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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–260–AD; Amendment 39–12496; AD 2001–22–17]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–81, –9–82, –9–83, and –9–87 Series Airplanes; Model MD–88 Airplanes; and Model MD–90–30 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–81, –9–82, –9–83, and –9–87 series airplanes; Model MD–88 airplanes; and Model MD–90–30 series airplanes. This action requires repetitive inspections of the electric motors (or motors) of the auxiliary hydraulic pump for electrical resistance, continuity, mechanical rotation, and associated wiring resistance/voltage; and corrective actions, if necessary. The actions specified by this AD are intended to prevent various failures of the electric motor(s) of the auxiliary hydraulic pump and associated wiring, which could result in fire at the auxiliary hydraulic pump and consequent damage to the adjacent electrical equipment and/or structure. This action is intended to address the identified unsafe condition.

DATES: Effective December 18, 2001.

The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD80–29A067, dated October 21, 1999; and McDonnell Douglas Alert Service Bulletin MD90–29A018, dated October 21, 1999; as listed in the regulations, is approved by the Director of the Federal Register as of December 18, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Albert Lam, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (526) 627–5346; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–81, –9–82, –9–83, and –9–87 series airplanes; Model MD–88 airplanes; and Model MD–90–30 series airplanes; was published in the **Federal Register** on December 6, 2000 (65 FR 76185). That action proposed to require repetitive inspections of the number 1 and 2 electric motors of the auxiliary hydraulic pump for electrical resistance, continuity, mechanical rotation, and associated wiring resistance/voltage; and corrective actions, if necessary.

Other Relevant Rulemaking

This AD affects McDonnell Douglas Model DC–9–81, –9–82, –9–83, and –9–87 series airplanes (i.e., MD–80 series airplanes); Model MD–88 airplanes; and Model MD–90–30 series airplanes. The FAA is planning to issue a separate AD for McDonnell Douglas Model DC–10 series airplanes, Model MD–10 series airplanes, and Model MD–11 series airplanes, to address the identified unsafe condition.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Correct Number of Motors Specified

Two operators indicate that, on the affected twin-jet airplanes, there is only one electric motor on an auxiliary hydraulic pump. The language in the final rule has been corrected accordingly.

Request To Extend the Interval for Repetitive Inspection

An operator recommends that the repetitive interval for inspection of the electric motor(s) on an auxiliary hydraulic pump be extended from 5,000 flight hours to 5,600 flight hours, so that the inspection can be done during scheduled maintenance checks. The FAA concurs with the commenter's request to extend the compliance time for the repetitive inspections. Extending the compliance time by 600 flight hours will not adversely affect safety, and will allow the inspection to be performed at a base during regularly scheduled maintenance where special equipment and trained maintenance personnel will be available if necessary. Paragraphs (b), (c), and (d) of the final rule have been revised to specify an interval for repetitive inspection of 5,600 flight hours.

Request To Change the Inspection Method

The same operator indicates that the inspection method specified in the service bulletin could damage a serviceable electric motor in an auxiliary hydraulic pump. The operator suggests that the applicable Boeing service bulletin be revised to specify a friction check procedure that poses less risk of damage to the electric motor. While agreeing that the test in question could be improved, the FAA finds the test acceptable for the required inspection. Therefore, no change has been made to the final rule in this regard.

Request To Change Time of Initial Inspection for Certain Operators

Another operator indicates that some operators have already performed

inspections of the electric motor(s) of an auxiliary hydraulic pump and its associated wiring, in accordance with the service bulletin. For these operators, the compliance period for the initial inspection should be one repetitive interval since the last inspection, rather than within 12 months after the effective date of the AD. The FAA concurs and has revised paragraph (a) of the final rule to add a new paragraph (a)(3) that provides a compliance time for the initial inspection for those operators which have already performed that inspection.

Request To Separate Requirements for Inspection of the Motor(s) and the Wiring

Finally, an operator suggests that inspection of the electric motor(s) on an auxiliary hydraulic pump and inspection of the associated wiring be addressed in separate paragraphs, so that the two inspections may be tracked individually. The operator points out that the electric motors may be removed from one pump to another and that the auxiliary hydraulic pumps may be moved from one airplane to another. Separate tracking of the required inspections decreases the risk of inadvertent non-compliance. The FAA does not concur with the commenter's suggestion. The auxiliary hydraulic pump is part of the airplane system that needs to be inspected along with its associated wiring. If a pump were to be removed and installed on another airplane, that pump would need to be re-inspected along with the associated wiring on that airplane. Therefore, no change to the final rule is necessary in this regard.

Cost Impact

There are approximately 1,292 Model DC–9–81, –9–82, –9–83, and –9–87 series airplanes; Model MD–88 airplanes; and Model MD–90-series airplanes of the affected design in the worldwide fleet. The FAA estimates that 697 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $41,820 or $60 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–22–17 MCDONNELL DOUGLAS:

Amendment 39–12496. Docket 2000–NM–260–AD.

Applicability: Model DC–9–81, –9–82, –9–83, and ''9–87 series airplanes, and Model MD–88 airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD80–29A067, dated October 21, 1999; and Model MD–90–30 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD90–29A018, dated October 21, 1999; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent various failures of electric motors of the auxiliary hydraulic pump and associated wiring, which could result in fire at the auxiliary hydraulic pump and consequent damage to the adjacent electrical equipment and/or structure, accomplish the following:

Inspection

(a) Do a detailed inspection of the electric motor(s) of the auxiliary hydraulic pump for electrical resistance, continuity, mechanical rotation, and associated wiring resistance/voltage, per McDonnell Douglas Alert Service Bulletin MD80–29A067, dated October 21, 1999 (for Model DC–9–81, –9–82, –9–83, and ''9–87 series airplanes, and Model MD–88 airplanes); or McDonnell Douglas Alert Service Bulletin MD90–29A018, dated October 21, 1999 (for Model MD–90–30 series airplanes); as applicable; at the applicable time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD.

(1) For airplanes that have accumulated 3,000 total flight hours or more as of the effective date of this AD: Inspect within 12 months after the effective date of this AD.

(2) For airplanes that have accumulated less than 3,000 total flight hours as of the effective date of this AD: Inspect within 12 months after accumulating 3,000 total flight hours.

(3) For airplanes on which the inspection has been accomplished prior to the effective date of this AD: Inspect within 12 months after the effective date of this AD or within 5,600 flight hours after the previous inspection, whichever occurs later.

Condition 1, No Failures: Repetitive Inspections

(b) If no failures are detected during the inspection required by paragraph (a) of this AD, repeat the inspection required by paragraph (a) of this AD every 5,600 flight hours.

Condition 2, Failure of Any Pump Motor: Replacement and Repetitive Inspections

(c) If any pump motor fails during any inspection required by paragraph (a) of this AD, before further flight, replace the failed

auxiliary hydraulic pump with a serviceable pump, per McDonnell Douglas Alert Service Bulletin MD80–29A067, dated October 21, 1999 (for Model DC–9–81, –9–82, –9–83, and ''9–87 series airplanes, and Model MD–88 airplanes); or McDonnell Douglas Alert Service Bulletin MD90–29A018, dated October 21, 1999 (for Model MD–90–30 series airplanes); as applicable. Repeat the inspection required by paragraph (a) of this AD every 5,600 flight hours.

Condition 3, Failure of Any Wiring: Repair and Repetitive Inspection

(d) If any wiring fails during any inspection required by paragraph (a) of this AD, before further flight, troubleshoot and repair the failed wiring, per McDonnell Douglas Alert Service Bulletin MD80–29A067, dated October 21, 1999 (for Model DC–9–81, –9–82, –9–83, and ''9–87 series airplanes, and Model MD–88 airplanes); or McDonnell Douglas Alert Service Bulletin MD90–29A018, dated October 21, 1999 (for Model MD–90–30 series airplanes); as applicable. Repeat the inspection required by paragraph (a) of this AD every 5,600 flight hours.

