Comment 10: The SIP fails to meet the section 110 requirements because the inapplicable ''moderate'' area requirements contained in the SIP do not provide for implementation, maintenance, and enforcement of the NAAQS; modeling shows that the plan does not provide for attainment until 2004.

Response 10: EPA finds that the Illinois SIP meets the section 110 requirements. See the January 30, 2003 proposed rule and responses to comments 8 and 9 for further discussion. See the responses to comments 19, 21, 23, and 24 below. See also the response to comment 3 in the separate rule published in today's **Federal Register** with regard to the redesignation of the Missouri portion of the St. Louis area.

Comment 11: The SIP fails to meet the part D requirements of the CAA. EPA asserts that certain requirements of part D are not applicable because monitoring data show that the area has attained. EPA relies on the case of Sierra Club v. EPA for this conclusion. However, this case has no application here because it was not a ''redesignation case''. Given the attainment demonstration modeling, it would be impossible to conclude that any of the ''Part D requirements are not necessary''. All part D requirements are applicable unless, prior to redesignation, EPA formally exempts the St. Louis area from the Part D requirements.

Response 11: See section II.A of the separate rule published in today's **Federal Register** with regard to the redesignation of the Missouri portion of the St. Louis area for a discussion of the rationale for EPA's determination of attainment and suspension of certain CAA requirements.

The part D requirements applicable to the Metro-East St. Louis area specifically include the requirements of sections 172(c) and 176 as well as the applicable requirements of subpart 2. The section 172(c) requirements include General Plan Requirements which, to the extent applicable, must provide for the implementation of all RACM as expeditiously as practicable (at a minimum, this requires RACT for stationary sources), Reasonable Further Progress (RFP), emissions inventories, identification and quantification of allowable emissions for major new or modified stationary sources, permits for new and modified major stationary source, other emission control measures needed to assure attainment of the NAAQS, section 110(a)(2) requirements, and contingency measures. Section 110(a)(2) requirements include: submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; provisions for establishment and operation of appropriate apparatus, methods, systems, and procedures needed to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD)); provisions for the implementation of part D requirements (nonattainment area New Source Review (NSR)) permit programs); provisions for stationary source emission control measures, source monitoring, and source reporting; provisions for air pollution modeling; and provisions for public and local agency participation in planning and emission control rule development.

Subpart 2 requirements include: attainment demonstrations; 1990 base year inventory and periodic emissions inventories updates; emission statements; 15 percent rate-of-progress plans; VOC RACT; RACM; stage II vapor recovery; I/M; and NO_X emission controls.

As stated in the response to comment 8 above, Illinois' SIP meets all applicable requirements, including section 110 and part D requirements. As stated in the January 30, 2003 proposed rule at 68 FR 4852 and 4853, EPA has approved Illinois' RFP plan, permitting programs, and VOC RACT rules as meeting the requirements of part D. Illinois' SIP has regulations requiring annual emission statements from major sources. Illinois has submitted complete emission inventories, which have been approved by the EPA. Illinois has approved general conformity rules pursuant to section 176. In this action, EPA has approved Illinois' maintenance plan, which includes adequate contingency measures. Thus, Illinois has met the applicable part D requirements of the Act. Note also that, as stated in our response to comment 8 above, by finding that the St. Louis area has attained the one-hour ozone standard, the attainment demonstration and RACM requirements are no longer applicable requirements. See also the final rule for Missouri published in today's **Federal Register** describing how the Missouri portion of the area has met the applicable requirements.

Neither Section 107(d)(3)(E) of the Act nor EPA policy referenced by the commenter require modeling as a prerequisite to redesignation of an ozone nonattainment area. In addition, no modeling was conducted as part of the redesignation requests submitted by Missouri or Illinois. Thus, there is no modeling basis for EPA to make any conclusions regarding the necessity for the Part D requirements. (Modeling is not a required element of a redesignation request. See, 65 FR 37879—Cincinnati redesignation for additional discussion of this issue. (*See, Wall* v. *EPA,* 265 F.3d. 426 upholding this interpretation.) However, the monitoring data collected over the 2000 through 2002 period show that the area has in fact attained the ozone standard. EPA finds no need for further controls to bring about attainment.

With respect to the commenter's assertion that the Tenth Circuit Court of Appeals *Sierra Club* v. *USEPA* case is not applicable because it is not a ''redesignation'' case, the commenter misses the point of the case as it relates to St. Louis. The Tenth Circuit's endorsement of the interpretation of the Act in ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995 (Seitz Memo), that certain ''statutory'' requirements relating to attainment are not applicable to an area which has attained the standard, was not dependent on the fact that the area was not being redesignated. The case involved a determination by EPA that Salt Lake and Davies Counties, Utah, had attained the ozone standard, and that, therefore, certain additional requirements relating to attainment (such as an attainment demonstration) would not apply so long as the area continued to attain. The Court expressly recognized that the area could be redesignated without having met those requirements, even though the action at issue there was an attainment determination and not a redesignation. The Court stated: ''Recall that the Environmental Protection Agency's determination to exempt the Counties from limited ozone requirements is really no more than a suspension of those requirements for so long as the area continues to attain the standard or until the area is formally redesignated to attainment.'' (*Sierra Club* v. *USEPA,* 99 F.3d. 1551, 1558 (10th Cir.1996)) (*See also,* 66 FR 53095 for EPA's redesignation of the Pittsburgh area.) The Court did not say, as the commenter would have it, that the area would have to adopt those measures which had been determined to be unnecessary in order to be redesignated. As it did in the Utah Counties, in which EPA redesignated those Counties without requiring that they meet the suspended requirements, EPA is here determining that the St. Louis area is attaining the standard and that certain CAA requirements do not apply. The basis for this determination and the suspension of certain requirements for the area was explained in detail in the January 30, 2003 proposed rule at 68 FR 4850–4858 and further explained in this response to various comments on the issue. The determination is based on monitored data, not modeling, for reasons explained in this notice. Nothing in the Tenth Circuit case prohibits EPA from simultaneously suspending the requirements and redesignating an area, which is what this rulemaking accomplishes. EPA has taken this dual action in a number of areas, including Louisville (66 FR 53665), Cincinnati (65 FR 37879), Grand Rapids (61 FR 31831), and Pittsburgh (66 FR 53094). Upon redesignation to attainment, the suspended nonattainment requirements will no longer apply at all since the area is no longer designated as a nonattainment area.

Comment 12: EPA asserts that the RACM requirements of section 172(c)(1) need not be adopted because the area has attained the NAAQS, thus, these measures would not accelerate attainment. This is confoundingly circular reasoning which erases the ''fully approved'' requirements of the CAA. EPA's assertion is not relevant here.

Response 12: The April 16, 1992 General Preamble (57 FR 13560) states that EPA interprets section 172(c)(1) such that the RACM requirements are a ''component'' of an area's attainment demonstration. Thus, since the attainment demonstration is not an applicable requirement, RACM is also no longer an applicable requirement. See our response to comment 8 above for further discussion. EPA has also been consistent in this interpretation. See the final rulemaking for Pittsburgh, 66 FR 53096 (October 19, 2001) for additional discussion of this interpretation.

EPA believes that its policy is not ''confoundingly circular reasoning'' but rather straightforward reasoning. It is reasonable to conclude that states need not develop an attainment demonstration showing how they will attain a NAAQS that they have already attained. Similarly, states need not adopt additional RACM as necessary to accelerate attainment when attainment has already been achieved.

As stated in the response to comments 8 and 9 above, SIPs must be ''fully approved,'' as required by section 107(d)(3)(E)(ii), only with respect to the ''applicable'' requirements of section 110 and part D, as addressed in section 107(d)(3)(E)(v) of the Act. If requirements are not ''applicable'' with respect to those sections, they need not be fully approved.

Comment 13: The RACM and RACT requirements of the CAA are not tied to reasonable further progress but are required by the CAA to be implemented as expeditiously as practicable. This is supported by H.R. Rep. No. 101–490, Part 2, 101st Cong., 2d Sess. at p. 223; Sierra Club v. USEPA, 99 F.3d 1551, 1557 (10th Cir. 1996); Wall v. EPA, 265 F.3d 426, 441 (6th Cir. 2001); and, EPA's Seitz Memo, page 4. EPA's contention that any additional RACM and RACT measures need not be adopted directly repudiates the plain language of the CAA.

Response 13: This comment refers to both the Missouri and the Illinois

portions of the St. Louis area. EPA is hereby providing a response regarding the Illinois portion of the St. Louis area. See the separate rulemaking in today's **Federal Register** regarding the redesignation of the Missouri portion of the St. Louis area for EPA's response to this comment as it pertains to the Missouri portion of the St. Louis area.

The RFP requirement under section 172(c)(2) of the Act is defined via section 171(1) of the Act as an annual incremental reduction in emissions of the relevant air pollutant (VOC and NO_X in this case) that is required to ensure attainment of the applicable standard (here the one-hour ozone standard) by the applicable date. Section 182(b)(1)(A) sets forth the specific requirements for RFP for a moderate nonattainment area which includes a reduction in VOC emissions of at least 15 percent from baseline emissions. As stated in the January 30, 2003 proposed rule at 68 FR 4854, EPA approved Illinois' 15 percent ROP plan on July 14, 1997 (62 FR 37494).

RACM is a general requirement of section 172(c)(1) which calls for SIPs to contain ''all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology and shall provide for attainment of the national primary ambient air quality standards.'' EPA has consistently interpreted this provision to require only implementation of potential RACM measures that could contribute to reasonable progress or attainment. See General Preamble 57 FR 13498, April 16, 1992. Thus, where an area has already met all applicable requirements for progress and has attained the relevant standard, no additional RACM measures are required.

Section 182(b)(2) specifies the SIP requirements for RACT in moderate nonattainment areas. These requirements include implementation of RACT at each source of VOC covered by Control Technology Guidelines (CTGs) and at all other major sources of VOC. EPA has never indicated that the area could avoid implementing VOC RACT requirements because the area has attained the standard.

As stated in the January 30, 2003 proposed rule at 68 FR 4855, Illinois has adopted and implemented all required VOC RACT rules. In addition, section 182(f) establishes NO_X RACT requirements for major stationary sources. Under the provisions of section 182(f), the EPA is exempting the Illinois portion of the St. Louis ozone nonattainment area from the requirements for NO_X RACT in this rulemaking. With the granting of this exemption, Illinois has met all applicable RACT requirements.

The commenter states that H.R. Rep. No. 101–490, Part 2, 101st Cong., 2d Sess. at p. 223 does not tie RACM and RACT measures to RFP. This document is a recitation of the statute, but does not address tying RACM and RACT to RFP.

With respect to the commenter's contention that EPA's position regarding additional RACM and RACT measures being rejected in the Tenth Circuit Sierra Club case and in Wall v. EPA, the commenter is incorrect. The Wall case involved VOC RACT, which is not an issue here, because, as discussed previously, and in response to comment 14 below, Illinois has adopted all applicable VOC RACT measures. The Tenth Circuit Sierra Club case upheld EPA's determination that RACT was not tied to reasonable further progress, and that case did not address EPA's interpretation of RACM at all. The commenter's Seventh Circuit brief, which it relies on to support its position that RACM requirements must be met for an area to be redesignated, argued that EPA's interpretation of the RACM requirement (that section 172(c)(1) requires only implementation of all RACM which would expedite attainment) is an improper reading of the CAA. That issue was not addressed or decided by the Seventh Circuit. However, the issue of EPA's interpretation of the RACM requirement was raised and upheld in the 5th Circuit (Sierra Club v. EPA, 314 F.3d 735, 743–45 (5th Cir. 2002)) and in the District of Columbia Circuit (Sierra Club v. EPA 294 F.3d 155, 162–63 (D.C. Cir. 2002)). Both circuits found that EPA's interpretation that the statute only required implementation of RACM measures that would advance attainment was reasonable.

Comment 14: The rulemaking should identify each VOC RACT rule implemented by the states and identify whether the states have met the VOC RACT requirements.

Response 14: This comment refers to both the Missouri and the Illinois portions of the St. Louis area. EPA is here providing a response regarding the Illinois portion of the St. Louis area. See a separate rulemaking in today's **Federal Register** regarding redesignation of the Missouri portion of the St. Louis area for EPA's response to this comment as it pertains to the Missouri portion of the St. Louis area.

The January 30, 2003 proposed rule states at 68 FR 4855 that both States have adopted and implemented all required VOC RACT rules. In addition, the proposed rule provided the following Web site which contains the content of Illinois rules: *http://www.epa.gov/region5/air/sips/sips.htm.*

The Illinois VOC RACT rules for the Metro-East St. Louis area listed on this Web site include the following:

Part 219—A General Provisions
Part 219—B Organic Emissions From Storage And Loading Operations
Part 219—C Organic Emissions From Miscellaneous Equipment
Part 219—E Solvent Cleaning
Part 219—F Coating Operations
Part 219—G Use Of Organic Material
Part 219—H Printing And Publishing
Part 219—Q Synthetic Organic Chemical And Polymer Manufacturing Plant
Part 219—R Petroleum Refining And Related Industries; Asphalt Materials
Part 219—S Rubber And Miscellaneous Plastic Products
Part 219—T Pharmaceutical Manufacturing
Part 219—V Socmi: Batch And Air Oxidation Processes
Part 219—W Agriculture
Part 219—X Construction
Part 219—Y Gasoline Distribution
Part 219—Z Dry Cleaners
Part 219—Aa Paint And Ink Manufacturing
Part 219—Bb Polystyrene Plants
Part 219—Gg Marine Terminals
Part 219—Hh Motor Vehicle Refinishing
Part 219—Pp Miscellaneous Manufacturing
Part 219—Qq Misc. Formulation Mfg.
Part 219—Rr Misc. Organic Chemical Mfg.
Part 219—Tt Other Emission Units
Part 219—Appendices.

These VOC control rules have been incorporated into the Illinois SIP by reference at 40 CFR 52.720. As part of the December 26, 2002 redesignation request submittal, the IEPA has confirmed that the State has implemented all RACT rules contained in the SIP.

Comment 15: The January 30, 2003 proposed rule concedes that EPA's waiver of the NO_X RACT requirements for the Illinois portion of the nonattainment area was vacated by the Court of Appeals for the Seventh Circuit. Therefore, the Illinois SIP is not approvable because it fails to meet the NO_X RACT requirements of the Act.

Response 15: As proposed in the January 30, 2003 proposed rule at 68 FR 4847 and as finalized in this rulemaking, the EPA is exempting the Metro-East St. Louis area from the NO_X RACT requirements under section 182(f) of the Act. This NO_X RACT exemption

is based on the St. Louis area attaining the one-hour ozone NAAQS without the implementation of these NO_X RACT emission controls. Section 182(f), and in particular section 182(f)(2)(B)(i), of the Act, provides for such an exemption since NO_X RACT emission reductions in this area would be in excess of those emission reductions needed to attain the standard, as evidenced by EPA's determination of attainment finalized in a separate rulemaking for Missouri also published in today's **Federal Register**. The rationale for the exemption is not the same as that stated in the June 26, 2001 final rule vacated by the Court of Appeals for the Seventh Circuit. The vacated NO_X RACT exemption was based on a modeled attainment demonstration indicating that additional NO_X emission reductions in this area would not be needed to attain the one-hour ozone standard. The EPA is not relying on the exemption basis expressed in that earlier, vacated final rule, but rather on a new determination, based on monitored air quality. Attainment of the one-hour standard without the implementation of NO_X RACT rules demonstrates that such rules are not needed to attain the one-hour ozone standard in the St. Louis area. Therefore, the Metro-East St. Louis area qualifies for a NO_X RACT exemption under section 182(f)(2)(B)(i) of the Act.

Comment 16: As the EPA concedes in the January 30, 2003 proposed rule, the Illinois SIP does not include transportation conformity procedures as required by the Act. EPA has no authority to waive this mandatory requirement for SIPs. Therefore, Illinois' SIP is incomplete.

Response 16: Section 176(c) of the Act provides that state conformity provisions must be consistent with Federal transportation conformity regulations that the CAA requires EPA to promulgate. The Federal transportation conformity regulations were finalized on November 24, 1993, amended on August 7, 1995, and amended again on August 15, 1997 (40 CFR parts 51 and 93 Transportation Conformity Rule Amendment: Flexibility and Streamlining). On March 2, 1999, a court decision (Environmental Defense Fund v. EPA, 167 F.3d 641 (D.C. Cir. 1999)) rescinded several sections of the Federal transportation conformity rule, requiring EPA to revise those sections of the Federal rule. Illinois submitted transportation conformity rules on September 23, 1998. The SIP revision was submitted by Illinois in response to the August 1997 changes to the Federal regulations. EPA has not acted on the Illinois transportation conformity rules submittal as it does not address later Federal transportation conformity regulation amendments. Once EPA has completed the revisions to the Federal rule to reflect the 1999 court decision, Illinois will need to revise the State's rule to address the changes.