Alternative Methods of Compliance

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

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

Special Flight Permit

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

Incorporation by Reference

(g) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD80–29A067, dated October 21, 1999; and McDonnell Douglas Alert Service Bulletin MD90–29A018, dated October 21, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on December 18, 2001.

Issued in Renton, Washington, on November 1, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–28023 Filed 11–9–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–68–AD; Amendment 39–12497; AD 2001–22–18]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce, plc Models Tay 650–15 and 651–54 Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to Rolls-Royce, plc models Tay 650–15 and 651–54 turbofan engines. This amendment requires initial and repetitive visual and ultrasonic inspections of fan blades for cracks, and, if necessary, replacement with serviceable parts. In addition, this AD requires recording instances when engines are operated in a stabilized manner in newly prohibited ranges. This amendment is prompted by reports of fan blade failures. The actions specified by this AD are intended to prevent fan blade failures, which can result in an uncontained engine failure, engine fire, and damage to the airplane.

DATES: Effective date December 18, 2001. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 18, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Rolls-Royce plc, Technical Publications Department, PO Box 31, Derby, England DE248BJ; telephone 44 1332 242424, fax 44 1332 249936. This information may be examined, by appointment, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard Woldan, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7136; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to Rolls-Royce, plc models Tay 650–15 and 651–54 turbofan engines was published in the **Federal Register** on September 14, 2000 (65 FR 55468). That action proposed to require initial and repetitive visual and ultrasonic inspections of fan blades for cracks, and, if necessary, replacement with serviceable parts. In addition, that action proposed to require recording instances when engines are operated in a stabilized manner in newly prohibited ranges.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Possible Conflict of AD's

One commenter states that AD 98–06–07, which was issued by the Transport Airplane Directorate, conflicts with the proposed AD. The commenter requests that the FAA clarify its position regarding the removal of engine speed restrictions in the forward thrust mode, introduced by AD 98–06–07. The commenter notes that the proposed AD does not require inspections if engines are operated in the restricted engine forward thrust mode, introduced by AD 98–06–07. The commenter appears to believe that the proposed action will have the effect of removing the restrictions introduced by AD 98–06–07. The FAA does not agree.

This AD is based on the latest revisions of service information published by the engine manufacturer, Rolls-Royce. Based on that information, the FAA has determined that no inspections are necessary for engines operated in the restricted engine forward thrust mode, introduced by AD 98–06–07. AD 98–06–07 was issued by the Transport Airplane Directorate. The Engine & Propeller Directorate has informed the Transport Airplane Directorate of this finding, which the Transport Directorate may use as a basis for further rulemaking with regard to the requirements of AD 98–06–07. The FAA

believes, however, that this AD and AD 98–07–06 do not conflict in that it is possible for operaters to comply with both AD's. Also, as stated by the commenter, an approval for modification of the requirements of AD 98–06–07 can be pursued through a request for an alternative method of compliance.

Modify Shop Visit Definition

One commenter requests that the shop visit definition in the proposed AD be modified to exclude engines that are inducted into the shop solely for convenience in performing maintenance that could be performed on-wing. The commenter further states that engines do not need to be removed from the airplane and inducted into the shop to perform on-wing types of maintenance, and, if only field-level maintenance is performed off-wing, it should not be considered a shop visit. The FAA agrees.

The intent of this proposed AD is to perform fan blade inspections during shop visit for heavy engine maintenance. Requiring these inspections during shop visits that are only performing field-level maintenance would needlessly penalize an operator when the required maintenance could be performed on-wing. Therefore, the FAA has revised the defintion of shop visit to exclude those shop visits when only field maintenance type activities are performed in lieu of performing them on-wing.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Economic Analysis

There are approximately 713 engines of the affected design in the worldwide fleet. The FAA estimates that 451 engines installed on airplanes of U.S. registry would be affected by this AD. Based on the current utilization and shop visit rates for the affected engine models, the FAA estimates that the number of shop visits and inspections for the U.S. fleet would be approximately 140 per year. It would take approximately 5 work hours per engine to accomplish the actions at a labor rate of $60 per work hour. Assuming that five percent of these inspections result in a rejected fan blade set at a cost of approximately $100,000 per set, the annual cost impact of this AD on U.S. operators is estimated to be $742,000. The current inspection failure rate is below one percent and this cost estimate is believed to be conservatively high.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2001–22–18 ROLLS-ROYCE, PLC: Amendment 39–12497. Docket No. 98-ANE–68-AD.

Applicability: This airworthiness directive (AD) is applicable to Rolls-Royce, plc (R-R) models Tay 650–15 and 651–54 turbofan engines. These engines are installed on, but not limited to, Fokker Model F.28 Mark 0100 and Boeing 727-QF series airplanes.

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

Compliance: Compliance with this AD is required as indicated, unless already done.

To prevent fan blade failure, which can result in an uncontained engine failure, engine fire, and damage to the airplane, accomplish the following:

Record Operation in Prohibited Operating Ranges

(a) If an engine is operated in a stabilized manner within the prohibited ranges described in R-R Service Bulletin (SB) No. Tay-72–1447, Revision 2, dated July 25, 2000, paragraphs 3.A ., 3.B.(2), or 3.C. as applicable by engine model, then prior to the next flight make an entry in the engine records that reflects that operation. If known, include the stabilized N1 speed in the engine records.

Inspections

(b) Perform initial and repetitive inspections of fan blades in accordance with paragraphs 1. D. (1) through (7) of R-R SB No. Tay 72–1442, Revision 1, dated December 19, 1997, as follows:

(1) Perform the initial inspection at the earliest of the following:

(i) If the engine records indicate that any of the conditions described in R-R SB No. Tay-72–1447, Revision 2, dated July 25, 2000, paragraphs 3.A.(2), 3.A.(3), 3.B.(2)(a), 3.B.(2)(b), or 3.C.(2), as applicable by engine model, are satisfied;

(ii) Prior to entering in service if fan blades are installed in a different engine than that from which they were removed and if the fan blades have time-in-service since the last inspection in accordance with R-R SB No. Tay 72–1442;

(iii) The next shop visit after the effective date of this AD.

(2) Thereafter, inspect at intervals not to exceed the earliest of paragraphs (b)(1)(i) through (b)(1)(iii) of this AD.

(c) Remove the entire fan blade set from service if any blade shows crack indications and replace with serviceable parts.

Definition of Shop Visit

(d) For the purposes of this AD, a shop visit is defined as the introduction of the engine into a shop that has the capability to separate Rolls-Royce, plc models Tay 650–15 or 651–54 turbofan engine major case flanges. This definition excludes shop visits when only field maintenance type activities are performed in lieu of performing them on-wing.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

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

Documents That Have Been Incorporated By Reference

(g) The inspection must be done in accordance with the following Rolls-Royce plc, mandatory service bulletins (MSB's):

Document No.	Pages	Revision	Date
MSB Tay 72–1442	1–3	1	December 19, 1997.
Appendix 1	1–2	1	December 19, 1997.
	3	Original	October 31, 1997.
Appendix 2	1	1	December 19, 1997.
Appendix 3	1	1	December 19, 1997.
Appendix 4	1	Original	October 31, 1997.
Total pages: 9			
MSB Tay-72–1447	1–5	2	July 25, 2000.
Total pages: 5			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rolls-Royce plc, Technical Publications Department, PO Box 31, Derby, England DE248BJ; telephone 44 1332 242424; fax 44 1332 249936. Copies may be inspected, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in United Kingdom Civil Aviation Authority Airworthiness Directives 008–10–97 and 001–12–97.

Effective Date

(h) This amendment becomes effective on December 18, 2001.

Issued in Burlington, Massachusetts, on October 31, 2001.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 01–28024 Filed 11–9–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 40, 45, 70, and 295

[T.D. ATF—469]

RIN 1512–AC42

Removal of Tobacco Products and Cigarette Papers and Tubes, Without Payment of Tax for Use of the United States; Recodification of Regulations (2000R–296P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Final rule (Treasury decision).