EPA believes that it is reasonable to interpret the conformity requirements as not applying for purposes of evaluating Illinois' ozone redesignation request under section 107(d) of the Act. The rationale for this is based on a combination of two factors. First, the requirement to submit SIP revisions to comply with the conformity provisions of the Act continues to apply to a nonattainment area after redesignation to attainment, since such an area would be subject to a section 175A maintenance plan. Second, EPA's Federal conformity rules require the performance of conformity analyses in the absence of Federally approved state rules. Therefore, because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under Federal rules if state rules are not yet approved, EPA believes it is reasonable to view these requirements as not applying for purposes of evaluating a redesignation request. EPA has explained its rationale and has applied this interpretation in a number of redesignation actions. See redesignations for: Tampa, Florida (60 FR 52748, December 7, 1995); Jacksonville, Florida (60 FR 41, January 3, 1995); Miami, Florida (60 FR 10325, February 24, 1995); Grand Rapids, Michigan (61 FR 31835, June 21, 1996); and Cleveland-Akron-Lorain, Ohio (61 FR 20458, May 7, 1996). The U.S. Court of Appeals for the Sixth Circuit recently upheld this interpretation in *Wall* v. *EPA*, No. 00–4010, Slip Op. at 21–24 (6th Cir. September 11, 2001). The Court upheld EPA's view that failure to submit a revision that meets the part D transportation conformity requirements is not a basis to deny an ozone redesignation request. Therefore, the EPA can redesignate the Illinois portion of the St. Louis ozone nonattainment area to attainment of the one-hour ozone standard notwithstanding the lack of fully approved transportation conformity rules in Illinois' SIP.

D. Comments Related to Criterion 3: The Improvement in Air Quality Must Be Due to Permanent and Enforceable Reductions in Emissions

Comment 17: The St. Louis area cannot meet this requirement since there is not an approved SIP meeting the ''serious'' area requirements, and there is no applicable implementation plan.

Response 17: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is here providing a response regarding the Illinois portion of the St. Louis area. See a separate rulemaking in today's **Federal Register** regarding redesignation of the Missouri portion of the St. Louis area for EPA's response to this comment as it pertains to the Missouri portion of the St. Louis area.

As described in the response to comments for Criterion (2) above, the Illinois SIP meets the applicable CAA requirements. The applicable SIP requirements are described in the January 30, 2003 proposed rule (68 FR 4850–4856). EPA's approval of previous SIP submittals and this rulemaking, which grants Illinois an exemption from the NO_X RACT requirements, render Illinois' SIP ''fully approved'' for all applicable SIP requirements. As stated in response to comments 7 and 8 above, since the serious area requirements are not yet due, the SIP is not deficient even though the serious area requirements have not been included.

In any event, this criterion is not dependent on which requirements are applicable or have been approved or implemented. The requirement is that air quality improvements be attributable to permanent and enforceable emissions reductions, which is a separable inquiry from the question of the requirements applicable to the area. Illinois' December 26, 2002 submission contains a detailed analysis of the air quality improvements in the St. Louis area and their relation to the emission reductions resulting from the permanent and enforceable emission control measures which are in place in the St. Louis area. (See response to comment 19 below for further discussion.) These measures and resulting emissions changes are listed in the January 30, 2003 proposed rule at 68 FR 4856–4858. These measures are all part of the applicable SIP. Thus, the commenter is incorrect in its assertion that there is no applicable SIP.

Comment 18: It is impossible to demonstrate that monitored concentrations during and after the 2002 Labor Day weekend resulted from permanent and enforceable emissions reductions. The emissions reductions were due to voluntary curtailment of operations by large industrial operations.

Response 18: The monitoring data for the St. Louis nonattainment area demonstrate that the estimated number of exceedances per year averaged over three years is 1.0 or less at all monitoring sites in the area. EPA

believes that any voluntary measures taken by industry and others over a two or three day period in this three year time period does not render the air quality monitoring data unrepresentative of the air quality. As explained in more detail in response to comment 19 below, ozone levels monitored during 2000–2002 are due to permanent and enforceable emission control measures which are in place (*e.g.* I/M programs, RACT on VOC stationary sources).

In the event that some sources did voluntarily reduce emissions over this two or three day period, EPA has no basis to conclude that these voluntary reductions had a significant effect on the monitored air quality. As the commenter points out, ozone formation occurs through ''complex chemistry and meteorology''. Voluntary reductions over a short time period may or may not have had an impact on the monitored air quality. (We note that ''voluntary'' reductions are always a factor, since total emissions at a given point in time depend, for example, on how many people decide to drive on a given day or weekend). However, the State's demonstration that air quality improvements are due to permanent and enforceable emission reductions is based on its analysis of emission reductions over a ten-year period (see response to comment 19), consistent with the guidance in the Calcagni Memo at page 4.

Note that in general, EPA encourages voluntary reductions to reduce emissions. EPA supports programs such as the Air Quality Index which encourages people to voluntarily reduce ozone forming activities such as filling gas tanks, painting, mowing, etc. at times when ozone formation is expected to be high. Although these measures are not enforceable nor measurable, they are encouraged. In addition, EPA does not believe that Congress intended, in enacting section 107(d)(3)(E)(iii) of the Act, that communities and states, acting to protect the health of their residents, should be ineligible for redesignation merely because they encourage voluntary ozone precursor emission reductions during periods when ozone concentrations may be high.

Comment 19: EPA cannot demonstrate that permanent and enforceable emission reductions are responsible for any alleged improvement of air quality. The only way to demonstrate this point is through photochemical grid modeling. No such modeling has been presented. Without modeling, EPA's claim is pure speculation. Emission reductions attributable to the emission controls ''could just as easily lead to increases in ozone concentrations.'' The attainment demonstration modeling shows that attainment was ''impossible'' in 2003.

Response 19: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is here providing a response regarding the Illinois portion of the St. Louis area. See a separate rulemaking in today's **Federal Register** regarding redesignation of the Missouri portion of the St. Louis area for EPA's response to this comment as it pertains to the Missouri portion of the St. Louis area.

EPA's response to this and other comments on the attainment demonstration modeling is included in the response to comments 21 and 24 below. In addition, see Wall v. EPA (265 F.3d 426, 435) and our response to comment 23 for further discussion regarding the use of modeling in demonstrating maintenance of the NAAQS.

Neither section 107(d)(3)(E)(iii) of the Act nor the Calcagni Memo referenced by the commenter require modeling as a prerequisite to redesignation of an ozone nonattainment area. Thus, modeling is not a necessary prerequisite for demonstrating that the improvement in air quality is due to permanent and enforceable reductions. See the General Preamble for the Interpretation of Title I of the CAA Amendments of 1990, (57 FR 13496) (April 16, 1992), supplemented at 57 FR 18070 (April 28, 1992); ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' John Calcagni, Director, Air Quality Management Division, September 4, 1992; ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992,'' Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993 (Shapiro Memo); and ''Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,'' D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993. Our policies provide that an area may meet this requirement by showing how its ozone precursor emissions changed due to permanent and enforceable emissions reductions from when the area was not monitoring attainment of the 1-hour ozone NAAQS to when it reached attainment. See the rationale set forth in the Cincinnati redesignation (65 FR 37879, 37886–37889) (June 19, 2000) and the Pittsburgh redesignation (66 FR 53094) (October 19, 2001). The Court of Appeals for the Sixth Circuit has recently upheld EPA's interpretation in *Wall* v. *EPA* (265 F.3d 426, 435).

In the January 30, 2003 proposed rule at 68 FR 4856–4858, EPA explains the basis for concluding that the observed air quality improvements are due to the implementation of permanent and enforceable emission reductions. The reasons cited include: emission controls which have resulted in emission reductions; an analysis of meteorological conditions which has shown a downward trend in ozone design values while the annual number of days conductive to forming high ozone concentrations showed no significant trend between 1989 and 2002; and an assessment of emissions in 1990 and 2000 which has shown a substantial decrease in emissions of VOC and NO_X.

Annual days conducive to ozone formation (those days with relatively clear skies, low wind speeds and southerly wind directions, high peak temperatures exceeding 85 degrees Fahrenheit, and little or no precipitation) have shown no noticeable trend up or down, only relatively random year-to-year variations. The annual number of ozone conducive days have stayed between approximately 20 and 50, with no consistent increasing or decreasing trend. Meanwhile, annual site-exceedances have decreased from over 120 in 1978, over 100 in 1983, over 60 in 1988, to a total of 11 in the three year period of 2000 to 2002, showing a significant downward trend and steadily improving peak ozone levels. In addition, the year-to-year fluctuation of annual conducive days cannot be correlated with higher or lower ozone exceedance levels over the last few years. Since 1989, as the annual number of conducive days fluctuated from year-to-year with no significant long term trend, the number of exceedances demonstrated a significant long term downward trend. This indicates a disassociation between monitored exceedances and meteorological effects.

During the 1990–2000 period, as the area-wide worst-case three year ozone design values (see our response to comment 20 for further discussion of the area's ozone design values) in the St. Louis area were decreasing, the VOC and NO_X emissions in the St. Louis area were also significantly decreasing in a downward trend. The following tables list VOC and NO_X emissions in 1990 and 2000 for the Missouri and Illinois portions of the St. Louis ozone nonattainment area. Both sections of the nonattainment area have experienced a

downward trend in VOC and NO_X emissions. The downward trend in emissions and ozone design values with no significant trends in days conducive to ozone formation implies that observed improvements in air quality are due to the implementation of permanent and enforceable emission control measures.

1990 AND 2000 MISSOURI PORTION OF THE ST. LOUIS NONATTAINMENT AREA VOC AND NO_X EMISSIONS

[Emissions in Tons Per Ozone Season Weekday]

Source category	VOC	NO_X
1990:		
Point Sources	81.97	347.61
Area Sources	87.74	29.47
On-Road Mobile Sources	135.421	135.00
Off-Road Mobile Sources	64.30	114.32
1990 Totals	369.43	626.40
2000:		
Point Sources	46.59	165.96
Area Sources	57.38	32.27
On-Road Mobile Sources	103.79	181.75
Off-Road Mobile Sources	40.59	73.16
2000 Totals	248.35	453.14

1990 AND 2000 METRO-EAST AREA VOC AND NO_X EMISSIONS

[Emissions in tons per ozone season weekday]

Source category	VOC	NO_X
1990:		
Point Sources	74.05	95.85
Area Sources	33.84	1.66
On-Road Mobile Sources	43.27	45.13
Off-Road Mobile Sources	23.49	23.99
1990 Totals	174.651	166.63
2000:		
Point Sources	17.91	61.91
Area Sources	28.32	1.18
On-Road Mobile Sources	26.57	54.71
Off-Road Mobile Sources	21.31	23.85
2000 Totals	94.11	141.64

Reductions in VOC and NO_X emissions have brought many areas across the Country into attainment. EPA has approved many ozone redesignations showing decreases in ozone precursor emissions resulting in attainment of the ozone standard. See redesignations for Charleston (59 FR 30326, June 13, 1994; 59 FR 45985, September 6, 1994), Greenbrier County (60 FR 39857, August 4, 1995), Parkersburg (59 FR 29977, June 10, 1994); (59 FR 45978, September 6, 1994), Jacksonville/Duval County (60 FR 41, January 3, 1995), Miami/Southeast Florida (60 FR 10325, February 24, 1995), Tampa (60 FR 62748, December 7, 1995), Lexington (60 FR 47089, September 11, 1995), Owensboro (58 FR 47391, September 9, 1993), Indianapolis (59 FR 35044, July 8, 1994; 59 FR 54391, October 31, 1994), South Bend-Elkhart (59 FR 35044, July 8, 1994; 59 FR 54391, October 31, 1994), Evansville (62 FR 12137, March 14, 1997; 62 FR 64725, December 9, 1997), Canton (61 FR 3319, January 31, 1996), Youngstown-Warren (61 FR 3319, January 31, 1996), Cleveland-Akron-Lorain (60 FR 31433, June 15, 1995; 61 FR 20458, May 7, 1996), Clinton County (60 FR 22337, May 5, 1995; 61 FR 11560, March 21, 1996), Columbus (61 FR 3591, February 1, 1996), Kewaunee County (61 FR 29508, June 11, 1996; 61 FR 43668, August 26, 1996), Walworth County (61 FR 28541, June 5, 1996; 61 FR 43668, August 26, 1996), Point Coupee Parish (61 FR 37833, July 22, 1996; 62 FR 648, January 6, 1997), and Monterey Bay (62 FR 2597, January 7, 1997). Most of the areas that have been redesignated to attainment of the one-hour ozone standard have continued to attain it. Areas that are not maintaining the one-hour ozone standard have maintenance plans to bring them back into attainment.

Between 1990 and 2000, area-wide VOC and NO_X emissions in the St. Louis area decreased by 37 percent and 25 percent, respectively (46 percent and 25 percent, respectively, in Metro-East St. Louis). These emissions reductions are due to the use of low volatility gasoline, more stringent Tier I motor vehicle emission standards, implementation of a more stringent vehicle inspection and maintenance (I/M) program, controls on area sources, adoption of tighter emissions limits on existing stationary sources, and requirements for the use of reformulated and low RVP gasoline in motor vehicles. Some of the specific emission control measures implemented in the Metro-East St. Louis area include:

- Basic and Enhanced I/M for Motor Vehicles
- Transportation Control Measures (TCMs)
- Low-Volatility (low Reid Vapor Pressure (RVP)) Gasoline
- Tightened Reasonably Available Control Technology (RACT) Standards for Some Source Categories

• RACT for Sources Covered By New Control Techniques Guidelines (CTGs)
• Architectural Surface Coating Standards
• Volatile Organic Liquids Storage Facility Controls
• Automobile Refinishing Operation Controls
• Marine Vessel Loading Emission Controls.

The commenter claims that the combination of NO_X and VOC emissions reductions could just as easily have led to increases in ozone. However, the actual monitoring data collected in the area show that ambient ozone concentrations have dropped when this combination of ozone precursor emission reductions occurred. In other metropolitan areas, other levels of VOC and NO_X reductions have also resulted in attainment. See the redesignation rules listed above in the first part of this response. The St Louis area's decrease in ozone levels is consistent with what other areas have experienced when ozone precursor emissions have been reduced. The commenter has not provided data showing that decreases in ozone precursor emissions have led to higher levels of ozone. In fact, the available data (as discussed in the January 30, 2003 proposed rule) for the St. Louis area prove just the opposite. Decreases in VOC and NO_X emissions in the St. Louis area are associated with a decrease in peak ozone levels. There is no reason to assume that future reductions in VOC and NO_X emissions will cause just the opposite effect. Therefore, it is appropriate for the EPA to assume that future reductions in VOC and NO_X emissions will lead to lower peak ozone concentrations.

EPA's conclusion that improvements in air quality are attributable to permanent and enforceable reductions in precursors is not ''speculation'' but is based on a careful review of the various technical analyses conducted by the States and described above. EPA believes it is reasonable not to require photochemical grid modeling. Three-year averaging of annual exceedance rates addresses variations in meteorological conditions. Analysis of meteorological conditions showed no significant trend in the number of days conducive to ozone formation, and the commenter has presented no evidence that the three year attainment period was unusually favorable. It is important to note that, redesignation is not intended as an absolute guarantee that the area will never monitor future standard violations. This is what maintenance plan contingency measures are designed to address and correct. See Cincinnati redesignation (65 FR 37879, 37886–37889) (June 19, 2000) and the Pittsburgh redesignation (66 FR 53094) (October 19, 2001).

Comment 20: If improvements in St. Louis air quality were due to permanent and enforceable emission reductions, the trend in monitored concentrations would be to go down. However, exceedances tripled from 2000 to 2001 and more than doubled from 2001 to 2002.

Response 20: A violation of the 1-hour ozone NAAQS occurs when the estimated number of exceedances per year averaged over three years is greater than 1.0 at any monitoring site in the area or its downwind environs, using conventional rounding techniques. Although there was an increase in the number of exceedances between 2000 and 2001 as well as between 2001 and 2002, year-to-year trends in exceedances are not used to determine attainment, but rather an average over three years at each monitoring site is used. As noted in a separate rulemaking published in today's **Federal Register**, EPA has determined that the St. Louis area is in attainment with the NAAQS.

As indicated in the January 30, 2003 proposed rule at 68 FR 4850, Table 1 Summarizes the number of expected exceedances at each monitor in the area.

TABLE 1.—1-HOUR OZONE NAAQS EXCEEDANCES IN THE ST. LOUIS, ILLINOIS-MISSOURI AREA FROM 2000 TO 2002

Site name	County or city and state	Estimated exceedances			Average number of estimated exceedances 2000–2002
		2000	2001	2002	
Jerseyville	Jersey, IL	0.0	1.0	1.0	0.7
Alton	Madison, IL	0.0	0.0	0.0	0.0
Maryville	Madison, IL	0.0	0.0	1.0	0.3
Edwardsville	Madison, IL	0.0	0.0	0.0	0.0
Wood River	Madison, IL	0.0	1.0	0.0	0.3
Houston	Randolph, IL	0.0	0.0	0.0	0.0
East St. Louis	St. Clair, IL	0.0	0.0	0.0	0.0
Arnold	Jefferson, MO	0.0	0.0	0.0	0.0
West Alton	St. Charles, MO	1.0	1.0	1.0	1.0
Orchard Farm	St. Charles, MO	0.0	0.0	2.0	0.7
Bonne Terre	St. Genevieve, MO	0.0	0.0	0.0	0.0
South Lindbergh	St. Louis, MO	0.0	0.0	2.0	0.7
Queeny	St. Louis, MO	0.0	0.0	0.0	0.0
Hunter	St. Louis, MO	0.0	0.0	0.0	0.0
Flo Valley	St. Louis, MO	0.0	0.0	0.0	0.0
St. Ann (old)	St. Louis, MO	0.0	n/a	n/a	[1] 0.0
St. Ann (new)	St. Louis, MO	n/a	0.0	0.0	[1] n/a
Broadway	St. Louis City, MO	0.0	0.0	0.0	0.0
Clark	St. Louis City, MO	0.0	0.0	0.0	0.0
Margaretta	St. Louis City, MO	0.0	0.0	0.0	0.0

[1] The owner of the property on which the old St. Ann monitor was located terminated the lease agreement with the Missouri Department of Natural Resources. The new site is 0.7 miles east of the old site. In general, ambient monitors should remain at the same location for the duration of the monitoring period required for demonstrating attainment. However, when three complete, consecutive calendar years of data is not available for a monitoring site, adjustments are made consistent with EPA monitoring criteria, in determining the average number of estimated exceedances per year. The average number of estimated exceedances for 2000—2002 for the old St. Ann monitor is the estimated exceedances for 2000, or 0.0. In addition, where a monitor has been in operation less than three years, the average estimated number of exceedances cannot be determined. Since the new St. Ann monitor has been in operation less than three years, the average number of estimated exceedances for 2000—2002 was not determined.

The area has monitored attainment for the three year period from 2000–2002. This indicates that the current level of emissions is adequate to keep the St. Louis area in attainment. In addition, the Act does not presume that the area will always be in attainment. The Act provides that, if the area were to violate the 1-hour ozone standard, then the contingency measures in the maintenance plan would be triggered. This would reduce the ozone precursor emissions and bring the area back into attainment.

One exceedance was monitored in the area in 2000, three in 2001, and seven in 2002. EPA notes that when dealing with numbers as small as one exceedance in 2000, any subsequent increase in the number of exceedances will result in the number of exceedances being at least doubled. Thus, citing a doubling or tripling of exceedances is not necessarily an indicator of significant changes in air quality.

The one-hour ozone NAAQS is based on a three-year average. For a violation, the estimated number of exceedances per year must exceed 1.0 at any monitoring site. Under this standard, a monitor may record up to three exceedances over a three-year period without causing a violation of the standard. The fourth-highest monitored level at a monitor over a three-year period can be used as an indicator of potential violations of the NAAQS. (Note that since other factors, such as missing data, can affect the calculation of the estimated number of exceedances, the fourth highest monitored value is not solely used to determine a violation. See the discussion in the January 30, 2003 proposed rule at 68 FR 4849 and 4850 for an example of how the number of estimated exceedances is determined.) The term ''design value'' is used to refer to the fourth highest monitored value in a three year period. For an individual monitor, the design value is the fourth-highest monitored value in a three-year period. For an area such as the St. Louis area, the highest of the individual monitor design values over a three-year period is referred to as the ''area's design value''. The lower an area's design value the more likely the area will meet the standard. Also, an area's design value which decreases over time indicates that the monitored ozone concentrations are generally lowering and the air quality is improving.

The St. Louis area's design value decreased as follows:

0.156 parts per million (ppm) in 1987—1989 (see 52 FR 13385—13386 dated March 18, 1999); 0.136 ppm in 1994—1996 (see 53 FR 15581 dated March 19, 2001); 0.131 ppm in 1996—1998 (see 53 FR 15583 dated March 19, 2001); 0.127 ppm in 1998—2000 (see 53 FR 15584 dated March 19, 2001), and, 0.123 ppm in 2000—2002. This indicates that the monitored air quality improved over this time period.

In the January 30, 2003 proposed rule at 68 FR 4856—4858, and in the response to comment 19, EPA explains the basis for concluding that the observed air quality improvements are due to the implementation of permanent and enforceable emission reductions. The reasons cited include emission controls which have resulted in emission reductions, an analysis of meteorological conditions which has shown a trend in the reduction of ozone from 1989 to the present while the number of days conducive to forming ozone showed no significant trend, and an assessment of emissions in 1990 and 2000 which have shown substantial decreases in emissions of VOCs and NO_X.

Finally, it is noted that the commenter errs in totalling the exceedance numbers from many monitors for each year and concluding, on the basis of the exceedance totals that a worsening ozone trend has occurred. Referring to Table 1 in the January 30, 2003 proposed rule (68 FR 4850) (repeated above), one can see that many monitors, including the worst-case monitor at West Alton, show no consistent trend in exceedance numbers in the 2000–2002 period on a monitor-specific basis. The ''sudden'' increase in exceedances from zero to two at the Orchard Farm and South Lindbergh monitoring sites, although implying a worsening ozone trend, simply point to the instability of considering year-to-year changes within a small time period.

Comment 21: The only modeling which the commenter is aware of was relied upon in the June 26, 2001 rulemaking. This modeling shows that it is impossible to attain the NAAQS in St. Louis in 2002. The significant factor is long range transport. This suggests that variations in out-of-state transport may account for the monitored improvements in air quality.

Response 21: Previous modeling referenced by the commenter was conducted as part of the attainment demonstration approved by EPA in the June 26, 2001 rulemaking (66 FR 33995). (This approval was vacated by the U.S. Court of Appeals for the Seventh Circuit, as explained previously.) This modeling demonstrated that utilizing planned controls and measures, the area will attain the standard by no later than November 15, 2004. EPA disagrees with the Commenter's assertion that the modeling demonstrated it was impossible to attain the standard in 2002. The purpose of the modeling was to determine the likelihood of attainment. EPA's approval of the States' attainment demonstrations did not include a determination that attainment or maintenance of the standard prior to 2004 was impossible.

The assumptions used in the modeling for the attainment demonstration approved in the June 26, 2001 rulemaking are described in an April 3, 2001 proposed rule (66 FR 17649–52). In this discussion, EPA noted that the States incorporated corrections to the 1996 base year emissions inventory, documented an assessment of the model's performance by applying statistical tests, and discussed assumptions regarding which states are affected by the NO_X SIP call including NO_X limits on facilities.

As discussed in the April 2001 notice, the States had taken measures to revise the emissions inventory to reflect the most current data inputs available. In addition, an evaluation of the model was performed as a measure of the ''likelihood'' that the standard will be achieved. The June 26, 2001 rulemaking at 66 FR 17652 states:

> The states conclude, and EPA concurs, that the revised modeling system performs at an acceptable level because it satisfactorily reproduces peak ozone concentrations relative to the monitored peak ozone concentrations. The modeling system adequately simulates the observed magnitude and spatial and temporal patterns of monitored ozone concentrations. Furthermore, the modeling results accurately differentiate between days with marginal ozone levels and days with elevated ozone concentrations. Therefore, based on the revised modeling and WOE results presented by the states which confirm the adequacy of the adopted emission control strategy, EPA is approving the states' attainment demonstrations.

The conclusions made regarding the likelihood of attainment based upon the attainment demonstration modeling were the best that could be drawn from the available information. It is likely that different conclusions regarding attainment would be drawn if the State's were required to conduct modeling as part of the maintenance demonstration. For example, if a prospective maintenance demonstration were performed with an ozone photochemical model following EPA guidance, the modeling would be allowed to use episode days from the 2000–2002 period, not 1991 and 1995 as was used in the attainment demonstration modeling. It is highly likely, if not certain, that the outcome would be a conclusion that attainment will be

preserved through the required 10-year period.

Ozone models are designed to primarily predict the relative impacts of emission changes on future ozone levels. Thus, it is not uncommon to observe that actual monitored ozone concentrations are different than modeled values at certain locations. The commenter's assertion that attaining the standard in 2002 is impossible is not supported by the existing science.

The commenter does not provide data to support its hypotheseis that variations in out-of-state transport may account for the improvement in air quality. The commenter only speculates that out-of-state transport may account for the improvement in air quality. As described in the response to comments 19 and 20 above, the States demonstrated that improvements in air quality are due to emission controls which have resulted in emission reductions, an analysis of meteorological conditions which has shown no significant decrease in the annual number of days conducive to ozone formation while there has been a significant reduction in monitored ozone concentrations, and an assessment of emissions in 1990 and 2000 which have shown decreased emissions of VOCs and NO_X. Thus, the states have demonstrated that the air quality improvements in the St. Louis area are due to permanent and enforceable emission reductions in the St. Louis area.

E. Comments Related to Criterion 4: The Area Must Have a Fully Approved Maintenance Plan Meeting the Requirements of Section 175A

Comment 22: Under section 175A(a) of the Act, the state maintenance plans must be a SIP revision. Section 110(a)(2)(A) of the Act requires a SIP to contain enforceable emission limitations. The maintenance plan for each State does not include any enforceable emission limitations.

Response 22: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is here providing a response regarding the Illinois portion of the St. Louis area. See a separate rulemaking in today's **Federal Register** regarding the redesignation of the Missouri portion of the St. Louis area for EPA's response to this comment as it pertains to the Missouri portion of the St. Louis area.

The Act requires the area to have a fully approved SIP and to have met all of the applicable requirements of the Act. The Illinois SIP satisfies this requirement as described in EPA's proposed rulemaking published on January 30, 2003 (68 FR 4847). The measures that the State relies on to maintain the one-hour ozone standard (the emission controls which have been previously implemented plus the statewide NO_X emission control rules now being implemented) have been approved into the SIP and are State and Federally enforceable. This includes Illinois' statewide NO_X rules, approved by the EPA on November 8, 2001 (66 FR 56449 and 66 FR 56454). The State must continue to implement these measures as provided for in the Federally approved SIP.

The Act does not require a separate level of enforcement for a maintenance plan as a prerequisite to redesignation. The enforcement program approved for and applicable to the SIP as a whole also applies to the maintenance plan. See discussion in the Cincinnati redesignation (65 FR 37879, 37881–37882), and Sixth Circuit decision in Wall v. EPA, supra, at 20–21, upholding EPA's interpretation of the requirement.

All of the control measures which the State relied on to attain and maintain the one-hour ozone standard are SIP-approved measures. EPA cannot withhold its approval of the maintenance plan submitted by Illinois because of concerns that the State may, at some future time, either submit a SIP revision to amend or remove a program, or that the State may fail to implement these programs in the Metro-East St. Louis area. The Federally approved SIP requirements remain in place, and remain enforceable until such time as EPA takes action to approve SIP revisions to amend or remove them. This can only be done via Federal rulemaking, which includes procedures for public comment and review.

Comment 23: Section 182(j), 40 CFR 51.112(b), the Calcagni Memo, and the General Preamble require the use of photochemical modeling to demonstrate maintenance. EPA is overruling Congress, EPA regulations, and common sense by proposing to predict maintenance for ten years without any modeling. Monitoring is more accurate to show past concentrations, but modeling is required to predict future concentrations. The commenter cites Ober v. U.S.E.P.A., 84 F.3d 304 (9th Cir. 1996) in support of this assertion.

Response 23: EPA disagrees with the commenter's assertion that the use of photochemical modeling to demonstrate maintenance is required by the Act, EPA policy, or EPA regulations. The EPA is not overruling Congress or EPA regulations.

Section 175A requires States to develop and submit, as a SIP revision, a plan for maintaining the NAAQS for at least 10 years after redesignation. The plan shall contain such additional measures, if any, as the Administrator deems necessary to ensure such maintenance. Section 175A does not require modeling.

Section 182(j) contains no reference to maintenance plans. Section 182(j)(1) requires that each state in a multi-state ozone nonattainment area shall ''* * * (A) take all reasonable steps to coordinate, substantively and procedurally, the revisions and implementation of State implementation plans applicable to the nonattainment area concerned; and (B) use photochemical grid modeling or any other analytical method determined by the Administrator, in his discretion, to be at least as effective''. The language in this section clearly refers to ''nonattainment'' areas. Thus, EPA believes that section 182(j) is applicable to attainment demonstrations not maintenance plans.

Even if the commenter is correct in the assertion that section 182(j) applies to maintenance plans, this section does not necessarily require modeling. EPA has the discretion to approve the use of other analytical methods determined to be at least as effective. In the Calcagni Memo, on page 9, EPA stated ''A State may generally demonstrate maintenance of the NAAQS by either showing that future emissions of a pollutant or its precursors will not exceed the level of the attainment inventory, or by modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS''. By this policy, EPA has, in effect, expressed how its discretion will be utilized regarding the use of emissions in lieu of modeling for demonstrating maintenance. In addition, the Sixth Circuit in Wall v. EPA (265 F.3d 426, 435) determined that ''EPA's actions are completely consistent with its own interpretive memorandum, which allows for NAAQS maintenance to be demonstrated by showing that the future emissions of a pollutant's precursors will not exceed the level that allowed the area to achieve attainment in the first place.'' The *Ober* v. U.S.E.P.A. case cited by the commenter deals with modeling requirements for approval of a SIP revision in a nonattainment area for particulate matter, and has no relevance to the ozone maintenance plan at issue here.

The regulation at 40 CFR 51.112(a) requires the SIP to demonstrate that the measures, rules, and regulations contained in it are adequate to provide for the timely attainment and maintenance of the NAAQS. The regulation at 40 CFR 51.112(b) specifies

what the demonstration required in 40 CFR § 51.112(a) must include. The Sixth Circuit in Wall v. EPA (265 F.3d 426, 435) determined that EPA's position that the regulation at 40 CFR 51.112(a) applies only to attainment demonstrations and not to maintenance plans is ''neither impermissible nor in conflict with a statutory mandate * * * Moreover, EPA's actions are completely consistent with its own interpretive memorandum, which allows for NAAQS maintenance to be demonstrated by showing that the future emissions of a pollutant's precursors will not exceed the level that allowed the area to achieve attainment in the first place.''

Lastly, the January 30, 2003 proposed rule at 68 FR 4858 states that emissions of NO_X in the Metro-East St. Louis area will be reduced from 141.64 to 96.67 tons per ozone season weekday from 2000 to 2014 and in Missouri, they will be reduced from 453.14 to 317.58 tons per ozone season weekday from 2000 to 2014. Emissions of VOCs in the Metro-East St. Louis area will be reduced from 94.11 to 75.98 tons per ozone season weekday from 2000 to 2014 and in Missouri, they will be reduced from 248.35 to 182.57 tons per ozone season weekday from 2000 to 2014. A ''common sense'' conclusion is that further emission reductions are projected to occur through 2014. Based on past trends of emissions decreases, peak ozone levels will continue to be reduced from 2000 to 2014. Further modeling would continue to demonstrate attainment. The commenter has not provided any data to indicate that these emission reductions would lead to modeled increases in ozone concentrations.

Comment 24: EPA and the States have stated in testimony provided to courts and the public that maintenance of the NAAQS in 2003 is not possible. EPA and the states have stated that, due to upwind emissions, attainment with the NAAQS cannot be achieved until 2004.

Response 24: The commenter uses the same arguments in this comment to state that the attainment with the NAAQS cannot be maintained as was used in comment 21 above to claim that the area cannot attain the NAAQS. See the response to comment 21 for further discussion.

EPA disagrees with the commenter's assertion that the modeling demonstrated it was impossible to maintain the standard in 2003. The evaluation of the modeling is to determine the likelihood of attainment by a future attainment deadline (2004 in this case). EPA's approval of the States' attainment demonstrations did not include a determination that attainment or maintenance of the standard prior to 2004 was impossible.

The commenter references documents submitted by EPA and the States as well as language used in various rulemakings stating, in effect, that reductions in upwind emissions are necessary for attainment of the standard and that the earliest attainment date is November 15, 2004. At the time these documents were developed, EPA and the States were basing their conclusions on the attainment demonstration including the accompanying modeling. The statements made were the best conclusions that could be drawn from the available information.

The conclusion that the maintenance plan will provide for maintenance of the NAAQS for the next ten years as required by section 175A is based, in part, on more recent information than what was relied upon in the attainment demonstration which included the modeling referred to by the commenter. The maintenance plan includes an emission inventory which is more recent than the inventory used in the attainment demonstration. See the response to comment 36 for further discussion.

EPA has no data to support the commenter's hypothesis that variations in out-of-state transport may account for the improvement in air quality. The commenter only speculates that out-of-state transport solely account for the improvement in air quality. EPA concludes that the plan demonstrates maintenance through 2014.