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is recodifying the regulations in part 295—Removal of Tobacco Products and Cigarette Papers and Tubes, Without Payment of Tax for Use of the United States, title 27 of the Code of Federal Regulations (CFR). The purpose of this recodification is to reissue the regulations in 27 CFR part 295 as 27 CFR part 45. This change improves the organization of title 27 CFR.

DATES: This rule is effective on November 13, 2001.

FOR FURTHER INFORMATION CONTACT: Lisa M. Gesser, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226, (202–927–9347) or e-mail at LMGesser@atfhq.atf.treas.gov.

SUPPLEMENTARY INFORMATION:

Background

As a part of continuing efforts to reorganize the part numbering system of title 27 CFR, ATF is removing part 295 of title 27 CFR, in its entirety, and is recodifying the regulations as 27 CFR part 45. This change improves the organization of title 27 CFR.

In addition to the recodification, ATF is making a technical amendment to the newly redesignated part 45 that revises the Office of Management and Budget control number.

DERIVATION TABLE FOR PART 45

The requirements of:	Are derived from:
Subpart A	
Sec.:	Sec.:
45.1	295.1
Subpart B	
45.11	295.11
Subpart C	
45.21	295.21
45.22	295.22
45.23	295.23
45.24	295.24
45.25	295.25
Subpart D	
45.31	295.31
45.32	295.32
45.33	295.33
45.34	295.34
45.35	295.35
45.36	295.36
45.37	295.37
Subpart E	
45.41	295.41
45.42	295.42
45.43	295.43
45.44	295.44
45.45	295.45
45.45a	295.45a

DERIVATION TABLE FOR PART 45—Continued

The requirements of:	Are derived from:
45.45b	295.45b
45.45c	295.45c
45.46	295.46
Subpart F	
45.51	295.51

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because there are no new or revised recordkeeping or reporting requirements.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule under the Administrative Procedure Act (5 U.S.C. 553), the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. We sent a copy of this final rule to the Chief Counsel for Advocacy of the Small Business Administration in accordance with 26 U.S.C. 7805(f). Assistant Chief Counsel commented that ''these amendments are merely technical in nature and will not have a significant impact on a substantial number of small businesses.''

Executive Order 12866

This final rule is not a significant regulatory action as defined in Executive Order 12866. Accordingly, this final rule is not subject to the analysis required by this Executive Order.

Administrative Procedure Act

Because this final rule merely makes technical amendments and conforming changes to improve the clarity of the regulations, it is unnecessary to issue this final rule with notice and public procedure under 5 U.S.C. 553(b). Similarly, because of the nature of this final rule, good cause is found that it is unnecessary to subject this final rule to the effective date limitation of 5 U.S.C. 553(d).

Drafting Information

The principal author of this document is Lisa M. Gesser, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 40

Cigars and cigarettes, Claims, Electronic funds transfers, Excise taxes, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Tobacco.

27 CFR Part 45

Cigars and cigarettes, Excise taxes, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Tobacco.

27 CFR Part 70

Administrative practice and procedure, Claims, Excise taxes, Freedom of information, Law enforcement, Penalties, Reporting and recordkeeping requirements, Surety bonds.

27 CFR Part 295

Cigars and cigarettes, Excise taxes, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Tobacco.

Authority and Issuance

ATF is amending title 27of the Code of Federal Regulations as follows:

PART 40—MANUFACTURE OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

Paragraph 1. The authority citation for 27 CFR part 40 continues to read as follows:

Authority: 26 U.S.C. 5142, 5143, 5146, 5701, 5703–5705, 5711–5713, 5721–5723, 5731, 5741, 5751, 5753, 5761–5763, 6061, 6065, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6404, 6423, 6676, 6806, 7011, 7212, 7325, 7342, 7502, 7503, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

§§ 40.44, 40.234, 40.384 and 40.453 [Amended]

Par. 2. Remove the reference to ''part 295'' and add in its place a reference to ''part 45'' in the following places:

a. Section 40.44;
b. Section 40.234;
c. Section 40.384; and
d. Section 40.453.

PART 70—PROCEDURE AND ADMINISTRATION

Par. 3. The authority citation for 27 CFR part 70 continues to read as follows:

Authority: 5 U.S.C. 301 and 552; 26 U.S.C. 4181, 4182, 5146, 5203, 5207, 5275, 5367, 5415, 5504, 5555, 5684(a), 5741, 5761(b), 5802, 6020, 6021, 6064, 6102, 6155, 6159, 6201, 6203, 6204, 6301, 6303, 6311, 6313, 6314, 6321, 6323, 6325, 6326, 6331–6343, 6401–6404, 6407, 6416, 6423, 6501–6503, 6511, 6513, 6514, 6532, 6601, 6602, 6611, 6621, 6622, 6651, 6653, 6656–6658, 6665, 6671, 6672, 6701, 6723, 6801, 6862, 6863, 6901, 7011, 7101, 7102, 7121, 7122, 7207, 7209, 7214, 7304, 7401, 7403, 7406, 7423, 7424, 7425, 7426, 7429, 7430, 7432, 7502, 7503, 7505, 7506, 7513, 7601–7606, 7608–7610, 7622, 7623, 7653, 7805.

§ 70.431 [Amended]

Par. 4. Amend paragraph (b)(6) in § 70.431, by removing the reference to ''Part 295'' and adding in its place a reference to ''Part 45''.

PART 295—REMOVAL OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES, WITHOUT PAYMENT OF TAX FOR USE OF THE UNITED STATES

Par. 5. The authority citation for 27 CFR part 295 continues to read as follows:

Authority: 26 U.S.C. 5703, 5704, 5705, 5723, 5741, 5751, 5762, 5763, 6313, 7212, 7342, 7606, 7805, 44 U.S.C. 3504(h).

Part 295 [Redesignated as 27 CFR Part 45]

Par. 6. Transfer 27 CFR part 295 from subchapter M to subchapter B and redesignate as 27 CFR part 45.

PART 45—REMOVAL OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES, WITHOUT PAYMENT OF TAX FOR USE OF THE UNITED STATES

Par. 7. The authority citation for the newly redesignated 27 CFR part 45 continues to read as follows:

Authority: 26 U.S.C. 5703, 5704, 5705, 5723, 5741, 5751, 5762, 5763, 6313, 7212, 7342, 7606, 7805, 44 U.S.C. 3504(h).

Editorial Note [Amended]

Par. 7a. Amend the ''Editorial Note'' following the table of contents by removing the reference to ''part 295'' and adding in its place a reference to ''part 45''.

§ 45.34 [Amended]

Par. 8. Amend § 45.34 by removing the reference to ''§ 295.36'' and adding in its place a reference to ''§ 45.36''.

§ 45.43 [Amended]

Par. 9. Amend § 45.43 by removing the Office of Management and Budget's control number ''1512–0488'' and adding, in its place, ''1512–0502.''

Signed: June 22, 2001.

Bradley A. Buckles,

Director.

Approved: August 23, 2001.

Timothy E. Skud,

Acting Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 01–28257 Filed 11–9–01; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 356

[Department of the Treasury Circular, Public Debt Series No. 1–93]

Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds; Calculation of Net Long Position and 35 Percent Limit

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Final Rule.

SUMMARY: The Department of the Treasury (''Treasury,'' ''We,'' or ''Us'') is issuing in final form an amendment to 31 CFR Part 356 (Uniform Offering Circular for the Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds). This amendment modifies the calculation of the net long position (''NLP'') to be reported in ''reopenings,'' which are auctions of additional amounts of previously issued securities. A bidder will have the option of subtracting from the holdings component of the NLP, combined with any STRIPS [1] principal components of the security being auctioned, an exclusion amount that Treasury will publish in the reopening offering announcement. The purpose of the modification is to ensure that participation in Treasury auctions remains both strong and broad.

EFFECTIVE DATE: November 13, 2001.