Comment 25: The SIPs must provide assurance that the States have adequate personnel, funding and authority to carry out the SIP. The record for this action must provide real evidence of this assurance. The commenter raises the following specific concerns with regard to Illinois:

a. The Illinois I/M funding expires on June 30, 2003. Illinois has no funding mechanism to replace this funding. Based on this observation, the EPA cannot lawfully find that Illinois has adequate funding to fully implement its SIP;

b. EPA cannot lawfully find that the Illlinois motor vehicle emissions budgets are adequate because they presume full funding for the Illinois I/M program;

c. Illinois is failing to adequately administer and enforce the title V source operating permits program due mainly to a lack of funding. Illinois failed to issue all source permits within three years of receiving interim approval of its title V permits program by the EPA on March 7, 1995 (60 FR 12478). At least 24 of the unpermitted sources are located in Madison and St. Clair Counties, Illinois. Illinois has announced that it will be very difficult to meet a commitment to issue all required source permits by the December 2003 deadline. Illinois is also violating the requirement to act on all source permit applications within 18 months of receipt, violating the requirements of 40 CFR 70.7(a)(2). This is due to a lack of adequate funding; and

d. Illinois is failing to adequately enforce its title V program through regular source inspections.

The commenter expresses the general concern that Illinois lacks the funds to adequately enforce any of the Clean Air Act requirements and to implement its SIP, including NSR, PSD, and RACT rules. Therefore, the commenter believes that EPA should reject Illinois' statement in the maintenance plan that Illinois has the necessary resources to enforce any violations of its rules or source permit provisions.

Response 25: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is here providing a response regarding the Illinois portion of the St. Louis area. *See* a separate rulemaking in today's **Federal Register** regarding the redesignation of the Missouri portion of the St. Louis area for EPA's response to this comment as it pertains to the Missouri portion of the St. Louis area, and as it relates to the general assertion that the Illinois maintenance plan lacks a showing of adequate resources.

With regard to the commenter's Illinois-specific comments, we have the following responses:

a. The Illinois I/M program, in the Metro-East St. Louis area, is currently funded through a combination of fuel taxes and Congestion Mitigation and Air Quality (CMAQ) funds. It is EPA's understanding that Illinois currently has sufficient funding from CMAQ previously appropriated and obligated and from fuel taxes to run this program through December 2003. Meanwhile, Illinois officials are seeking alternative funding sources to replace the expired CMAQ funding, including continuance of CMAQ funding through Congressional reauthorization. The EPA believes at this time that it is reasonable to assume that Illinois will continue to implement this program, for several reasons. First, Illinois is committed to continuing implementation of this program, which it has been operating since 1986. Second, if Illinois fails to maintain this program other than termination through approvable means (for example, by substituting an emissions control measure to achieve

equal or greater emissions reductions), the program remains an enforceable component of the approved SIP. Finally, it is noted that this program is contractor operated, with the contractor operating under a binding contract extending through 2005. This contract, which is on file at EPA as part of the documentation for this portion of the SIP, contains penalty clauses insuring that the State will continue funding the I/M program through the lifetime of the contract (in the event that the State prematurely terminates the contract, the State would still be obligated to reimburse the contractor through 2005 for the estimated value of the contract). Illinois has no financial incentive to discontinue the I/M program;

b. Since, for the reasons described above, EPA can assume that the Illinois I/M program will continue to operate in the Metro-East St. Louis area and since this program is an ozone maintenance measure assumed in Illinois' ozone maintenance demonstration, it is correct to conclude that Illinois' mobile source emissions budgets are acceptable and are not in jeopardy due to a pending termination of the I/M program; and

c–d. As evidenced in the December 23, 2003 maintenance plan, Illinois remains committed to implementing the SIP after redesignation of the area. The Illinois ozone SIP for the Metro-East St. Louis area has been fully approved, and there are no criteria requiring EPA to evaluate and assess title V programs prior to redesignation of the area to attainment. The SIP approval and redesignation criteria do not include evaluating permitting programs to ascertain whether any deficiencies exist in these programs. The maintenance plan is designed to assure that attainment of the one-hour ozone standard is preserved. Whatever deficiencies are confirmed to exist in the source permitting program may be addressed and corrected in other contexts, including a finding of failure to implement under section 173(b) of the Act. Therefore, this comment is not a basis for disapproving Illinois' ozone maintenance plan and the EPA disagrees with the commenter on this issue.

In addition, it should be noted that section 107(d)(3) and section 175A ozone redesignation and ozone maintenance plan requirements require compliance with section 110 and part D requirements under title I of the Act. Title I of the Act itself does not require compliance with title V of the Act for purposes of considering redesignations to attainment of the NAAQS. Therefore, even if the commenter were correct in its assertion that Illinois is not properly implementing its title V permit program, this would not be a basis for disapproval of the redesignation request and concerns with title V compliance and implementation are moot.

The ozone SIP for the Metro-East St. Louis area has been fully approved, and there are no criteria requiring EPA to evaluate and assess title V programs prior to redesignation of the area to attainment. The SIP approval and redesignation criteria do not include evaluating permitting programs to ascertain whether any deficiencies exist in these programs. The maintenance plan is designed to assure that attainment of the one-hour ozone standard is preserved. Whatever deficiencies are confirmed to exist in the source permitting program may be addressed and corrected in other contexts, including a finding of failure to implement under section 173(b) of the Act.

EPA disagrees with the commenter that this action must include in the record further evidence of Illinois resource commitments. Neither this commenter nor any other person has submitted substantive comments that would lead EPA to separately analyze whether it should call on the State to revise its section 110(a)(2) SIP regarding enforcement and funding.

Comment 26: EPA policy indicates that a state may not relax existing controls upon redesignation. However, the States are moving requirements for Lowest Achievable Emissions Rates (LAER), new source emission offsets, and NO_X RACT to the contingency plans without a modeling demonstration showing that these control measures are not needed for attainment, contrary to EPA policy.

Response 26: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is here providing a response regarding the Illinois portion of the St. Louis area. See a separate rulemaking in today's **Federal Register** regarding redesignation of the Missouri portion of the St. Louis area for EPA's response to this comment as it pertains to the Missouri portion of the St. Louis area.

Illinois has a commitment on page 26 of the maintenance plan to maintain all of the emission control measures implemented in the Metro-East St. Louis area to ensure maintenance of the one-hour ozone NAAQS.

The commenter refers to the Calcagni Memo at page 10 which states that ''the State will be expected to maintain its implemented control strategy despite redesignation to attainment, unless such measures are shown to be unnecessary for maintenance or are replaced with measures that achieve equivalent reductions''.

Section 175A of the Act requires that maintenance plans shall contain contingency provisions deemed necessary to assure that the States will promptly correct any violation of the standard which occurs after redesignation of the area as an attainment area. These provisions shall include a requirement that the State will implement ''all measures with respect to the control of the air pollutant concerned which were contained in the SIP for the area before redesignation of the area as an attainment area''. On page 6 of an October 14, 1994 memorandum entitled, ''Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment'' from Mary D. Nichols, assistant Administrator for Air and Radiation, EPA stated its interpretation that the term ''measures'' used in section 175A does not include part D NSR permitting programs. In accordance with this interpretation, EPA believes that LAER and offsets, which are components of Illinois' part D NSR permitting program, are not required to be retained following redesignation of the Metro-East St. Louis area as an attainment area.

LAER and new source emissions offsets are specified in part D and subpart 2 of the Act to be applicable to nonattainment areas. Upon redesignation to attainment, these requirements are no longer applicable. Removing the LAER and offsets provision in the State's permitting program is not contrary to the above mentioned policy. Upon redesignation to attainment, the LAER requirements included in stationary source permits and the emissions offsets which were obtained by stationary sources at the time when the LAER and offset provisions were in effect will remain in effect for those facilities. Thus, the LAER and offset measures which were relied upon to attain the NAAQS will remain in effect following redesignation.

Following redesignation, any new facilities subject to the State's permitting requirements will be subject to the PSD requirements of part C of title I of the Act. Under these requirements, the State must ensure that such new facilities will not cause significant deterioration of air quality to the extent that they cause or contribute to peak ozone levels in excess of the NAAQS (see section 165 of the Act). As part of the PSD program, sources are required to perform a source-specific air quality demonstration to show no adverse impact on the NAAQS. This is a more accurate way of predicting impacts than

to do generalized modeling which does not consider emissions growth at specific sources.

Illinois' new source rules are structured such that new source requirements, for new sources seeking permits after the area is redesignated to attainment, automatically revert to PSD requirements after an area is redesignated to attainment. This rule is part of Illinois' approved SIP.

For Illinois, it is noted that the State has not relied on NO_X RACT to attain the ozone standard and the Illinois SIP does not contain NO_X RACT rules. Therefore, moving NO_X RACT to the contingency plan is not a relaxation of the Illinois SIP.

Regarding modeling, the Shapiro Memo at page 6 states that ''States may be able to move SIP measures to the contingency plan upon redesignation if the State can adequately demonstrate that such action will not interfere with maintenance of the standard * * * for ozone, the State would need to submit an attainment modeling demonstration consistent with EPA's current ''Guideline on Air Quality Models.'' showing that the control measure is not needed to maintain the standard''. As stated above, all emission control measures in place as a result of the LAER and Offsets rules are being retained by sources already implementing them following redesignation. For the Illinois portion of the St. Louis area, as noted above, NO_X RACT is not part of Illinois' existing SIP. Thus, no modeling is needed to demonstrate that these measures are not needed since all are being retained or are not parts of existing SIPs.

Comment 27: The contingency provisions of the maintenance plans fall short of those required. All serious area requirements of section 182(c) of the CAA should be included in the contingency plans and implemented promptly in case of a violation. Virtually none of these provisions are included in the contingency plans and, thus, the contingency plans cannot be approved.

Response 27: EPA disagrees with the commenter's assertion that all of the serious area requirements of section 182(c) should be included in the contingency plans and implemented in case of a violation.

The requirements of section 175A(d) are the applicable requirements for contingency measures in maintenance plans. Section 175A(d) states:

> Each plan revision submitted under this section shall contain such contingency provisions as the Administrator deems necessary to assure that the State will promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area. Such provisions shall include a requirement that the State will implement all measures with respect to the control of the air pollutant concerned which were contained in the State implementation plan for the area before redesignation of the area as an attainment area.

None of the serious area requirements were contained in the SIPs prior to redesignation. The plans must contain contingency measures which assure that the States ''will promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area''. As described in response to comment 28 below and in the January 30, 2003 proposed rule, EPA believes that this requirement has been met. The statute does not require that all serious area requirements be included in the maintenance plans as contingency measures, but rather that all measures included in the SIP prior to redesignation be included in the maintenance plans as contingency measures. As explained previously, certain serious area requirements need not be met in the case of the St. Louis area since the area has attained the standard prior to the date that these requirements are due. Since these provisions are not applicable in the St. Louis area, they do not need to be included in the maintenance plans as contingency measures.

The commenter's assertion that there is no implementation plan applicable to this ''serious area'' is addressed above. See, for example, our response to comment 17.

Comment 28: 42 U.S.C. 7505a(d) requires that the states will promptly correct any violation of the standard which occurs after redesignation. However, there is nothing in either contingency plan which assures prompt correction of future violations. The plans contain no adopted measures, and no schedule to adopt specific measures. The plans offer to adopt an unspecified measure within eighteen months of notification of a violation. This is an unreasonably long period. The plans should require adoption in much less than eighteen months and immediate implementation.

Response 28: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is here providing a response regarding the Illinois portion of the St. Louis area. See a separate rulemaking in today's **Federal Register** regarding redesignation of the Missouri portion of the St. Louis area for EPA's response to this comment as it pertains to the Missouri portion of the St. Louis area.

EPA disagrees that Illinois' maintenance plan lacks adequate contingency provisions should the area violate the standard. As stated in the January 30, 2003 proposed rule at 68 FR 4859, the contingency plan portion of each State's maintenance plan delineates the State's planned actions in the event of future one-hour ozone standard violations, increasing ozone levels threatening a subsequent violation of the ozone standard, and unanticipated increases in ozone precursor emissions threatening a subsequent violation of the ozone standard. Illinois has developed a contingency plan with several levels of triggered actions depending on whether the ozone standard has actually been violated after the redesignation of the area to attainment or whether a subsequent violation of the ozone standard is threatened on the basis of increased ozone concentrations approaching the standard or unanticipated significant increases in ozone precursor emissions. Illinois has also committed to continue to implement all control measures included in the SIP prior to redesignation consistent with section 175A(d) of the Act.

The action trigger levels and planned corrective actions in each contingency plan are the following:

A Level I Trigger will be exceeded if: (1) The monitored ambient ozone levels exceed 124 parts per billion, one-hour averaged, more than once per year at any monitoring site in the St. Louis maintenance area (the current St. Louis ozone nonattainment area), or more than two exceedances in any two-or three-year period; or (2) the St. Louis maintenance area's VOC or NO_X emissions for 2005 or 2008 increase more than 5 percent above the 2000 attainment levels. In the event one of these action trigger levels are exceeded, Illinois and Missouri will work together to evaluate the situation and determine if adverse emissions trends are likely to continue. If so, the States will determine what and where emission controls may be required to avoid a violation of the one-hour ozone NAAQS. A study shall be completed within nine months of the determination of the action trigger exceedance.

A Level II Trigger will be exceeded if a violation of the one-hour ozone NAAQS at any monitoring site in the St. Louis ozone maintenance area is recorded after the area is redesignated to attainment of the standard. If this trigger is exceeded, Illinois and Missouri will work together to conduct a thorough analysis to determine appropriate new emission control measures, from those

listed below, to address the cause of the ozone standard violation.

The contingency plan for Illinois lists a number of possible contingency measures. The plan calls for the appropriate contingency measures to be adopted no later than 18 months of a Level I or Level II trigger being exceeded. The December 23, 2002 maintenance plan for the Metro-East St. Louis area stated that the adopted contingency measures would be implemented as expeditiously as practicable, but generally within 24 months of adoption. However, in a letter dated April 15, 2003 from the IEPA, the State noted that the final maintenance plan was erroneously modified based on a prior comment letter from the EPA addressing the State's October 1, 2002 draft maintenance plan. The State has corrected its contingency implementation deadline commitment to reflect the contingency implementation deadline language contained in the October 1, 2002 draft maintenance plan, which commits the State to implement adopted contingency measures within 18 months of a determination of a violation of the one-hour ozone standard based on quality-assured data. The October 1, 2002 draft maintenance plan was the version of the maintenance plan reviewed by the public in the State's public hearing and during its public review period. The State notes that, in amending its October 1, 2002 draft maintenance plan to the final December 23, 2002 version, the State did not intend to extend the implementation deadline for contingency measures, but to merely address EPA's comment on the October 1, 2002 draft version. With the April 15, 2003 letter, the State of Illinois officially clarifies its commitment to implement contingency measures within 18 months of a determination that a one-hour ozone standard violation has occurred. The April 15, 2003 letter includes a revised contingency measures section, section 6.1, to replace the same section of the December 23, 2002 version of the State's maintenance plan, consistent with its clarification.

The list of possible contingency measures in Illinois' contingency plan include the following:

Point Source Measures

- NO_X SIP call Phase II (non-utility measures)
- Reinstatement of requirements for new source offsets and/or Lowest Achievable Emission Rates
- Apply RACT to smaller existing sources
- Tighten RACT for existing sources covered by Control Techniques Guidelines
- NO_X RACT
- Expand geographic coverage of current point source emission control measures
- Apply Maximum Available Control Technology for industrial sources
- Other point source measures to be identified Mobile Source Measures—
- Transportation Control Measures, including, but not limited to, area-wide rideshare programs, telecommuting, transit improvements, and traffic flow improvements
- High-enhanced vehicle inspection/maintenance (OBDII)
- California engine standards
- Other mobile source measures to be identified

Area Source Measures

- California architectural/industrial maintenance coating emission controls
- California commercial and consumer products coating emission controls
- Broader geographic applicability of existing emission control measures
- California off-road engine standards
- Other area source measures to be identified

As stated in the Calcagni Memo, page 12, ''For purposes of section 175A, a State is not required to have fully adopted contingency measures that will take effect without further action by the State in order for the maintenance plan to be approved. However, the contingency plan is considered to be an enforceable part of the SIP and should ensure that the contingency measures are adopted expediently once they are triggered.'' Thus, according to this policy, the plans need not contain adopted measures.

In order to properly deal with future ozone standard violations and to comply with its own internal rulemaking procedure requirements, Illinois requires time to evaluate potential controls and provide public notice and public participation in the rulemaking process when adopting contingency measures. The commenter provided no rationale for why a time period shorter than 18 months to adopt and implement contingency measures is warranted. EPA finds that 18 months, as described in Illinois' maintenance plan, as amended by the IEPA's April 15, 2003 letter, to adopt and implement contingency measures is a reasonable time period for Illinois to meet its regulatory obligations while meeting the requirement under section 175A to promptly correct any violation of the one-ozone standard after the redesignation of the St. Louis area to attainment. In addition, this 18 month period to adopt and implement contingency measures is consistent with other redesignations, such as that approved for Pittsburgh, Pennsylvania (66 FR 53102), in which a 12 to 24 month time period was specified to adopt and implement contingency measures.