ADDRESSES: You may download this final rule from the Bureau of the Public Debt's website at *www.publicdebt.treas.gov.* It is also available for public inspection and copying at the Treasury Department Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220. To visit the library, call (202) 622–0990 for an appointment.

FOR FURTHER INFORMATION CONTACT: Lori Santamorena (Executive Director), Chuck Andreatta (Senior Financial Advisor), or Lee Grandy (Associate Director), Bureau of the Public Debt, Government Securities Regulations Staff, (202) 691–3632.

SUPPLEMENTARY INFORMATION: The Uniform Offering Circular, in conjunction with the offering announcement for each auction, provides the terms and conditions for the sale and issuance in an auction to the public of marketable Treasury bills, notes, and bonds.[2] One of these terms is the reporting of net long positions, which we use for limiting the amount that we will award to any one bidder in an auction (''the 35 percent rule''). In this document, we describe the rationale for this rule, and why we are changing it. We then discuss the public comments that we received in response to the Advance Notice of Proposed Rulemaking (''ANPR'') published on July 25, 2001.[3] Last, we describe the final amendment.

I. The 35 Percent Limit and its Rationale

The 35 percent rule generally limits auction awards for any one competitive bidder to 35 percent of the total amount offered to the public in a particular auction.[4] This rule ensures that awards in our auctions are distributed to a number of auction participants. This principle of broad distribution is intended to encourage participation by a significant number of competitive bidders in each auction. Broad participation over time keeps our borrowing costs to a minimum and helps ensure that Treasury auctions are fair and competitive.

A key component of the 35 percent award limit is the NLP calculation.[5] Currently, if a bidder has a reportable NLP, we subtract it from the 35 percent award limit in determining the bidder's maximum award amount for each auction.

The NLP is generally the amount of the security being auctioned that a bidder has obtained, or has arranged to obtain, outside of the auction in the secondary market. The term ''net long'' refers to the extent to which an investor has bought (or has agreed to buy) more of a security than it has sold (or has agreed to sell). The specific components of the NLP are intended to capture the various ways that a bidder can acquire a Treasury security. As defined in § 356.13(b), these components are the par amount of:

(1) Holdings of outstanding securities with the same CUSIP [6] number as the security being auctioned;

(2) Positions, in the security being auctioned, in

(i) When-issued trading,[7]

(ii) Futures contracts that require delivery of the specific security being auctioned (but not futures contracts for which the security being auctioned is one of several securities that may be delivered, and not futures contracts that are cash-settled),

(iii) Forward contracts; and

(3) Holdings of STRIPS principal components of the security being auctioned, including when-issued trading positions of such principal components.

A competitive bidder is required to report its NLP if the sum of its bids plus its NLP equals or exceeds the NLP reporting threshold, currently $2 billion for Treasury notes and bonds and $1 billion for Treasury bills (unless otherwise stated in the offering announcement).[8] If a bidder's total bids exceed the reporting threshold but the bidder either has no position or has a net short position, it must report an NLP of zero.

The application of the NLP reporting requirement and the 35 percent award limit in reopenings has caused us to re-examine the rule. In a reopening, we apply the 35 percent limit to the public offering amount of that specific auction, rather than to the total amount that will be outstanding after the settlement date of the reopening. Because a bidder must include any holdings of the security being auctioned in its NLP calculation, its participation in the reopening may be limited by its holdings. The bidder's award may be reduced—or it may receive no award—even though the bidder's portion of the total amount outstanding of the security may be under 35 percent once we issue the additional amount.

Reopenings are now more frequent because in February 2000 we adopted a

[1] Separate Trading of Registered Interest and Principal of Securities.

[2] The Uniform Offering Circular was published as a final rule on January 5, 1993 (58 FR 412). The circular, as amended, is codified at 31 CFR Part 356.

[3] 61 FR 38600 (July 25, 2001).

[4] 31 CFR 356.22(b).

[5] 31 CFR 356.13.

[6] Committee on Uniform Securities Identification Procedures. The CUSIP number is the unique identifying number assigned to each separate security issue and each separate STRIPS component.

[7] When-issued trading refers to trading in a security that occurs prior to its issuance. Payment and delivery for this trading activity occurs on the day we issue the securities, thus the term ''when-issued.'' In the Treasury securities market, when-issued trading can begin as soon as we publicly announce the upcoming auction. When-issued trading aids the distribution process for Treasury securities. Most importantly for the auction process, when-issued trading serves as a price-discovery mechanism for competitive bidders.

[8] 31 CFR 356.10, 356.13(a).

policy of regular reopenings to preserve the liquidity of our longer-term securities as our borrowing needs declined.[9] In addition, we conducted Treasury's first auction of four-week bills on July 31, 2001. These auctions are reopenings of previously issued Treasury bills. Treasury issued a press release on July 23, 2001, that described the net long position reporting requirements and the application of the 35 percent award limit for Treasury four-week bill auctions while we considered whether to modify the rule.

The development of more frequent reopenings makes it an appropriate time to re-examine the application of the NLP and the 35 percent limit in auctions.

II. Comments Received in Response to the Advance Notice of Proposed Rulemaking

We published an ANPR for public comment on July 25, 2001,[10] to solicit comments on six alternatives for modifying the calculation of the net long position and the 35 percent award limit. We stated at that time that we believed Alternative 1 to be the most workable. The closing date for comments was September 10, 2001.

We received eight comments in response to the ANPR[11]—six from securities firms, one from a major trade association, and one from the debt management advisory committee of a major trade association. Five of these commenters favored Alternative 1, while three favored Alternative 4.

Since all commenters preferred either Alternative 1 or Alternative 4, we describe them below. Readers may refer to the ANPR for descriptions of the other alternatives.

Alternative 1: Optional Exclusion Amount for a Portion of a Bidder's Current Holdings

Under this alternative, a bidder would have the option of subtracting from the current holdings component of the NLP, combined with any STRIPS principal components of the security being auctioned, a published exclusion amount. We would specify in the offering announcement for the reopening the amount of holdings that may be excluded from the NLP calculation. The bidder would be required to include in the NLP calculation any holdings above this announced exclusion amount.

For example, suppose we reopen a Treasury note of which $10 billion is already outstanding by offering an additional $9 billion. In the example, suppose the reopening offering announcement specifies that the exclusion amount is $3.5 billion. Also suppose that a bidder already holds $3 billion par of that note, $1 billion of the note's STRIPS principal component, and a when-issued position in that note of $1 billion. That bidder would be able to exclude $3.5 billion of its holdings from its NLP calculation for the reopening auction. The bidder's holdings components of the NLP would therefore be $4 billion minus $3.5 billion, or $0.5 billion. This amount, when added to the $1 billion when-issued position component, results in a total NLP of $1.5 billion.[12] Since the 35% award limit in the reopening would be $3.15 billion (.35 × $9 billion), the bidder could be awarded up to $1.65 billion more of the note in the reopening ($3.15 billion − $1.5 billion). If the bidder were to be awarded this amount in the reopening, on the settlement date it would then have a total of $6.65 billion, or 35 percent, of the total $19 billion of the note outstanding (assuming there were no other changes in its position).

Those commenters that preferred Alternative 1 generally believed that it best achieves the goal of fostering broad participation in Treasury auctions while still limiting the potential for excessive concentration of ownership in a particular marketable Treasury security. Two of the commenters who favored Alternative 1 cited Alternative 4 as their second choice. Both of these commenters expressed concern, however, that since Alternative 4 would not include holdings of the security being auctioned in the net long position calculation, that it would not sufficiently limit the potential for excessive concentration of ownership. While one of the commenters acknowledged that Alternative 1 is more complex operationally than Alternative 4, it did not believe the operational difficulties of efficiently reporting the NLP would be so great as to favor Alternative 4.

Alternative 4: Continue to Calculate the 35 Percent Limit on the Reopening Public Offering Amount, but Redefine the Net Long Position as Including Only the When-issued Position

The commenters that preferred Alternative 4 indicated that this alternative would allow for the broadest participation in reopening auctions. They also indicated that this alternative would be easier to implement than Alternative 1 because the net long position calculation would be considerably simpler. Those favoring Alternative 4 also asserted that Treasury has adequate means at its disposal, such as its Large Position Reporting rules[13] and anti-market manipulation laws, to address undue concentrations of ownership.

III. Amendment to the Rule

After considering the comments we received, we are modifying the NLP calculation for reopenings to provide an optional exclusion amount for a portion of a bidder's holdings (Alternative 1 in the ANPR). We believe this alternative best achieves our goal of fostering broad participation in Treasury auctions.

Accordingly, § 356.13(b) of the Uniform Offering Circular (UOC) is restructured and revised. Paragraph (b)(1) has been reorganized so that the ''holdings'' components are listed consecutively and then the ''positions'' components are listed. Paragraph (b)(2) now provides that in a reopening a bidder may subtract the published exclusion amount for that security from the sum of: (1) its holdings of the security being auctioned, and (2) its holdings of STRIPS principal components of the security being auctioned.

A bidder must include any holdings in excess of the exclusion amount in calculating and reporting the net long position. A bidder may not take advantage of the exclusion amount if its combined holdings are zero or less than zero. For example, a bidder who is ''short'' the security being auctioned, and whose holdings amount is therefore a negative number, cannot make its position more ''short'' by subtracting the exclusion amount. Further, if a bidder takes advantage of the exclusion amount, it must first calculate its combined holdings before subtracting the exclusion amount.

In addition, a bidder may use the exclusion amount only up to the amount of its combined holdings. After subtracting the exclusion amount from its combined holdings, the resulting

[9] Treasury Press Release dated February 2, 2000.

[10] *See supra*, note 3.

[11] The ANPR and comment letters are available for downloading on the Internet and for inspection and copying at the Treasury Department Library at the addresses provided earlier in this final rule.

[12] The bidder would report this amount with its bids if the amount, when combined with its bids, equals or exceeds the NLP reporting threshold for the auction. See § 356.13(a).

[13] 17 CFR Part 420.

amount cannot be included in the NLP calculation as a negative number. In other words, a bidder cannot change a long holdings position to a short position through use of the exclusion amount.

We will publish the specific optional exclusion amount in the offering announcement for each particular auction. We expect that the exclusion amount will be approximately 35 percent of the outstanding amount of the particular security (CUSIP) being auctioned, less the amount of the outstanding security held by the Federal Reserve for its own account. However, bidders must carefully read each offering announcement to ensure they are aware of the exact exclusion amount for the auction and other details of the particular offering. As provided in § 356.10, if the provisions of an offering announcement are different from the provisions of the UOC, the announcement takes precedence.

IV. Procedural Requirements

This final rule is not a significant regulatory action for purposes of Executive Order 12866. Although we issued an Advance Notice of Proposed Rulemaking on July 25, 2001 to benefit from public comment, the notice and public procedures requirements of the Administrative Procedure Act do not apply, under 5 U.S.C. 553(a)(2).

Since no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

List of Subjects in 31 CFR Part 356

Bonds, Federal Reserve System, Government securities, Securities.

For the reasons stated in the preamble, we amend 31 CFR Part 356 as follows:

PART 356—SALE AND ISSUE OF MARKETABLE BOOK-ENTRY TREASURY BILLS, NOTES, AND BONDS (DEPARTMENT OF THE TREASURY CIRCULAR, PUBLIC DEBT SERIES NO. 1–93)

1. The authority citation for Part 356 continues to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 3102 *et seq.*; 12 U.S.C. 391.

2. Section 356.13 is amended by revising paragraph (b) to read as follows:

§ 356.13 Net long position.

* * * * *

(b) *Determination of net long position.* (1) The net long position must be determined as of the designated reporting time, which is one-half hour prior to the closing time for receipt of competitive bids. Except as modified in (b)(2) in the event of a reopening, a net long position includes the par amount of:

(i) Holdings of outstanding securities with the same CUSIP number as the security being auctioned;

(ii) Holdings of STRIPS principal components of the security being auctioned; and

(iii) Positions, in the security being auctioned, in

(A) When-issued trading, including when-issued trading positions of the STRIPS principal components;

(B) Futures contracts that require delivery of the specific security being auctioned (but not futures contracts for which the security being auctioned is one of several securities that may be delivered, and not futures contracts that are cash-settled); and

(C) Forward contracts that require delivery of the specific security being auctioned or of the STRIPS principal component of that security.

(2) In a reopening (i.e., additional issue) of an outstanding security, a bidder may subtract the published exclusion amount for that security from: its holdings of the outstanding securities (paragraph (b)(1)(i) of this section) combined with its holdings of STRIPS principal components of the security being auctioned (paragraph (b)(1)(ii) of this section). The amount of holdings that may be excluded from the net long position calculation will be specified in the Treasury offering announcement for that auction. A bidder may not take the exclusion if its combined holdings are zero or less than zero. The exclusion is optional for bidders. However, if a bidder takes the exclusion, it must include any holdings in excess of the exclusion amount in calculating its net long position. If the published exclusion amount is greater than the bidder's combined holdings (paragraphs (b)(1)(i) and (ii) of this section), the combined holdings may be calculated as zero, but cannot be included in the calculation as a negative number.

* * * * *

Dated: November 7, 2001.

Donald V. Hammond,

Fiscal Assistant Secretary.

[FR Doc. 01–28435 Filed 11–8–01; 1:19 pm]

BILLING CODE 4810–39–P

DEPARTMENT OF LABOR

Veterans' Employment and Training Service

41 CFR Part 61–250

RIN 1293–AA07

Annual Report From Federal Contractors

AGENCY: Veterans' Employment and Training Service (VETS), Labor.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final regulation which was published Thursday, October 11, 2001 (66 FR 51998–52008). The regulation pertains to annual reporting of efforts in hiring of targeted veterans by contractors and subcontractors.

EFFECTIVE DATE: This rule is effective November 13, 2001.

FOR FURTHER INFORMATION CONTACT: Norm Lance, Chief of Investigations and Compliance Division, VETS, at (202) 693–4731 or by e-mail at *Lance-Norman@dol.gov*. Individuals with hearing impairments may call (800) 670–7008 (TTY/TDD).

SUPPLEMENTARY INFORMATION:

Background

The final regulation that is the subject of this correction provides amended reporting procedures required of contractors and subcontractors to conform with the provisions of the Veterans' Employment Opportunities Act of 1998.

Need for Correction

As published, the final regulation contained an error which may prove to be misleading. The change below will correct the misleading language to conform to that used in the rest of the document, i.e., later in § 61–250.11(b) and in the preamble.

Correction of Publication

Accordingly, the publication of October 11, 2001, of the final regulation at 66 FR 51998–52008 is corrected as follows:

PART 61–250 [CORRECTED]

§ 61–250.11 [Corrected]

On page 52006, in the second column in § 61–250.11, the first sentence of paragraph (b) is corrected to read as follows:

* * * * *

(b) Contractors and subcontractors that submit computer-generated output for more than 10 hiring locations to satisfy their VETS–100 reporting

obligations must submit the output in the form of an electronic file. * * *

* * * * *

Signed at Washington, DC, this 7th day of November, 2001.

Charles S. Ciccolella,

Deputy Assistant Secretary, Veterans' Employment and Training Service.

[FR Doc. 01–28433 Filed 11–9–01; 8:45 am]

BILLING CODE 4510–79–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 416, 482, and 485

[CMS–3070–F]

RIN 0938–AK95

Medicare and Medicaid Programs; Hospital Conditions of Participation: Anesthesia Services

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule amends the Anesthesia Services Condition of Participation (CoP) for hospitals, the Surgical Services Condition of Participation for Critical Access Hospitals (CAH), and the Surgical Services Condition of Coverage for Ambulatory Surgical Centers (ASCs), and, with its publication, withdraws the January 18, 2001 final rule (66 FR 4674). This final rule maintains the current physician supervision requirement for certified registered nurse anesthetists (CRNAs), unless the Governor of a State, in consultation with the State's Boards of Medicine and Nursing, exercises the option of exemption from this requirement consistent with State law.