Comment 29: Neither maintenance plan provides any procedure for quantifying the reductions needed to correct violations.

Response 29: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is here providing a response regarding the Illinois portion of the St. Louis area. See a separate rulemaking in today's **Federal Register** regarding redesignation of the Missouri portion of the St. Louis area for EPA's response to comment as it pertains to the Missouri portion of the St. Louis area.

As indicated above, the maintenance plans refer to a violation of the NAAQS as a level II trigger. In the event of a violation, Illinois and Missouri have committed to work together to conduct a thorough analysis to determine appropriate measures to address the cause of the ozone standard violation. It is impossible for a State to determine, before a violation, what emission reductions are necessary to correct a violation. For example, if Illinois would select tightening RACT for existing sources as a contingency measure, the amount of emissions reductions resulting from implementation of this measure is dependent upon the number of sources subject to RACT rules in the area at the time of the violation. Since the State has no control over when a source ceases operating, it is impossible to determine, at this time, how many sources will be affected by a tightening of RACT which may be implemented at some unspecified time in the future. Thus, it is impossible to determine beforehand how much of an emission reduction will be achieved by implementing this measure.

The approach taken in the Illinois maintenance plan is to conduct a thorough analysis to determine the magnitude of the emissions reductions needed to correct an ozone standard violation, the types of sources for which emission reductions must be made, and the mechanisms for achieving the emissions reductions. The list of contingency measures includes a reasonable mix of emission control measures from which to select the emission control measures most suited to address a future ozone standard violation (a level II trigger), if one

occurs, or to alleviate an unanticipated worsening of air quality or emissions (a level I trigger). EPA finds that this is a reasonable approach which will assure prompt correction of the air quality problem. In addition, this approach is consistent with EPA guidance contained in the Calcagni Memo.

Comment 30: The contingency measures in the maintenance plans are vague and open ended. Neither plan identifies any measures to be adopted. No firm schedule for adoption and implementation is included.

Response 30: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is here providing a response regarding the Illinois portion of the St. Louis area. See a separate rulemaking in today's **Federal Register** regarding redesignation of the Missouri portion of the St. Louis area for EPA's response to this comment as it pertains to the Missouri portion of the St. Louis area.

EPA disagrees with the commenters assertion that the contingency measures are vague, and open ended. In response to comments 28 and 29 above, EPA addressed the procedures contained in the maintenance plan for evaluating which measures are necessary to promptly correct a violation.

In addition, in response to comment 28 above, EPA identified the list of potential contingency measures contained in Illinois' maintenance plan along with a schedule of 18 months to adopt and implement selected contingency measures in the event of a violation (a level II trigger) or worsening air quality (a level I trigger). EPA has concluded that the maintenance plan satisfies EPA guidance regarding adoption and implementation of contingency measures consistent with EPA guidance and the Act.

Comment 31: Each maintenance plan contains inadequate provisions to respond to anticipated violations of the NAAQS. Anticipated violations are based on emissions inventories exceeding the 2000 inventory or two exceedances at any monitoring site during a two- or three-year period. There is no commitment to adopt any additional controls to address anticipated violations.

Response 31: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is here providing a response regarding the Illinois portion of the St. Louis area. See a separate rulemaking in today's **Federal Register** regarding redesignation of the Missouri portion of the St. Louis area for EPA's response to this comment as it pertains to the Missouri portion of the St. Louis area.

As indicated above, a Level I Trigger will be exceeded if: (1) the monitored ambient ozone levels exceed 124 parts per billion, one-hour averaged, more than once per year at any monitoring site in the St. Louis maintenance area (the current St. Louis ozone nonattainment area), or more than two exceedances in any two- or three-year period; or (2) the St. Louis maintenance area's 2005 or 2008 VOC or NO_X emissions increase more than 5 percent above the 2000 attainment levels. In the event one of these action trigger levels are exceeded, Illinois and Missouri will work together to evaluate the situation and determine if adverse emissions trends are likely to continue. If so, the States will determine what and where emission controls may be required to avoid a violation of the one-hour ozone NAAQS. A study shall be completed within nine months of the determination of the action trigger exceedance to select emission controls needed to mitigate possible future ozone standard violations. Illinois commits to implement any selected emission controls as expeditiously as practible.

It is true that Illinois has not specified implementation deadlines for implementing new emissions controls in the event of exceedance of a Level I trigger. Illinois has only committed to conduct studies to determine if new emission controls are needed to avert possible future ozone standard violations. These studies could conclude that no additional emission controls are needed to avoid a future ozone standard violation. For example, such a study during 2004 could conclude that statewide NO_X emission controls to be implemented to meet the State's NO_X control SIP will be adequate to prevent a future ozone standard violation. In this case, Illinois may conclude that no additional emission controls are necessary. Given that the study could reach such a conclusion, Illinois is not committing to implement additional emission controls at this time.

In addition, note that section 175A(d) of the Act only requires a state to implement additional emission controls in the event of a standard violation after an area is redesignated to attainment. Under this section of the Act, States are not obligated to implement additional emission controls if an area is ''threatened'' with a future ozone standard violation. Similarly, EPA does not require such action on the part of the States. EPA does encourage the States to take preventative measures to prevent future ozone standard violations if at all possible, but does not definitively require the States to implement additional emission controls unless a violation of the standard has actually occurred. The commitments of Illinois to respond to Level I triggers go beyond the minimum requirements of section 175A(d) and the EPA.

The contingency plan meets the requirements of section 175A(d) of the Act and applicable guidance in the Calcagni Memo. The Administrator has exercised discretion regarding adoption and implementation of contingency measures consistent with EPA guidance and the Act.

Comment 32: The maintenance plans contain no commitment to implement measures in the SIP. EPA cannot approve the maintenance plan without this commitment.

Response 32: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is here providing a response regarding the Illinois portion of the St. Louis area. See a separate rulemaking in today's **Federal Register** regarding redesignation of the Missouri portion of the St. Louis area for EPA's response to this comment as it pertains to the Missouri portion of the St. Louis area.

The commenter is incorrect in its statement that the maintenance plan does not contain a commitment to implement emission control measures in the SIP. Such a commitment was included in Illinois' maintenance plan. Section 6.1 of Illinois' maintenance plan states the following: ''Consistent with this plan, Illinois agrees to adopt and implement the necessary corrective actions in the event that violations of the one-hour ozone NAAQS occur anywhere within the St. Louis maintenance area after redesignation to attainment.'' In addition, as described in response to comment 28, Illinois is retaining and is continuing to implement all of the emission control measures contained in its SIP prior to redesignation.

Comment 33: The maintenance plans do not address expected growth in areas adjacent to the nonattainment area, such as Ste. Genevieve County. An assessment of this growth should be included. Also, the plans are based on the ''irrational assumption'' that ''if there is no increase in emissions, and no decrease in controls, the standard will be maintained.''

Response 33: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is here providing a response regarding the Illinois portion of the St. Louis area. See a separate rulemaking in today's **Federal Register** regarding redesignation of the Missouri portion of the St. Louis area for EPA's response to this comment as it

pertains to the Missouri portion of the St. Louis area.

The commenter's characterization of the ''basic premise'' of the maintenance plans is incorrect. The plans do not simplistically assume that there will be no increase in emissions. The plans carefully project the growth in emissions that will occur in various source sectors (source categories or types), and the emission reductions which will occur based on emission control programs which are in place, in order to determine the net change in emissions from 2000 through 2014. The States are required to and have applied the appropriate techniques to estimate and account for potential emissions changes in the area. These techniques are necessarily based on source sector-specific growth indicators (positive and negative), *i.e.*, sector-specific economic factors, because the States have no way of predicting specific changes which will take place on a source-by-source basis in the emissions inventory.

Specific new source projects, such as those cited by the commenter, are addressed through mechanisms other than maintenance plans. To implement new source projects, Illinois implements PSD and NSR permitting regulations depending on the attainment status and classification of an area. These regulations address the air quality impacts of new sources and expansion of existing sources both inside and outside the boundaries of nonattainment areas. They are designed to prevent new source construction or existing source expansion which would adversely affect an area's ability to attain or maintain a national standard.

EPA believes that it is the function of the State's air permitting rules, rather than the maintenance plan, to ensure that specific potential new sources do not create emissions which would interfere with the maintenance of the ozone standard. The new source rules in Illinois' address potential new sources both inside and outside of the St. Louis area.

The anticipated plant referenced by the commenter is a potential source in Missouri. See the response to comment 33 in a separate rulemaking in today's **Federal Register** regarding redesignation of the Missouri portion of the St. Louis area for a discussion regarding this facility.

Comment 34: The emission estimates in the maintenance plans are unreliable. A recent study of flares throws doubt into the St. Louis emission inventory. Flares area used extensively in the Metro-East St. Louis area, including at the Conoco Wood River Refinery, two barge loading facilities, Granite City Steel, and three bulk gasoline storage facilities. EPA must consider the significant underestimation of flare emissions in the emission inventory.

Response 34: This comment refers to both the Missouri and Illinoi portions of the St. Louis area. EPA is here providing a response regarding the Illinois portion of the St. Louis area. See a separate rulemaking in today's **Federal Register** regarding redesignation of the Missouri portion of the St. Louis area for EPA's response to this comment as it pertains to the Missouri portion of the St. Louis area.

EPA believes that the States used the appropriate emission estimates in developing the emission inventories. The commenter cites a study of emissions from flares reported by the Bay Area Management District which the commenter alleges shows that the States greatly underestimated emissions from flares. EPA does not agree that the study cited by the commenter renders the emission estimates unreliable.

The Bay Area Air Quality Management District (AQMD) study referenced by the commenter is a ''Draft'' document, which has the stipulation ''Do Not Cite or Quote.'' In addition, the study was specific to refinery flares and not all flare systems in general. The submitted comment inappropriately extends the applicability of this draft study document to flares at barge loading facilities, steel making operations, and bulk gasoline storage facilities.

IEPA staff reviewed the flare operations at the Conoco Phillips Wood River Refinery, which is the only facility in the Metro-East St. Louis area that the AQMD study findings would possibly apply to, and found a well-designed emissions recovery and control system. The flares at the Wood River refinery function primarily as safety devices and are provided to avoid discharge of raw hydrocarbons to the atmosphere both during upsets and during planned intermittant maintenance activities. Process units' hydrocarbon emissions to flares are kept to a minimum to prevent product loss. Whenever possible, vent gasses are recovered, compressed, and used for firing heaters and boilers rather than being sent to flares. Seal vessels and pressure control systems allow nearly all vent gasses to be recovered by managing the pressure levels during normal operations and upsets.

The Conoco Phillips Wood River Refinery has four refinery flares that the findings of the AQMD study would apply to—the distilling flare, the alkylation flare, the aromatics low-pressure flare, and the aromatics high-pressure flare. The AQMD technical assessment document presented that the primary concern for the 28 flares studied was that refinery flares were being used more often and more routinely than historic emissions data indicated. For the Conoco Phillips Wood River Refinery, this finding is not valid. The Conoco Phillips refinery flares are used only as safety devices and as minimally as possible because loss of product occurs when these devices must be used. When it became necessary to use these safety devices, all upset emissions were reported in the annual emissions reports. Such reports for 2000 were used in the development of the emission inventories developed by the IEPA for the redesignation request and the maintenance plan. Therefore, the Illinois redesignation request and maintenance plan accurately includes these emissions.

Another issue identified in the AQMD refinery flare study was in regards to emissions control efficiency (CE) since its impact has a significant effect on reported emissions. All field studies regarding flare CE, which were referenced in the AQMD technical analysis document, indicate that CEs of greater than 98 percent could be expected for flares. The emissions for the Conoco Phillips flares, as included in Illinois' emissions inventories, uses EPA's recommended CE of 98 percent for all flares except in the lube area, which has a 99 percent CE. Therefore, any impact of inventory emissions from overestimation of CE is considered to be insignificant for the Conoco Phillips Wood River Refinery.

In regards to the impacts of crosswinds, the AQMD technical analyis document references one laboratory scale Canadian study that indicates that CEs may be impacted by crosswinds. The Canadian researchers, however, indicate that applying their laboratory findings after scaling up to the actual sizes of flares that refineries normally use could prove difficult. A referenced study in the AQMD technical analysis document shows that crosswinds with a speed of 18 miles per hour (8 meters per second) are needed before any impact is seen on CEs for flares. In the years of 1999 and 2000, no hourly wind speeds greater than 11 miles per hour was recorded at the Edwardsville monitor, which is located less than 10 miles from Wood River, during high ozone days in the St. Louis area. Therefore, crosswinds are not considered to be an issue that might impact emission estimates for the Metro-East St. Louis area refinery flares.

Further review of the document has shown that methane was included in the emission factor that was used to

derive emissions for this study. Methane is not an ozone precursor, and the inclusion of this pollutant could significantly alter the preliminary findings. The study targets the control efficiencies of the flares and states that ''efficiency drops approximately by the cube of the speed (wind)''. This would suggest that on high wind event days that the control efficiencies would be at their lowest. However, in the St. Louis area, high ozone days have been characterized by low wind conditions, which would produce minimal impact on flare control efficiencies during the periods of concern.

Lastly, NO_X and VOC emissions from all flares constitute less than one-tenth of one percent of the total emissions inventory for the St. Louis ozone nonattainment area. Therefore, any potential changes in calculation methodology from this source category, even if changes were warranted based on this draft study, would still likely produce an insignificant change to the St. Louis area total VOC and NO_X emissions.

Comment 35: The Illinois request for approval of its maintenance plan and revised motor vehicle emissions budgets was submitted under the signature of David Kolaz, Chief, Bureau of Air, Illinois Environmental Protection Agency (IEPA). This submission included the commitment to adopt contingency measures in the event of ozone standard exceedances and/or violations. The IEPA is without authority to make this commitment on behalf of the State of Illinois. During the Illinois public hearing (November 7, 2002), the IEPA stated that it did not have the authority to impose emission control requirements. The IEPA explained that such authority rests with the Illinois Pollution Control Board, a separate and independent State agency. The EPA cannot lawfully approve the maintenance plan submitted by the IEPA if the State is not legally bound to implement the commitments in the plan, including contingency measures.

Response 35: Under the Illinois Environmental Protection Act, the IEPA has authority to develop and submit for EPA approval air quality control plans. Section 4(j) of the Illinois Environmental Protection Act states: ''The Agency shall have the duty to represent the State of Illinois in any and all matters pertaining to plans, procedures, or negotiations for interstate compacts or other governmental arrangements relating to environmental protection.'' In addition, section 4(l) of the Illinois Environmental Protection Act states that ''The Agency is hereby designated as * * * air pollution agency for the state for all purposes of the Clean Air Act * * *'' These provisions give the IEPA the authority to develop and submit air quality plans to the EPA. Therefore, EPA disagrees with the commenter that the IEPA lacks the authority to submit an ozone maintenance plan that commits the State to certain actions if triggered under the contingency plan.

With regard to adoption of specific emission control measures or rules, the IEPA has the authority and responsibility of developing source emission control regulations, which are subsequently adopted by the Illinois Pollution Control Board. Establishment of a separate rulemaking body is consistent with the process established by many states.

The Calcagni Memo suggests that a procedure for adoption of contingency measures should be in place. However, there is no suggestion that a state must alter or suspend its rulemaking process in order to commit to implementation of contingency measures. If the State is unable to adopt a particular contingency measure as a result of its rulemaking process, it will be required to adopt and implement another equally effective measure (or group of measures) within the same 18-month time frame. The IEPA will continue to be responsible for ensuring that its commitment is met, and the commitment remains enforceable.

Comment 36: EPA cannot conclude that keeping emissions no higher than the projected inventory amounts will ensure maintenance of the ozone NAAQS.

Response 36: As stated in response to comment 23 above, keeping emissions no higher than those that occurred in the attainment period (2000 through 2002) will ensure maintenance of the NAAQS. The Court of Appeals for the Sixth Circuit in *Wall* v. *EPA* (265 F.3d 426, 435) determined that ''EPA's actions are completely consistent with its own interpretive memorandum, which allows for NAAQS maintenance to be demonstrated by showing that the future emissions of pollutant's precursors will not exceed the level that allowed the area to achieve attainment in the first place.''

Comment 37: Neither maintenance plan provides a technical analysis demonstrating that maintenance of the 2000 emission levels will assure maintenance of the NAAQS. Such a demonstration requires photochemical grid modeling.

Response 37: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is here providing a response regarding the Illinois portion of the St. Louis area. See a separate rulemaking in today's **Federal Register** regarding redesignation of the Missouri portion of the St. Louis area for EPA's response to this comment as it pertains to the Missouri portion of the St. Louis area.

EPA disagrees that modeling is required to demonstrate maintenance of the NAAQS. EPA reiterates its response to comment 23 in that the Court of Appeals for the Sixth Circuit in *Wall* v. *EPA* (265 F.3d 426, 435) determined that ''EPA's actions are completely consistent with its own interpretive memorandum, which allows for NAAQS maintenance to be demonstrated by showing that the future emissions of a pollutant's precursors will not exceed the level that allowed the area to achieve attainment in the first place.'' Also see the response to comment 36 above.