DATES: The rule published in the **Federal Register** on January 18, 2001 (66 FR 4674) was delayed at 66 FR 15352 (March 19, 2001) and was further delayed at 66 FR 27598 (May 18, 2001) is withdrawn as of November 13, 2001. The amendments set forth in this final rule are effective November 13, 2001.

FOR FURTHER INFORMATION CONTACT: Stephanie Dyson, (410) 786–9226. Jeannie Miller, (410) 786–3164.

SUPPLEMENTARY INFORMATION: Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $9. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**. This **Federal Register** document is also available from the **Federal Register** online database through GPO access, a service of the U.S. Government Printing Office. The Website address is *http://www.access.gpo.gov/nara/index.html*

I. Background

A. Legislation

Sections 1861(e)(1) through (e)(8) of the Social Security Act (the Act) provide that a hospital participating in the Medicare program must meet certain specified requirements. Section 1861(e)(9) of the Act specifies that a hospital also must meet such other requirements as the Secretary finds necessary in the interest of the health and safety of the hospital's patients. Section 1820 of the Act contains criteria for application for States establishing a Critical Access Hospital. Sections 1832(a)(2)(F)(i) and 1833(i) provide coverage requirements for ASCs. Section 1861(bb) of the Act, provides definitions for certified registered nurse anesthetists (CRNAs) and their services.

B. General

On December 19, 1997, we published a proposed rule entitled, ''Hospital Conditions of Participation, Provider Agreements and Supplier Approval,'' (62 FR 66726) in the **Federal Register**. The CoPs are the requirements that hospitals must meet to participate in the Medicare and Medicaid programs. The CoPs are intended to protect patient health and safety and to ensure that high quality care is provided to all patients. We proposed, among other things, to let State law determine which professionals would be permitted to administer anesthetics, and the level of supervision required for practitioners in each category, recognizing States' traditional domain in establishing professional licensure and scope-of-practice laws. Policy surrounding the proposal was based on the principle that States traditionally regulate practitioner scope-of-practice, and was also based on the lack of evidence to support maintaining a special Federal requirement for physician supervision of CRNAs that would have the effect of superseding State requirements. We also stated that a fundamental principle was to facilitate flexibility in how a hospital would meet our performance expectations, and to eliminate structure and process requirements unless there was evidence that they improved desired outcomes for patients.

The final rule was published on January 18, 2001 (66 FR 4674) and was to have been effective March 19, 2001. In accordance with the proposed rule, the January 2001 final rule changed the physician supervision requirement for CRNAs furnishing anesthesia services in hospitals, ASCs, and CAHs. Under that rule, State laws would control which professionals would be permitted to administer anesthesia and the level of supervision required for CRNAs. It did not prohibit, limit, or restrict in any way the practice of medicine by a physician or anesthesiologist. Hospitals, ASCs, and CAHs retained the ability to exercise stricter standards than those required by State law.

On March 19, 2001, the effective date was delayed 60 days in accordance with the memorandum to the President from the Chief of Staff, dated January 20, 2001, and published in the **Federal Register** (see 66 FR 15352). On May 18, the rule was further delayed for 180 days, until November 14, 2001, in order to explore alternatives for implementation (see 66 FR 27598). In reviewing the January 2001 final rule, we identified two important questions that were not raised and thus not addressed previously.

- One question concerned the States' reliance on Medicare physician supervision requirements in establishing State scope-of-practice laws and monitoring practices. In some cases, State laws and regulations may have been written with the assumption that Medicare would continue its longstanding policy requiring physician supervision of the anesthesia care provided by CRNAs. Eliminating Medicare requirements now could change supervision practices in some States without allowing States to consider their individual situations. In the absence of Federal regulations, we were concerned that States might have promulgated different laws or different monitoring practices.
- The second question was whether a prospective study or monitoring should be undertaken to assess the impact in those States where CRNAs practice without physician supervision. The literature we reviewed indicated that the anesthesia-related death rate is extremely low, and that the

administration of anesthesia in the United States is safe relative to surgical risk. However, in the absence of clear research evidence it is impossible to definitively document outcomes related to independent CRNA practice.

Both were legitimate implementation questions; thus, in addition to delaying the effective date of the January final rule, we published a new proposed rule on July 5, 2001 (66 FR 35395), which proposed an alternative method for implementing the independent practice proposal in lieu of proposing an immediate removal of the requirement. Our alternative proposal was to—

(1) Establish an exemption from the physician supervision requirement by recognizing a Governor's written request to us attesting that, after consultation with the State's Boards of Medicine and Nursing on issues related to access to and the quality of anesthesia services, and consistent with State law, he or she is aware of the State's right to an exemption from the requirement and has determined that it is in the best interests of the State's citizens to exercise this exemption, and

(2) Have the Agency for Healthcare Research and Quality (AHRQ), with input from HCFA and that of other stakeholders, including anesthesiologists and CRNAs, design and conduct a prospective study or monitoring effort to assess outcomes of care issues relating to CRNA practice and involvement. One approach that we sought comment on was to create a voluntary registry that could prospectively monitor these practices.

The State survey agencies (SAs), in accordance with section 1864 of the Social Security Act (the Act), survey hospitals to assess compliance with the CoPs. The SAs conduct surveys using the instructions in the *State Operations Manual* (SOM), (Health Care Financing Administration (HCFA) Publication No. 7). The SOM contains the regulatory language of the CoPs as well as interpretive guidelines and survey procedures and probes that elaborate on regulatory intent and give guidance on how to assess provider compliance. Under § 489.10(d), the SAs determine whether hospitals have met the CoPs and report their recommendations to us.

Under the authority of section 1865 of the Act and the regulations at § 488.5, hospitals accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or the American Osteopathic Association (AOA) are deemed to meet the requirements in the CoPs, and therefore are not routinely surveyed for compliance by the SAs.

C. Recognizing State Laws and Professional Scope of Practice

The Congress has specified which non-physician health professionals may receive separate payment for their professional services (such as CRNAs and nurse practitioners). In addition, the Congress left the function of licensing these health professionals to the States. Medicare recognizes the scope of practice established by the States for these health professionals. This rule establishes a shared commitment to quality care among States, Medicare providers, and us. States are in the best position to assess the evidence and consider data relevant to their own situations (for example, physician access, hospital and patient characteristics and needs of rural areas) about the best way to deliver anesthesia care. Hospitals can always exercise stricter standards than required by State law. We will conduct a review of the effects on the quality of anesthesia care furnished to Medicare beneficiaries resulting from the greater flexibility provided to States and hospitals under this rule, by allowing governors to exercise their ability to opt-out of the supervision requirement.

II. Provisions of the Proposed Anesthesia CoP

We proposed several changes to the January 18 final rule that was to have become effective on November 14, 2001. The proposed changes were included in our proposed rule published on July 5, 2001 (66 FR 35395) and affected the physician supervision requirements for certified registered nurse anesthetists furnishing anesthesia services in hospitals (42 CFR 482.52), critical access hospitals (42 CFR 485.639), and ambulatory surgical centers (42 CFR 416.42) that participate in the Medicare and Medicaid programs. Under the final rule, the current physician supervision requirement would be maintained, unless the governor of a State, in consultation with the State's Boards of Medicine and Nursing, exercises the option of exemption from this requirement, consistent with State law. These proposed changes are an integral part of our efforts to improve the quality of care furnished through Federal programs, while at the same time recognizing a State's traditional domain in establishing professional licensure and scope-of-practice laws. It will give States the flexibility to improve access and address safety issues.

We solicited comments on whether a prospective study or monitoring should be undertaken to assess the impact of those states where CRNAs practice without physician supervision, or where physicians practice without the assistance of CRNAs.