Illinois' maintenance plan includes a technical analysis, as described in the response to comment 28 above, that demonstrates maintenance of the NAAQS based on a comparison of base year (attainment year) and projected VOC and NO_X emissions. This analysis meets the maintenance requirements of the Act and of EPA guidelines.

Comment 38: EPA announced substantial changes in its PSD program on December 21, 2002. Illinois is required to administer these changes in attainment areas effective March 3, 2003, and three years later for nonattainment areas. 67 FR 80185. Therefore, the new NSR rules will not go into effect in the Metro-East St. Louis area for three years unless EPA redesignates the area to attainment. On February 27, 2003, Illinois announced that it is filing a lawsuit challenging the NSR changes due, in part, to the fact that the State lacks the resources to administer the new NSR rules. On the basis of this admission, EPA cannot lawfully make the finding that Illinois has adequate resources to administer the new NSR program that will only be necessary if EPA redesignates the area to attainment.

Response 38: The Federal revisions to the PSD regulations promulgated on December 31, 2002 became effective on March 3, 2003. States like Illinois, to which EPA had delegated the authority to administer the PSD program, are required to implement the revisions as of their effective date. The commenter does not provide any specific information that the IEPA lacks the resources to administer the revised program in the Metro-East St. Louis area upon redesignation. In addition, the IEPA has not formally notified EPA that it does not have sufficient resources to

administer the PSD program under the revised regulations.

Even if the State is unable to administer the PSD program in the Metro-East St. Louis area, the only consequences would be that EPA would, under this hypothetical situation, withdraw the delegation of the PSD program and administer the program itself. In addition, sources would still be required to obtain a source permits (and demonstrate that they will not adversely impact air quality) prior to construction, regardless of which agency (the IEPA or EPA) is responsible for permit issuance. Therefore, the perceived defect would not result in an inability to maintain the one-hour ozone standard in the area.

Comment 39: The maintenance plan must include RACM and RACT, for the reasons stated in comment 13 above.

Response 39: EPA incorporates its response to comment 13 in response to this comment.

F. Comments Related to Criterion 5: The Area Must Have Met All Applicable Requirements Under Section 110 and Part D

Comment 40: Neither State has met all the requirements applicable to the area. The serious area requirements of section 182(c) are applicable, but none of these requirements have been met. Some of the requirements are applicable and enforceable now, such as the 50 ton per year threshold for permitting and enforcement and paragraphs 7, 8, and 10 of section 182(c).

Response 40: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is here providing a response regarding the Illinois portion of the St. Louis area. See a separate rulemaking in today's **Federal Register** regarding redesignation of the Missouri portion of the St. Louis area for EPA's response to this comment as it pertains to the Missouri portion of the St. Louis area.

As stated in the response to comments 6 through 11 above, the Illinois SIP meets the applicable requirements and the serious area requirements are not applicable for purposes of this redesignation. States requesting redesignation to attainment must meet the relevant CAA requirements that come due prior to the submittal of a complete redesignation request. Areas may be redesignated even though they have not adopted measures that come due after the submission of a complete redesignation request. Upon completion of today's actions, the Illinois SIP is fully approved for all applicable regulations. SIP revisions addressing the serious area requirements are required to be submitted by January 30, 2004, after the submittal of Illinois' complete redesignation request and maintenance plan.

The commenter errs in the conclusion that the 50 ton per year emissions threshold for permitting and enforcement is not in effect in Illinois. As of January 30, 2003, the St. Louis area was classified as a serious nonattainment area (68 FR 4836). At that time, the 50 ton per year emissions threshold for permitting and enforcement immediately became effective in Illinois. However, by redesignating the Metro-East area to attainment in this rulemaking, the 50 ton per year emissions threshold for permitting and enforcement is no longer applicable.

Section 182(c) paragraphs 7 and 8 refer to special rules for modifications of major sources while paragraph 10 refers to a 1.2 to 1 offset requirements for serious nonattainment areas. As stated in response to comment 7, EPA established a future date for submission of the serious area requirements, including section 182(c)(7), (8), and (10), and the requirements are not now applicable for purposes of this redesignation.

G. Comments Related to Implementation of Contingency Measures

Comment 41: A commenter requested that in the final rule, EPA expressly state that, in the event of a future violation of the NAAQS, Illinois and Missouri will not necessarily be required to evaluate any particular contingency measure nor be required to submit further attainment demonstrations.

Response 41: As stated above, the contingency plans delineate the States' planned actions in the event of future one-hour ozone standard violations (Level II trigger in the Illinois and Missouri ozone maintenance plans), multiple ozone standard exceedances at any monitor in a single or two year period (not a violation based on three years of data) (Level I trigger in the Illinois and Missouri ozone maintenance plans), or unanticipated emissions increases threatening a subsequent violation of the one-hour ozone standard (Level I trigger in the Illinois and Missouri ozone maintenance plans). In the event of an exceedance of a Level I trigger, Illinois will work with Missouri to evaluate the situation and to determine if adverse emissions or air quality trends are likely to continue and to threatened maintenance of the one-hour standard. If so, Illinois will determine to what extent, what type, and where (local or regional) emission controls may be required to avoid a violation of the one-hour ozone standard. A study will be completed within nine months of the determination of the action trigger exceedance. If needed to avoid future ozone standard violations, emission control measures and regulations will be adopted within 18 months of the completion of the study and implemented as expeditiously as practicable.

In the event of a Level II trigger (a determination of a violation of the one-hour ozone standard in the St. Louis area), the States will complete an analysis of the air quality issue within six months of the ozone standard violation determination, and Illinois will adopt and implement necessary emission control measures and rules within 18 months of the ozone standard violation determination.

EPA expects that, through this process, the States will identify the appropriate emission control measures to implement in the near term to maintain the ozone NAAQS. The States are not obligated to select any particular emission control measure for study and/or implementation. The States must, however, select those emission control measures that their analyses show are adequate for maintenance of the NAAQS and which can be implemented within the time constraints contained within the maintenance plans.

With regard to the need for new ozone attainment demonstrations, as indicated in the January 30, 2003 proposed rule (68 FR 4847), a final determination of attainment leads to the conclusion by the EPA that Illinois is not obligated to produce new ozone attainment demonstrations for the St. Louis area for purposes of attaining the one-hour ozone standard. The available quality-assured ozone data for the most recent three years demonstrate that the St. Louis area has attained the one-hour ozone standard. This conclusion leads to the conclusion that additional emission reduction in the Metro-East St. Louis area may only be needed for the purposes of maintaining the ozone standard in the St. Louis area and for reducing ozone and ozone precursor transport into downwind areas. Therefore, additional ozone modeling to support a new ozone attainment demonstration is not needed at this time.

Following the redesignation of the St. Louis area to attainment of the one-hour ozone standard (the subject of this final rule and that for the Missouri portion of the St. Louis area also published today), a violation of the one-hour ozone

standard will not necessarily trigger the need for Illinois to conduct additional photochemical dispersion modeling for the St. Louis area. In this situation, the maintenance plan requirements place no specific ozone modeling requirements on the State. Illinois is free to choose the types of analyses it deems necessary to determine the levels and types of additional emission controls needed to rectify the ozone attainment problem. Redesignated areas are not subject to an obligation to meet additional nonattainment area requirements, such as attainment demonstrations, since they are no longer as nonattainment areas. Instead, they must implement contingency measures, which is what Congress provided in the Act.

H. Comments Related to Redesignation of a Portion of the St. Louis Area

Comment 42: One commenter requested that in the event the EPA is unable to finalize Missouri's I/M program, as proposed in a separate rulemaking on January 30, 2003, EPA should proceed with the redesignation for the Illinois portion of the St. Louis area.

Response 42: In a separate rule published in today's **Federal Register**, EPA is approving Missouri's revised I/M rule. In addition, as explained above, EPA is finalizing its actions on the Missouri and Illinois redesignation requests in separate rulemakings.

I. Comments Related to Interstate Transport

Comment 43: EPA must ensure that the CAA requirements of section 110(a)(2)(D) pertaining to interstate transport impacts are actively and adequately met through the States' SIP's and through Federal control programs such as the NO_X SIP call.

Response 43: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is here providing a response regarding the Illinois portion of the St. Louis area. See a separate rulemaking in today's **Federal Register** regarding redesignation of the Missouri portion of the St. Louis area for EPA's response to this comment as it pertains to the Missouri portion of the St. Louis area.

As stated above, EPA believes that state obligations under the NO_X SIP call are not applicable requirements for purposes of evaluating a redesignation request. The NO_X SIP call requirements are not linked with a particular area's ozone designation and classification. EPA believes that the requirements linked with a particular nonattainment area's classification are the requirements that are the relevant measures to evaluate in reviewing a redesignation request. The NO_X SIP call submittal requirements continue to apply to a State regardless of the designation of any one particular area in the State.

Thus, we do not believe that the NO_X SIP call submission should be construed to be an applicable requirement for purposes of redesignation. The section 110 and part D requirements, which are linked with a particular area's designation and classification, are the relevant measures to evaluate in reviewing a redesignation request. This policy is consistent with EPA's existing conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. See Reading, Pennsylvania proposed and final rulemakings (61 FR 53174–53176) (October 10, 1996), (62 FR 24826) (May 7, 1997); Cleveland-Akron-Lorain, Ohio final rulemaking (61 FR 20458) (May 7, 1996); and Tampa, Florida final rulemaking at (60 FR 62748, 62741) (December 7, 1995). *See also* the discussion on this issue in the Cincinnati redesignation (65 FR 37890) (June 19, 2000).

Illinois has adopted and EPA has approved statewide NO_X rules into the SIP on November 8, 2001 (66 FR 56449 and 66 FR 56454). These rules will remain in effect and will remain Federally enforceable following the redesignation of the Metro-East St. Louis area to attainment of the one-hour ozone standard.

Comment 44: A commenter notes that the expected NO_X emission control programs and emission reductions for the St. Louis area should not be jeopardized due to the absence of continued Federal enforceability of the SIPs.

Response 44: The SIPs will remain Federally enforceable following redesignation of the St. Louis area to attainment. In addition, NO_X emission control measures (with the exception of NSR, which will be replaced by PSD) which are currently in place will remain as SIP requirements following redesignation to attainment. Illinois will continue to implement and enforce its statewide NO_X emission control regulations adopted to comply with the NO_X SIP call. This rulemaking, however, finalizes a NO_X RACT waiver for the Metro-East St. Louis area. NO_X RACT has never been part of the Illinois SIP. This redesignation does not jeopardize any NO_X emission control regulations expected and part of the SIP for the Metro-East St. Louis area or for the State of Illinois.

Comment 45: The redesignation of the St. Louis area to attainment should not weaken the impetus to rapidly address NO_X transport to downwind areas. These efforts are critical to addressing the 8-hour and 1-hour ozone NAAQS in the St. Louis and downwind areas. Any revisions to SIP requirements would have to meet the applicable provisions of the Act and be approved by the EPA.

Response 45: As noted above, the redesignation of the St. Louis area to attainment of the one-hour ozone standard will have no effect on the implementation of the statewide NO_X control rules in Illinois. In addition, irregardless of the attainment status of the St. Louis area for the one-hour ozone standard, EPA will proceed with making its decision as to whether the eastern portion of Missouri must meet specific NO_X SIP call requirements. EPA will closely review any proposed changes in the NO_X emission control programs which are currently in place in the Metro-East St. Louis area and in Illinois to ensure that the proposed changes will not adversely affect the attainment of the NAAQS in the St. Louis area and in downwind ozone nonattainment areas.

VI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and, therefore, is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 11, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 81

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

Dated: April 30, 2003.

Thomas V. Skinner,

Regional Administrator, Region 5.

■ For the reasons stated in the preamble, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart O—Illinois

■ 2. Section 52.726 is amended by adding paragraph (ee) to read as follows:

§ 52.726 Control strategy: Ozone.

* * * * *

(ee) Approval of the Maintenance Plan for the Illinois Portion of the St. Louis Area—On December 30, 2002 Illinois submitted Maintenance Plan for the Illinois portion of the St. Louis Nonattainment Area. The plan includes 2014 On-Road Motor Vehicle Emission Budget of 10.13 tons per ozone season weekday of VOCs and 18.72 tons per ozone season weekday NO_X to be used in transportation conformity.

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 § 81.314 the table entitled ''Illinois–Ozone (1-Hour Standard)'' is amended by revising the entry for St. Louis Area to read as follows:

§ 81.314 Illinois.

* * * * *

ILLINOIS—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * *	*	* *	*	*
St. Louis Area:				
Madison County	May 12, 2003	Attainment		
Monroe County	May 12, 2003	Attainment		
St. Clair County	May 12, 2003	Attainment		
* * *	*	* *	*	*

[1] This date is October 18, 2000, unless otherwise noted.

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[FR Doc. 03–11524 Filed 5–9–03; 8:45 am]

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Federal Register

Monday,
May 12, 2003

Part III

Department of Education

Tech-Prep Demonstration Program; Notice Inviting Applications for New Awards in Fiscal Year 2003; Notices

DEPARTMENT OF EDUCATION

[CFDA No: 84.353]

Office of Vocational and Adult Education, Tech-Prep Demonstration Program (TPDP); Notice Inviting Applications for New Awards in Fiscal Year (FY) 2003

Purpose of Program: The Tech-Prep Demonstration Program (TPDP) provides grants to enable consortia described in section 204(a) of the Carl D. Perkins Vocational and Technical Education Act of 1998 (Perkins III) to carry out tech-prep education projects authorized by section 207 of Perkins III that involve the location of a secondary school on the site of a community college, a business as a member of the consortium, and the voluntary participation of secondary school students. Following an initial recruitment period, funded projects would enroll a new student cohort in each year of the project, in addition to continuing support for each previous TPDP student cohort.

Eligible Applicants: To be eligible for funding under the TPDP, a consortium must include at least one member in each of the following three categories:

(1) A local educational agency, an intermediate educational agency, an area vocational and technical education school serving secondary school students, or a secondary school funded by the Bureau of Indian Affairs;

(2)(a) A nonprofit institution of higher education that offers a two-year associate degree, two-year certificate, or two-year postsecondary apprenticeship program, or (b) a proprietary institution of higher education that offers a two-year associate degree program; and

(3) A business. Under the provisions of section 204(a)(1) of Perkins III, to be eligible for consortium membership both nonprofit and proprietary institutions of higher education must be qualified as institutions of higher education pursuant to section 102 of the Higher Education Act of 1965 (HEA), including institutions receiving assistance under the Tribally Controlled College or University Assistance Act of 1978 (25 U.S.C. 1801 *et seq.*) and tribally controlled postsecondary vocational and technical institutions.

In addition, nonprofit institutions of higher education are eligible only if they are not prohibited from receiving assistance under HEA, title IV, part B (20 U.S.C. 1071 *et seq.*), pursuant to the provisions of HEA section 435(a)(3) (20 U.S.C. 1083(a)). Proprietary institutions of higher education are eligible only if they are not subject to a default management plan required by the Secretary.

Applicants must submit a signed consortium agreement, to provide evidence that each of the required categories of membership has been satisfied. Under the provisions of section 204(a)(2), consortia also may include one or more: (1) institutions of higher education that award baccalaureate degrees; (2) employer organizations; or (3) labor organizations.

Note: Eligible consortia seeking to apply for funds should read and follow the regulations in 34 CFR 75.127–75.129, which apply to group applications.

Applications Available: May 12, 2003.

Deadline for Transmittal of Applications: June 26, 2003.

Deadline for Intergovernmental Review: August 25, 2003.

Estimated Available Funds: $9,968,000.

Estimated Range of Awards: $600,000 to $700,000 for the 60-month project period.

Estimated Average Size of Awards: $650,000.

Estimated Number of Awards: 14.

Note: The Department is not bound by any estimates in this Notice.

Project Period: 60 months. Applicants under this competition are required to provide detailed budget information for each year of the proposed project and for the total grant. The Department will negotiate funding levels for each 12-month period of the grant at the time of the award.

Note: The Secretary has concluded that entire, multi-year projects funded by five-year awards will be necessary for TPDP grantees to fully meet the statutory purposes of section 207 and the requirements of this notice. By definition, tech-prep programs combine at least two years of secondary education with a minimum of two years of postsecondary education in a nonduplicative, sequential course of study, and result in the attainment of a postsecondary degree or certificate. As outlined in this notice, five-year funding will: (a) Allow funded projects to engage in a lengthy recruitment effort and meet their enrollment goals; (b) enable the first cohort of students to complete the full four years of the tech-prep program and attain the necessary postsecondary degree or certificate; and (c) enable subsequent cohorts of students to complete a significant portion of the tech-prep program, thus increasing the likelihood that they will persist in their efforts to attain the necessary postsecondary degree or certificate. In addition, by enabling funded projects to conduct the full four-year tech-prep program, five-year funding will allow grantees and the Department to evaluate the effectiveness of the funded programs more thoroughly.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 85, 86, 97, 98, and 99; and (b) the regulations in the Notice of Final Requirements, Priorities, and Selection Criteria published elsewhere in this issue of the **Federal Register**.