III. Analysis of and Responses to Public Comments

We received over 28,500 comments on the proposed anesthesia requirements. These comments were from hospitals, professional organizations, accrediting bodies, practitioners, and other individuals. Summaries of the public comments received and our responses to those comments are set forth below.

A. Outcome Study/Registry

We asked for comments on whether a prospective study or monitoring should be undertaken to assess the impact in those States where CRNAs practice without physician supervision, or where physicians practice without the assistance of CRNAs.

Comment: Commenters were in favor of, and supported our efforts to undertake a prospective anesthesia outcome study. Overwhelmingly, commenters expressed that a study was preferred over a registry, stating that a study would settle many issues with a greater degree of certainty than the registry as a registry would not yield sufficient scientific data. The majority of commenters were opposed to a voluntary registry, stating this method of study carries a heavy bias and would not yield definitive scientific data for use by CMS and the nation's governors. However, there were a large number of commenters that thought a study was unfair, discriminatory (assuming it would exclusively study CRNA practice), expensive, and time consuming. Alternatives were offered such as studying the impact of the removal of the requirement that physicians supervise CRNAs in those States that have opted out of the Federal requirement.

Response: We have chosen not to pursue a registry at this time. Instead, AHRQ will conduct a study of anesthesia outcomes in those States that choose to opt-out of the CRNA supervision requirement compared to those States that have not.

Comment: One commenter questioned the ethics of the proposed study, and asked if patients should be requested to give informed consent for excluding a physician anesthesiologist from their care.

Response: We are not proposing to carry out any independent demonstration, which affects patient choice regarding anesthesia professionals. The study would rely on data collection from practices in use in

the States, according to State law and hospital policy.

B. Boards of Medicine and Nursing

In the proposed rule, we proposed that the governor must consult with the State's Board of Medicine and Nursing in determining if it is in the best interest of that particular state to exercise the option of exemption from the physician supervision requirement.

Comment: Overall the majority of commenters questioned the extent of involvement of the Boards of Medicine and Nursing, and requested clarification and procedures detailing the means by which Boards of Medicine and Nursing act to advise the governor under the rule. Commenters stated that if implemented, this would create an extremely difficult political situation because many governors will not want to be involved in battles between nurses and physicians, or, potentially, battles between nursing and medical boards. Commenters also stated that such a consultation should involve more than a perfunctory communication with the State boards, and said that ''ideally,'' a governor and the State boards should be required to all agree to opt-out, while some commenters suggested the need for governors to obtain concurrence from only the Board of Medicine. In the absence of concurrence, some commenters suggested, at a minimum, the Boards should be required to provide written comments on a governor's petition, which should be available for public inspection. Commenters opposed to the proposed rule, urged CMS to reconsider if there is any useful purpose in the governor consulting with these entities.

Response: The proposed consultation with the Boards of Medicine and Nursing is to ensure appropriate involvement of parties on both sides of the issue. We purposefully were not prescriptive in detailing processes or steps that should be undertaken. In addition, the particular factors that are pertinent in reaching a sound policy decision will invariably vary from State to State (for example, access to anesthesia services in rural areas). We agree governors should be given the discretion and maximum flexibility to decide with whom they should consult, and this regulation does not prevent governors from consulting with others should they find it necessary.

In addition, we realize States have experience in promulgating laws and soliciting opinion of various types from various professional organizations. For example, in 1997, Oregon passed a Law (SB 412–69th Congress) requiring the State Board of Nursing to adopt scope of practice for CRNAs, and establish procedures for issuing certification of special competency for a CRNA. This law, which allows CRNAs to deliver specified services in hospitals without medical collaboration, and allows CRNAs to deliver specified services in ASCs if no anesthesiologist is available, was a direct result of collaboration and compromise between the Oregon Medical Association, the Oregon Association of Hospitals and Health Systems, the Oregon Association of Nurse Anesthetists, and the Oregon Society of Anesthesiologists. Therefore, we do not agree that CMS should set standards, guidelines, or criteria for a consultation process to be used by any State. We are giving the States flexibility to develop a process that works best for its particular situation and unique needs.

Comment: A few commenters stated that requiring Boards of Medicine's input would place one profession (medicine) in a position to dictate how another profession (nursing) should be regulated. Commenters further argued that requiring Boards of Medicine's input would have obvious ''anti-competitive implications,'' and could encourage behavior that would hinder their ability to practice without physician supervision. Commenters in opposition to the opt-out method stated this is a cumbersome process that, by mandating consultation with the Board of Medicine, allows physicians to ''initiate their brand of grass roots politics.''

Response: CMS is not asking the governor to allow one profession to make judgements regarding the scope of practice of another. As noted above, the governors are using this consultation to gather information that may or may not be used in making a decision regarding the delivery of anesthesia services. This consultation serves as an opportunity for participants on both sides of the issue to have their opinions, issues and concerns heard, first hand, by the individual or designee responsible for making the decisions regarding whether to opt-out of the Federal supervision requirement.

C. State Law Determination

The proposed rule gave the governor the ability to exercise the right of exemption from the physician supervision requirement of CRNAs, if it was in the best interest of that particular State and if it was consistent with State law.

Comment: The majority of comments focused on the interpretation of existing States' scope-of-practice laws. Commenters requested clarification and the promulgation of documented procedures detailing the means by which State law would be determined, and suggested that CMS provide steps and guidance to accomplish this. They argued that a more specific process should be established for determining whether opting-out is consistent with State law. One commenter suggested revising the regulations text to require the governor to attest that the opt-out is consistent ''with all relevant State laws,'' arguing that in most States, several statutory codes or regulations ''issued pursuant thereto'' bear on the issue whether a nurse anesthetist may practice with or without supervision by or in collaboration with a physician and are thus germane to the issue of whether opt-out is consistent with State law.

Response: We recognize there is a difference of opinion of those parties on both sides of this issue, regarding what State law is, but we believe the governors are best suited to make determinations in this area. Anesthesiologists have argued that only one State, New Hampshire, allows CRNAs to practice without physician supervision. Anesthesiologists further argue that the American Association of Nurse Anesthetists (AANA) calculated the number of States permitting independent CRNA practice based solely on nursing regulations and ignored the mandate of the ''medical acts,'' hospital regulations, and controlled-substance laws. Conversely, the AANA argues that 39 states do not have a physician ''supervision'' requirement for CRNAs scope of practice laws or regulations. The AANA further states if one takes into account State hospital licensing laws or regulations, 30 States still do not require physician supervision. They continue by stating if clinical ''direction'' requirements are considered in addition to supervision, 31 States do not have physician supervision or directions requirements for CRNAs in nursing or medical laws or regulations. And last, taking into account State hospital licensing laws or regulations, 20 States still do not require physician supervision or direction requirements.

Objective interpretation of this issue was provided by a 1998 Journal of the American Medical Association (JAMA) article. In this article, Cooper, Henderson, and Dietrich concluded that 18 States permit CRNAs to practice ''independently.'' (Cooper, Richard A., Henderson, Tim, Dietrich, Craig L., ''Roles of Nonphysican Clinicians as Autonomous Providers of Patient Care.'' JAMA. 1998; 270:795–802, at page 797 in Table 2). The ASA challenged the findings of this article, contending its

figures were incorrect. The authors of this article reasserted (in a letter published at page 511 of the February 10, 1999 issue of JAMA), that their findings are correct. The authors stated in their letter that they used data collection from not only the nonphysician clinician organizations, but also the Health Policy Tracking service at the National Conference of State Legislatures and the Internet Web sites of individual States. It was from these sources, they stated ''we have concluded that CRNAs have the authority to practice independent of physician supervision in 18 states.''

Under this final rule, CRNAs would be allowed to practice without physician supervision where State law permits subject to the governor's attestation. Likewise, CRNAs would have to be supervised by a physician where such oversight is required by State law or hospital policy. It would not allow a CRNA to practice outside the scope of authority granted by State law, nor would it prohibit, limit, or restrict in any way the practice of medicine by a physician or anesthesiologist. We emphasize that if State law establishes a more stringent rule on administration of anesthesia, hospitals would be required to comply with State law. In addition, hospitals can always exercise stricter standards than required by State law. The final rule would not require hospitals under any circumstance, to eliminate physician supervision if they deem this appropriate. Again, we believe that the governor is best suited to determine whether an opt-out is consistent with State law.