Priorities: This competition gives competitive priority to applicants that meet the conditions outlined in the Notice of Final Requirements, Priorities, and Selection Criteria for this program, which is published elsewhere in this issue of the **Federal Register**.

Instructions for Transmittal of Applications:

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In FY 2003, the U.S. Department of Education is continuing to expand its pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The TPDP (CFDA #84.353) is one of the programs included in the pilot project. If you are an applicant under the TPDP, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application) portion of the Grant Administration and Payment System (GAPS). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format. When you enter the e-Application system, you will

find information about its hours of operation.

• You may submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Assistance (ED 424) to the Application Control Center after following these steps:

(1) Print ED 424 from the e-Application system.

(2) The institution's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

• We may request that you give us original signatures on all other forms at a later date.

• *Closing Date Extension in Case of System Unavailability:* If you elect to participate in the e-Application pilot for the TPDP and you are prevented from submitting your application on the closing date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. For us to grant this extension—

(1) You must be a registered user of e-Application, and have initiated an e-Application for this competition; and

(2)(a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 and 3:30 p.m., Washington, DC time, on the deadline date; or (b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 and 4:30 p.m., Washington, DC time) on the deadline date.

The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension you must contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the TPDP at: *http://e-grants.ed.gov.*

We have included additional information about the e-Application pilot project (*see* Parity Guidelines between Paper and Electronic Applications) in the TPDP application package.

FOR FURTHER INFORMATION CONTACT: For information on the program and to download a TPDP application package, you may access the Department's Web site at: *http://www.ed.gov/GrantApps/.*

If you need further assistance and need to speak with someone regarding TPDP, or to request a paper application package, you may contact Karen Stratman Clark, by phone at (202) 205–3779, or by mail at 330 C Street, SW., Room 5523, Washington, DC 20202. Requests for applications may also be sent by fax to (202) 401–4079.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. Individuals with disabilities may obtain this notice in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have the Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO) toll free at 1–888–293–6498, or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 2376.

Dated: May 7, 2003.

Carol D'Amico,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 03–11899 Filed 5–9–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Tech-Prep Demonstration Program

AGENCY: Office of Vocational and Adult Education, Department of Education.

ACTION: Notice of final requirements, final priorities and final selection criteria for new awards in Fiscal Year (FY) 2003 and subsequent years.

SUMMARY: The Assistant Secretary for Vocational and Adult Education announces requirements, priorities, and selection criteria under the Tech-Prep Demonstration Program (TPDP). The Assistant Secretary will use these requirements, priorities, and selection criteria for new awards made in FY 2003, and may use them in later years. We intend these requirements, priorities, and selection criteria to support the four basic education reform principles underlying the No Child Left Behind Act of 2001 (NCLB): Stronger accountability for results, increased flexibility and local control, expanded options for parents, and an emphasis on teaching methods that have been proven to work. We take this action to clarify the Department's expectations regarding this program, so that TPDP-funded projects will help students, schools, and teachers in their efforts to improve student achievement, meet high standards for high school graduation, and increase transition and persistence rates in postsecondary education.

EFFECTIVE DATE: These requirements, priorities and selection criteria are effective June 11, 2003.

FOR FURTHER INFORMATION CONTACT: Karen Stratman Clark, U.S. Department of Education, OVAE, MES Room 5223, 400 Maryland Avenue, SW., Washington DC 20202–7100. Telephone: (202) 205–3779 or via Internet: *karen.clark@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: This final notice establishes program requirements, priorities, and selection criteria for the TPDP, which is authorized by section 207 of the Carl D. Perkins Vocational and Technical Education Act of 1998 (Perkins III). TPDP provides grants to consortia to carry out tech-prep education projects

that involve the location of a secondary school on the site of a community college, a business as a member of the consortium, and the voluntary participation of secondary school students. We intend to fund projects that, following an initial recruitment period, will enroll a new student cohort in each year of the project, in addition to continuing support for each previous TPDP student cohort.

We published a notice of proposed requirements, proposed priorities and proposed selection criteria in the **Federal Register** on Friday, January 24, 2003 (68 FR 3517). In that notice, we discussed (on pages 3517 though 3519) the proposed requirements, priorities, and selection criteria for this year's TPDP competition and subsequent competitions.

Analysis of Comments and Changes

In response to our invitation in the notice of proposed requirements, proposed priorities, and proposed selection criteria, six parties submitted comments. An analysis of the comments, and of any changes made as a result of comments submitted, follows.

We have grouped major issues by subject. Generally, we do not address technical or other minor, non-substantive changes, or suggested changes, which the applicable statutory authority does not authorize us to make. Specifically, we have made technical changes to Priority 3 to clarify when we will award points for this priority.

Project Period

Comment: Three commenters were concerned with the proposal to extend the TPDP project period from three to five years. They expressed concern that this extension of the project period, coupled with the plan to fund the entire grant award from FY 2002 funds, would reduce the amount of funds available per year and reduce the number of grants to be funded.

Discussion: The decision to extend the project period from three to five years is based on a number of factors. By statutory definition, under section 202(a)(3) of Perkins III, tech-prep programs combine at least two years of secondary education with a minimum of two years of postsecondary education in a nonduplicative, sequential course of study. Federal funding of three-year projects under the first TPDP competition was not intended to support entire four-year tech-prep projects. With an expanded five-year project period, grantees will have both a lengthy tech-prep recruitment phase, and sufficient time for the first cohort of students to complete the entire four-year tech-prep program. Furthermore, five-year funding will allow the grantees funded under this year's competition and the Department to fully evaluate the effectiveness of the funded projects. The Department believes the estimated average size of awards accurately reflects what are likely to be relatively low costs of the first year's recruitment efforts, as well as costs associated with the four-year instructional program. While the expanded project period may serve to reduce the number of grants to be awarded, the Department believes that funding fewer projects to implement complete tech-prep programs serving significant numbers of students is preferable to funding a greater number of projects that would implement only partial tech-prep programs. However, regarding the estimated amount of funds available per year, the Department has also decided to use both the FY 2002 and the FY 2003 TPDP appropriations for this year's competition, which will serve to almost double the estimated amount of TPDP funds available for grant awards. See the ''Estimated Available Funds'' section in the notice inviting applications published elsewhere in this issue of the **Federal Register**.

Changes: None.

Assurance Regarding Start of Classes

Comment: Three commenters were concerned with the proposed grant schedule. If TPDP grants were to be awarded in August of 2003, the commenters were concerned that grantees would have insufficient time to launch their projects by September of 2003.

Discussion: Requirement 3 states that successful applicants must enroll the first student cohort and must begin classes ''no later than September of the calendar year after the year in which the grant award is made.'' For this year's competition, this would mean September of 2004. This proposed time frame will allow funded projects a full year's time to recruit their first cohort of students and begin classes by September of 2004. Indeed, as is discussed in response to an earlier comment, providing sufficient recruitment time was one of the reasons we proposed to expand the project period.

Changes: None.

Full-Time Enrollment Requirement

Comment: Three commenters were concerned about the requirement that eligible applicants enroll students full time in the program. They argued that this ''guideline'' would eliminate applicants with part-time programs from the applicant pool as well as significantly expand the scope of the currently funded TPDP projects.

Discussion: The requirement for full-time enrollment is based on the statutory language in section 207 of Perkins III, which specifically requires that funds be used to ''enable eligible consortia to carry out tech-prep education projects that involve the location of a secondary school on the site of a community college.'' For purposes of the TPDP program, the Department does not consider part-time programs to be ''secondary schools'' and has concluded that the full-time enrollment requirement is necessary in order to fund programs under this competition that meet fully the intent of section 207. This will not, however, alter the scope of currently funded TPDP projects. Rather, it applies only to new projects funded under this year's competition and perhaps in future competitions.

Changes: None.

Evaluation Requirement

Comment: One commenter recommended enhancing the program evaluation and outcomes assessment.

Discussion: The Department believes that the TPDP evaluation requirement, which is now more rigorous than that in the first TPDP competition, is sufficient for the program. The evaluation requirement now provides that a funded TPDP project must use an experimental or quasi-experimental design in the evaluation of the project. It further stipulates that funded TPDP projects also must carry out an evaluation to determine the impact of the project on a comprehensive set of student outcomes, including academic and technical skills achievement, high school graduation, enrollment and completion of postsecondary education, postsecondary remedial coursework, and labor market entry.

Change: None.

Comment: Three commenters were concerned about the proposed data reporting requirements regarding postsecondary persistence and completion, and labor market entry. They felt that greater resources should be allocated to support this data collection effort.

Discussion: The Department recognizes that by undertaking this data collection and reporting effort, some projects may incur additional costs. Consequently, the projected range of awards has been increased from the last competition.

Changes: None.

Proposed Priority 1—Highly Qualified Teachers

Comment: Three commenters were concerned that, as proposed, Priority 1 would require community colleges seeking TPDP funds to meet the teacher quality standards of the Elementary and Secondary Education Act (ESEA), as amended by the NCLB, Federal legislation that does not govern postsecondary institutions. They believed the use of this proposed priority would extend NCLB into an inappropriate arena.

Discussion: By its nature, the TPDP is a collaborative effort between secondary and postsecondary education. For this reason, it is appropriate to include priorities that reflect the focus of NCLB with respect to a component of a TPDP project taught by a secondary teacher. Our examination of currently funded TPDP projects revealed two different models for providing core academic classes—one in which secondary teachers taught core academic classes on the campus of the community college and another in which postsecondary instructors taught core academic classes for dual high school and community college credit. However, as it was not the Department's intent to expand the applicability of NCLB's provisions beyond elementary and secondary education and into the arena of community college hiring, the proposed priority has been revised.

Change: Under Priority 1 as revised, we will give competitive preference by awarding up to five additional points to applications that: (a) Require all secondary teachers teaching core academic subjects to be highly qualified, as such term is defined by section 9101(23) of the ESEA, as amended by NCLB; and (b) require all postsecondary teachers teaching core academic subjects to meet State standards for community college faculty.

Eligibility Requirements

Comment: One commenter urged the Department to allow technical centers to apply for TPDP funding. This individual believed that technical centers have both the resources and the expertise to house a successful tech-prep high school.

Discussion: Section 207 provides that funds are to be used to ''enable eligible consortia to carry out tech-prep education projects that involve the location of a secondary school on the site of a community college.'' In light of this statutory requirement, a technical center that serves students on a full-time basis may be a TPDP site only if it is located on the campus of a community college.

Change: None.

Comment: One commenter recommended that community colleges play a greater role in tech-prep programs.

Discussion: The TPDP already places community colleges in a pivotal role in the development and implementation of tech-prep programs, given that the statute requires eligible consortia to implement tech-prep education projects that involve the location of a secondary school on the site of a community college.

Change: None.

Comment: One commenter recommended that community-based organizations (CBOs) be encouraged to play a greater role in tech-prep programs.

Discussion: While section 207 does not identify CBOs as required members of eligible consortia, it does not preclude their participation. Thus, CBOs are eligible for consortium membership, or may serve some other function in a TPDP project, should an applicant choose to include them.

Change: None.

Comment: One commenter thought that four-year colleges and universities should be involved in tech-prep curriculum reform efforts.

Discussion: Under the provisions of section 207(d), tech-prep articulation agreements with four-year institutions cannot be supported with TPDP funds. However, section 207 does not preclude the participation of four-year colleges and universities in a TPDP project. They are eligible for consortium membership if an applicant chooses to include them, and they can participate in curriculum reform efforts within the context of the TPDP project.

Change: A change has been made. For information purposes, ''Allowable Costs'' and ''Unallowable Costs'' sections have been added to this notice immediately following the ''Requirements'' section. These sections indicate, among other things, that articulation agreements with four-year institutions cannot be funded under the TPDP and discuss the allowability of several other types of costs about which we frequently receive questions.

Comment: One commenter recommended that one of the required partners in the grant application be a tech-prep consortium.

Discussion: The requirements for membership in a TPDP consortium are taken from the statutory language in section 204(a) and section 207(b) of Perkins III. A tech-prep consortium under section 204, which receives funds under the State Tech-Prep Education Program, would not necessarily be eligible for funding under the TPDP because section 204 does not require inclusion of a business member. In contrast, section 207 specifically states that TPDP funds may only be awarded to a consortium that includes a business member.

Change: None.

Academic Preparation for Postsecondary Education

Comments: One commenter stated that tech-prep programs should be academically rigorous in order to support the transition from high school to college for more students, and that tech-prep programs should avoid tracking and serve a diverse student population. The commenter also recommended that recruitment and retention strategies be geared toward minority students.

Discussion: All students participating in TPDP projects should be expected to meet or exceed State academic standards and to enroll in postsecondary education. This expectation is reflected in the ''Project Design'' and ''Project Evaluation'' selection criteria. As to the commenter's recommendations that TPDP recruitment and retention strategies be geared toward minority students, the TPDP has several provisions related to special populations aimed at assisting students to overcome barriers that might interfere with recruitment or retention, or otherwise prevent them from succeeding in a TPDP project. While minority students are not necessarily special population students, minority students would be included in the definition of ''special populations'' to the extent that they are economically disadvantaged or single parents, face other barriers to educational achievement, including limited English proficiency, or otherwise meet the definition of ''special populations'' in section 3(23) of Perkins III. There are already several criteria factors in this notice that are intended to address the needs of all special population students. In addition, section 207(d)(3) of Perkins III requires the Secretary to give ''special consideration'' to consortia submitting applications that meet the requirements of paragraphs (1), (3), (4), and (5) of section 205(d). Specifically, section 205(d)(3) addresses dropout prevention and the needs of special populations. Also, section 205(d)(5) addresses how tech-prep programs will help students meet high academic and employability competencies. In order to more fully implement the statutory requirement that special consideration be provided

to certain applications—including applications addressing dropout prevention and special populations—and in response to this comment, in addition to the points to be awarded to applicants based on the selection criteria and Priorities 1–3, the Department will award five additional points to applications that address, among other things, dropout prevention and the needs of special population students. Also, in response to the commenter's additional concerns, we note that in section 204(c)(5) of Perkins III, recruitment and counseling activities are stated to be key tech-prep components that must be geared to meeting the needs of participating students.

Changes: A change has been made. A ''Special Considerations'' section has been added to this notice, immediately before the ''Selection Criteria'' section, wherein we state that, in addition to the points to be awarded to applicants based on the selection criteria and Priorities 1–3, the Department will award five additional points to applications that: (1) Provide for effective employment placement activities; (2) Effectively address the issues of school dropout prevention and reentry, as well as the needs of special populations; (3) Provide education and training in career areas or skills in which there are significant workforce shortages, including the information technology industry; and (4) Demonstrate how tech-prep programs will help students meet high academic and employability competencies.

Uses of Funds

Comment: One commenter requested funds to survey workplace literacy, English as a Second Language (ESL), General Educational Development (GED), and basic education programs in Milwaukee, Wisconsin.

Discussion: Since the programs identified appear to be adult literacy programs rather than tech-prep education programs, the proposed activity would not be allowable under TPDP.

Change: None.

Project Period

We have concluded that funding multi-year projects for a project period of five years entirely from the FY 2002 and FY 2003 appropriations is necessary for TPDP grantees to meet fully the statutory purposes of section 207 and the requirements of this notice. Such a funding arrangement will enable projects to engage in an adequate recruitment effort to meet their enrollment goals, and to implement both the full, two-year secondary component and the full, two-year postsecondary component of the TPDP project for the first student cohort during the grant award period.

Requirements

To achieve the purposes of section 207 of Perkins III, we establish the following requirements. These requirements will apply to all applicants seeking funding under this competition.

(1) Each applicant must submit a signed Consortium Agreement (Agreement), providing evidence that each of the categories of membership required under section 207 has been satisfied, and that each of the required members is eligible for membership under the provisions of Perkins III. The Agreement must contain a signature of commitment from any participating secondary school, community college, and business member, affirming that those entities have formed a consortium to develop, implement, and sustain a TPDP project as described under section 207 of Perkins III. The Agreement also must describe the roles and responsibilities of each consortium member within the proposed project. The format for the Agreement will be included in the application package.

(2) Each applicant must submit enrollment goals for the number of students in each student cohort to be enrolled in each year of the TPDP project.

(3) Each applicant must provide an assurance that it will enroll its first student cohort and begin classes no later than September of the calendar year after the year in which the grant award is made, and enroll its second, third, and fourth student cohorts by September of each subsequent year of the proposed project.

(4) Each applicant must submit a complete Proposed Project Course Sequence Plan (Plan) to demonstrate how the proposed instructional program represents a sequential, four-year program of study that meets the specific criteria set forth in sections 202(a)(3) and 204(c) of Perkins III. The Plan must list the course sequences for each program of study within the proposed TPDP project, describing the specific academic and technical coursework required for all four years of the program. The Plan also must summarize program entrance requirements and specify the associate degree or postsecondary certificate to be earned upon completion of the program. The format for the Plan will be included in the application package.

(5) Each TPDP-funded project must involve a secondary school physically located on the site of a community college and provide a complete program of academic and technical coursework at the community college that, at a minimum, meets State requirements for high school graduation. Students must be enrolled full-time in the high school on the community college campus. However, enrolled students may participate in extracurricular activities at their original high school. Proposed projects that involve only the ''virtual'' location of a secondary school on the site of a community college, and projects that involve only satellite community college sites located on the premises of secondary schools, are not eligible for support under this competition.

(6) Each TPDP-funded project must carry out an evaluation to determine the impact of the project on a comprehensive set of student outcomes, including: Academic and technical skills achievement; high school graduation; enrollment and completion of postsecondary education; postsecondary remedial coursework; labor market entry; and, to the extent feasible, earnings or earnings increase after program completion. In conducting this evaluation, each TPDP project must use either an experimental design, in which students are randomly assigned to the demonstration program or another program, or a quasi-experimental design, in which each program participant is matched with a non-participant possessing similar pre-program characteristics, such as test scores on State academic assessments, grade point average, class rank, technical coursework or course of study, and socioeconomic status.

(7) Each TPDP project must submit annual reports of anticipated enrollment. The reports of anticipated enrollment must include the number of students in each cohort enrolled for the coming year and, if that differs from the enrollment goals stated in the approved application, the reasons. The reports of anticipated enrollment will be due at the end of April of each project year.

(8) Each TPDP project must submit annual project performance reports and a final project performance report. Both the annual and final performance reports must summarize the TPDP project's progress and significant accomplishments, with respect to both the process of implementation and the outcomes of student participation; provide data regarding enrollment, persistence, and program completion for each student cohort; identify barriers to continued progress and outline

solutions; include a progress report on and an analysis of the findings of the project evaluation; and review prospects for sustained operations after the cessation of Federal support. The annual and final performance reports will be due within 90 days of the end of each project year and of the end of the project, respectively.

Funded projects will be required to comply with all requirements adopted in this notice. Failure to comply with any applicable program requirement may subject a grantee to special conditions, withholding, or termination.

Allowable Costs

Allowable activities and expenditures for TPDP projects include, but are not limited to: Recruitment and enrollment of students; staff hiring; updating of articulation agreements; curriculum revision; professional development for secondary and postsecondary faculty, counselors, and administrators; and development and maintenance of business and industry partnerships. In addition, section 207(b)(2) specifies that TPDP projects may provide summer internships at a business for students or teachers.

Section 207 gives applicants latitude for innovation. For example, although tech-prep education by definition includes at least two years of education at the secondary level preceding high school graduation and two years of postsecondary education or apprenticeship training, section 204(c)(3)(B) authorizes tech-prep programs that allow students to concurrently complete both secondary and postsecondary courses, and simultaneously satisfy requirements for a high school diploma and an associate degree or other postsecondary credential.

Unallowable Costs

(1) *Supplanting.* In accordance with section 311(a) of Perkins III, funds under this program may not be used to supplant non-Federal funds used to carry out vocational and technical education activities and tech-prep activities. Further, the prohibition against supplanting also means that grantees are required to use their negotiated restricted indirect cost rate under this program. (34 CFR 75.563.)

Because of the statutory prohibition against supplanting, we caution applicants not to plan to use Federal funds awarded under section 207 to replace non-Federal funding that is already, or that otherwise would be, available for support of the TPDP projects to be assisted. Further, we are concerned that TPDP funds may be used to replace Federal student financial aid. We wish to highlight the fact that the statute does not authorize us to fund projects that serve primarily as entities through which students may apply for and receive tuition and other financial assistance.

(2) *Construction.* Under EDGAR (34 CFR 75.533), TPDP grants cannot be used for the acquisition of real property or construction.

(3) *Articulation Agreements with Four-Year Institutions.* Under the provisions of section 207(d), tech-prep articulation agreements with four-year institutions cannot be supported with funds awarded under section 207. However, articulation agreements with four-year institutions can be developed using other resources by applicants who wish to establish ''open-ended'' tech-prep career pathways. Also, the inclusion of institutions of higher education that award baccalaureate degrees in TPDP consortia is allowable under section 204(a)(2)(A).

Special Considerations

In addition to the points to be awarded to applicants based on the selection criteria and Priorities 1–3, under section 207(d)(3) of Perkins III, we award five additional points to applications that:

(1) Provide for effective employment placement activities;

(2) Effectively address the issues of school dropout prevention and reentry, as well as the needs of special populations;

(3) Provide education and training in career areas or skills in which there are significant workforce shortages, including the information technology industry; and

(4) Demonstrate how tech-prep programs will help students meet high academic and employability competencies.

Note: This notice does *not* solicit applications. In any year in which we choose to use one or more of these proposed priorities, we invite applications through a notice in the **Federal Register**. (A notice inviting applications under this program is published elsewhere in this issue of the **Federal Register**.) When inviting applications, we designate each priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive preference priority (34 CFR 75.105(c)(2)(i); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Priorities

Priority 1

Under this priority, we will give competitive preference by awarding up to five additional points to applications that: (a) Require all secondary teachers teaching core academic subjects to be highly qualified, as such term is defined by section 9101(23) of the ESEA, as amended by NCLB; and (b) require all postsecondary teachers teaching core academic subjects to meet State standards for community college faculty.

Note: ESEA defines the term ''core academic subjects'' as English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

Priority 2

Under this priority, we will give competitive preference by awarding up to five additional points to applications that require each participating student, as a condition of high school graduation, to pass at least one high school-level test (either a comprehensive test covering a variety of courses in a subject area or a high school end-of-course test) in each of English or language arts, mathematics, and science. To receive any points under this priority, applicants must describe their specific high school graduation requirements.

Priority 3

Under this priority, we will give competitive preference by awarding up to five additional points to applications that offer the proposed TPDP project as an additional alternative for students attending high schools that have not met adequate yearly progress (AYP) for two or more consecutive years, as defined by section 1111 of the ESEA, as amended by NCLB, and 34 CFR 200.13. To receive any points under this priority, applicants must: (a) Provide evidence that at least one high school served by a consortium member (under 204(a)(1)(A) of Perkins III) has not met AYP for at least two consecutive years; and (b) provide an assurance that eligible students that are transferring

from this high school will be given a genuine opportunity to enroll in the TPDP project.

Note: Each State published a list of ''school improvement'' schools for the 2001–02 school year last summer or early fall. Based on the transition language in the ESEA, these schools are also in school improvement for the 2002–03 school year. Applications from consortia that have a member (under 204(a)(1)(A) of Perkins III) serving at least one school on the list for the 2002–03 school year, will be eligible for a competitive preference under Priority 3.

Selection Criteria

We establish the following selection criteria to evaluate applications for new grants under this year's competition and perhaps subsequent competitions. The maximum score for all of the following criteria is 100 points. The maximum score for each criterion and sub-criterion is indicated in parentheses.

(a) *Quality of the project design.* (40 points)

In determining the quality of the design of the proposed project, we consider the following factors:

(1) The extent to which the applicant demonstrates its readiness to implement a complete, career-oriented, four-year program of study, as evidenced by a formal articulation agreement concerning the structure, content and sequence of all academic and technical courses to be offered in the proposed tech-prep program and, if applicable, the conditions under which dual credit will be awarded. (8 points)

(2) The extent to which the proposed instructional program will meet high academic standards that equal or exceed those established by the State. (4 points)

(3) The extent to which the applicant has aligned its secondary academic and technical course offerings and requirements for program completion with the entrance requirements for the corresponding postsecondary degree or certificate program. (4 points)

(4) The extent to which the applicant presents a detailed student recruitment plan that is likely to be effective in fulfilling the project's enrollment goals for each year of the project. (8 points)

(5) The extent to which the proposed project will provide comprehensive academic and career counseling and other support services to participating students at both the secondary and postsecondary levels, to ensure their persistence in the program and attainment of a postsecondary degree or certificate. (8 points)

(6) The extent to which the proposed project will provide high-quality, sustained, and intensive professional development for instructors, counselors, and administrators involved in the program. (8 points)

(b) *Quality of the management plan.* (15 points)

In determining the quality of the management plan for the proposed project, we consider the following factors:

(1) The extent to which the management plan outlines specific, measurable goals, objectives, and outcomes to be achieved by the proposed project. (5 points)

(2) The extent to which the management plan assigns responsibility for the accomplishment of project tasks to specific project personnel, and provides timelines for the accomplishment of project tasks. (5 points)

(3) The extent to which the time commitments of the project director and other key personnel are appropriate and adequate to achieve the objectives of the proposed project. (5 points)

(c) *Quality of project personnel.* (15 points)

In determining the quality of project personnel, we consider the following factors:

(1) The extent to which the applicant encourages applications for employment from members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (5 points)

(2) The qualifications, including relevant training and experience, of the project director. (5 points)

(3) The qualifications, including relevant training and experience, of key project personnel, including teachers, counselors, administrators, and project consultants. (5 points)

(d) *Adequacy of resources.* (10 points)

In determining the adequacy of resources for the proposed project, we consider the following factors:

(1) The adequacy of support, including facilities, equipment, supplies, and other resources, from the participating institutions. (5 points)

(2) The extent to which the budget is adequate and costs are reasonable in relation to the objectives and design of the proposed project. (5 points)

(e) *Quality of the project evaluation.* (20 points)

In determining the quality of the evaluation, we consider the following factors:

(1) The extent to which the application presents a feasible, credible plan for project evaluation and includes: the type of design to be used; outcomes to be examined; and how participants will be assigned to the program or matched for comparison to non-program participants. (10 points)

(2) The extent to which the evaluation will provide reports or other documents at appropriate intervals to be used for continuous program improvement. (4 points)

(3) The extent to which the proposed evaluation will be conducted by an independent evaluator with the necessary background and technical expertise to carry out the evaluation. (6 points)

Note: With points awarded under ''Special Considerations,'' Priorities 1–3, and the selection criteria an application may receive a maximum of 120 points.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive Order is to foster intergovernmental partnership and a strengthened federalism. The Executive Order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Applicable Program Regulations: 34 CFR parts 74–79.

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Catalog of Federal Domestic Assistance Number: 84.353.

Program Authority: 20 U.S.C. 2376.

Dated: May 7, 2003.

Carol D'Amico,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 03–11900 Filed 5–9–03; 8:45 am]

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Federal Register

Monday,
May 12, 2003

Part IV

The President

Executive Order 13299—Interagency Group on Insular Areas

Federal Register
Vol. 68, No. 91
Monday, May 12, 2003

Presidential Documents

Title 3—

The President

Executive Order 13299 of May 12, 2003

Interagency Group on Insular Areas

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. *Interagency Group on Insular Areas.* (a) There is established, within the Department of the Interior for administrative purposes, the Interagency Group on Insular Areas (IGIA). The group shall consist exclusively of:

(i) the heads of the executive departments; and

(ii) the heads of such agencies as the Secretary of the Interior may designate.

(b) The Secretary of the Interior, or the Secretary's designee under section 1(c) of this order, shall convene and preside at the meetings of the IGIA, determine its agenda, direct its work and, as appropriate to deal with particular subject matters, establish and direct subgroups of the IGIA that shall consist exclusively of members of the IGIA.

(c) A member of the IGIA may designate, to perform the IGIA or IGIA subgroup functions of the member, any person who is a part of the member's department or agency (agency) and who is either an officer of the United States appointed by the President or a member of the Senior Executive Service.

Sec. 2. *Functions of the IGIA.* The IGIA shall:

(a) provide advice on establishment or implementation of policies concerning American Samoa, Guam, the United States Virgin Islands, and the Commonwealth of Northern Mariana Islands (Insular Areas) to:

(i) the President, through the Office of Intergovernmental Affairs in the White House Office, in written reports, at least once each year; and

(ii) the Secretary of the Interior;

(b) obtain information and advice concerning Insular Areas from governors and other elected officials in the Insular Areas (including through a meeting at least once each year with such governors of the Insular Areas who may wish to attend) in a manner that seeks their individual advice and does not involve collective judgment or consensus advice or deliberation;

(c) obtain information and advice concerning Insular Areas, as the IGIA determines appropriate, from representatives of entities or other individuals in a manner that seeks their individual advice and does not involve collective judgment or consensus advice or deliberation; and

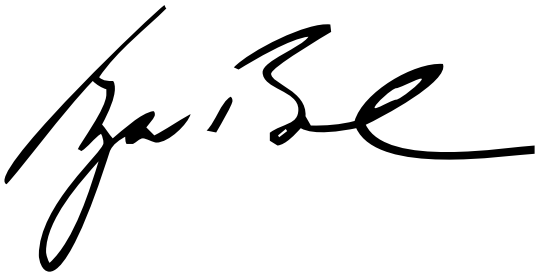
(d) at the request of the head of any agency who is a member of the IGIA, unless the Secretary of the Interior declines the request, promptly review and provide advice on a policy or policy implementation action affecting one of the Insular Areas proposed by that agency.

Sec. 3. *General Provisions.* (a) The Secretary of the Interior may, as the Secretary determines appropriate, make recommendations to the President, or to the heads of agencies, regarding policy or policy implementation actions of the Federal Government affecting the Insular Areas.

(b) Nothing in this order shall be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

Sec. 4. *Judicial Review.* This order is intended only to improve the internal management of the Federal Government and is not intended to, and does

not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officers or employees, or any other person.



THE WHITE HOUSE,
May 8, 2003.

[FR Doc. 03–11969
Filed 5–9–03; 10:47 am]
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Family and educational travel transactions, remittances, support for Cuban people and humanitarian projects; technical amendments; comments due by 5-23-03; published 3-24-03 [FR 03-06808]

TREASURY DEPARTMENT

Internal Revenue Service

Excise taxes:

Structured settlement factoring transactions; cross-reference; comments due by 5-20-03; published 2-19-03 [FR 03-03865]

TREASURY DEPARTMENT

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USA PATRIOT Act; implementation—

Nauru; special measures imposition due to designation as primary money laundering concern; comments due by 5-19-03; published 4-17-03 [FR 03-09410]

Terrorism Risk Insurance Program

State residual market insurance entities and State workers' compensation funds; comments due by 5-19-03; published 4-18-03 [FR 03-09613]

TREASURY DEPARTMENT

Terrorism Risk Insurance Program

Statutory conditions for Federal payment; comments due by 5-19-03; published 4-18-03 [FR 03-09611]

TREASURY DEPARTMENT

Terrorism Risk Insurance Program

Statutory conditions for Federal payment; cross-reference; comments due by 5-19-03; published 4-18-03 [FR 03-09612]

VETERANS AFFAIRS DEPARTMENT

Grants and cooperative agreements; availability, etc.:

Homeless Providers Grant and Per Diem Program; comments due by 5-19-03; published 3-19-03 [FR 03-06329]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''PLUS'' (Public Laws Update Service) on 202–741–6043. 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. 1770/P.L. 108–20

Smallpox Emergency Personnel Protection Act of 2003 (Apr. 30, 2003; 117 Stat. 638)

S. 151/P.L. 108–21

Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 (Apr. 30, 2003; 117 Stat. 650)

Last List April 29, 2003

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–050–00001–6)	9.00	[4]Jan. 1, 2003
3 (1997 Compilation and Parts 100 and 101)	(869–050–00002–4)	32.00	[1] Jan. 1, 2003
4	(869–050–00003–2)	9.50	Jan. 1, 2003
5 Parts:			
1–699	(869–050–00004–1)	57.00	Jan. 1, 2003
700–1199	(869–050–00005–9)	46.00	Jan. 1, 2003
1200–End, 6 (6 Reserved)	(869–050–00006–7)	58.00	Jan. 1, 2003
7 Parts:			
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27–52	(869–050–00008–3)	47.00	Jan. 1, 2003
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210–299	(869–050–00010–5)	59.00	Jan. 1, 2003
300–399	(869–050–00011–3)	43.00	Jan. 1, 2003
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700–899	(869–050–00013–0)	42.00	Jan. 1, 2003
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CFR Index and Findings Aids	(869–050–00048–2)	59.00	Jan. 1, 2003
Complete 2003 CFR set		1,195.00	2003
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Subscription (mailed as issued)		298.00	2003
Individual copies		2.00	2003
Complete set (one-time mailing)		298.00	2002
Complete set (one-time mailing)		290.00	2001

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] 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.

[3] 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.

[4] No amendments to this volume were promulgated during the period January 1, 2002, through January 1, 2003. The CFR volume issued as of January 1, 2002 should be retained.

[5] 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.

[6] No amendments to this volume were promulgated during the period April 1, 2001, through April 1, 2002. The CFR volume issued as of April 1, 2001 should be retained.

[7] 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.

[8] No amendments to this volume were promulgated during the period July 1, 2001, through July 1, 2002. The CFR volume issued as of July 1, 2001 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2001, through October 1, 2002. The CFR volume issued as of October 1, 2001 should be retained.