Comment: Commenters suggested that we strengthen the requirement by mandating a written opinion of a State attorney general to support any opt-out decision, arguing that determination of the issue of ''consistent with State law'' will require examination of the nursing code, medical code, various institutional codes, codes for controlled substances, and reconciliation of the terms of each code to the others. These commenters concluded that this is a task ''normally'' performed by the State attorney general.

Response: States have their own regulatory and administrative structures and rules in place, and we respect the authority of States to meet regional/local needs. State authorities are experienced at regulating the licensing, education, training, and skills of the professionals practicing under their purview, without the burden of prescriptive Federal regulations. The Congress has left this licensure function to States, and Medicare recognizes the scope of practice for which health professionals are licensed by States. Given this, we believe States have the responsibility for clarifying their laws and seeking opinion, if needed, on definition of terms such as collaboration, direction or the allowance of CRNAs to practice without physician supervison. This one exception to Medicare's standards for deferring to States on health professionals licensure matters, does not require further unnecessary burdensome restrictions such as mandatory solicitation of the attorney general's opinion.

Comment: Commenters requested that CMS provide procedural safeguards to ensure that the State governors, in their exercise of their discretion, would observe existing State laws in regards to physician supervision.

Response: This administration strongly believes in deferring to State authority whenever possible. The proposed strategy strikes an appropriate balance between the equally important goals of maintaining patient safety and encouraging state innovation and flexibility, especially in areas where States have historically had a strong role. We are not restricting or limiting the legislative or regulatory process at a State level. If governors feel it is in the best interest of their State to allow CRNAs to practice without supervision, they do have the authority to promulgate laws allowing such practice.

E. Governors' Authority to ''Opt-out''

The proposed rule would give governors the ability to exercise the option of exemption from the requirement of physician supervision of CRNAs.

Comment: A number of commenters who do not support the July 5, 2001 proposed rule remain opposed to the governors' opt-out authority, stating they do not believe safety standards should differ from State to State. These commenters argue that if governors are allowed to opt out, there will be differences and disparities among the various States, resulting in inequality of care across the country. As a result, they stated that Medicare beneficiaries would lose an important Federal guarantee for minimum standards of anesthesia care, and instead would be subjected to a variety of State laws. Some of these commenters stated that they accepted the idea that this is a compromise between Federal safety-oriented regulations and the protection of States' rights, but acceptable only if accompanied by stringent regulations guiding this process.

Response: This rule establishes a shared commitment to quality care among us, the States, and Medicare providers. The final rule broadens the overall flexibility of States by permitting individuals and authorities closer to patient care delivery to make decisions about the best way to deliver health care services. States are in the best position to assess the evidence and consider data relevant to their own situations (for example, physician access, hospital and patient characteristics and needs of rural areas) about the best way to deliver anesthesia care. It will effectively provide greater discretion to State authorities that are experienced at regulating the licensing, education, training, and skills of the professionals practicing under their purview, without the burden associated with duplicative regulatory oversight. Allowing States to make determinations about health care professional standards of practice, and hospitals to make decisions regarding the delivery of care, assures that those closest to, and who know the most about, the health care delivery system are accountable for the outcomes of that care.

Comment: Although commenters believe States should not be able to opt-out, it was strongly suggested that CMS strengthen the regulation text and provide stringent provisions, which should include ''procedural safeguards'' to assure that the rules' opt-out conditions are strictly satisfied. Commenters believed this process is flawed and needs to be fine-tuned and clarified in order to be workable in a practical way. Commenters in support of the July 5, 2001 proposed rule, supported the concept of a governor's right to opt-out of the physician supervision requirement, but only under what was described as the ''limiting conditions'' of the proposed rule. Those commenters objecting to the opt-out stated that the decision would be arbitrary, and that governors would succumb to political pressure. Questions were raised such as, ''can a governor opt-out for a single hospital or surgical center, or class of institutions?''

Response: In the proposed rule, we stated the governor was best able to make a determination of need and safety for his/her particular State. Further, we believe a Federal regulation permitting opt-out for particular classes of institutions or particular facilities would be confusing, and therefore we are not creating a cumbersome process of only allowing specific hospitals or classes of institutions on the Federal level. However, this does not prevent the governor from requesting an opt-out on behalf of such facilities at the State level. This regulation does not and should not impede the State's ability to

create laws and/or regulations that fit its needs. Oregon, for example, has a law that allows CRNAs to practice without physician collaboration in hospitals, and requires collaboration with physicians in ASCs, but will allow independent practice in this setting if a physician is not available. We understand that States are unique and have different needs and priorities, and we are giving those closest to that care the ability to make appropriate decisions.

Comment: It was suggested that CMS create uniform criteria for determining whether opting-out is in ''the best interest of the State's citizens.'' Commenters feared that without set criteria, such determinations would be ''whimsical,'' and not based on objective findings of fact. Commenters suggested using criteria such as permitting opt out when it would—

(1) Materially improve patient access to anesthesia services, or when patient access to anesthesia is quantitatively improved, and

(2) Not materially decrease the quality of anesthesia services and patient care in a State, or quality of anesthesia services and patient outcomes are not quantitatively decreased.

Others argued the governors must determine that there is an ''unusual situation'' where physicians may not be available to provide the necessary supervision.

Response: We are not categorizing specific situations or instances by which the governor has the ability to opt out. As mentioned in the proposed rule, the governor is acting in the best interest of his/her State, within the parameters of State law, and with consideration for patient safety.

Comment: Commenters opposed to the opt-out alternative argue that Governors are poorly equipped to review the literature and make scientifically valid conclusions. Some commenters suggested that allowing States to make their own decisions would result in inconsistency among States and that the Federal Government can best make a single decision for the nation, while others stated governors should be allowed to exercise exceptions that are narrowly tailored to address specific State needs and circumstances.

Response: Our fundamental findings have not changed, as we have stated earlier. Our policy surrounding the January 2001 final rule was based on the principle that States traditionally regulate practitioners' scope-of-practice. This final rule judiciously maintains the current physician supervision requirement as sought by some, yet permits States to opt-out of the requirement if desired, a change to the existing requirement that is consistent with the position of those seeking deference to State law and regulation. It is not unusual to find differences in State law. States make decisions based upon their unique needs and specifications.

Comment: Some commenters suggested the need for CMS to develop and implement a specific process relating to the opt-out. Commenters suggested there needs to be a better understanding of the steps a governor must take prior to opting-out. However, these commenters did not believe further prescriptive Federal regulation is necessary, just clarification. For example, commenters questioned if the governor will have to provide a notice for public inspection, and observe a waiting period of up to 60 days after making this determination, arguing that some additional processes should be required, such as a notice in the **Federal Register**, for adequate public input, and to facilitate a transition to opt-out status. Commenters argued that without these requirements, the potential exists for gubernatorial action without the benefit of input by Medicare and Medicaid beneficiaries, providers, and other interested citizens. One commenter cited proposed changes in statewide methods and standards for setting Medicaid payment rates to be used as a precedent, stating that there is precedent for notice and opportunity to comment. Other suggestions were to require a governor to provide appropriate notice to a State's residents prior to submitting a request to opt-out, and to hold at least one public hearing on the matter. In short, commenters wanted the Federal Government to ensure the governor's decision is made in a public forum. They also wished to have an adequate amount of time for facility and providers to prepare. In contrast, a few commenters believed that no further details need to be included in the regulation as it would only increase the paperwork burden for the hospital, and not guarantee improved quality of patient care.

Response: It is not the role of the Federal Government to prescribe how State law and practice decisions are articulated to State residents. We do not want to apply unnecessary multiple standards when the overarching principle is that the governor has the authority to act according to his or her assessment of the needs and safety of the citizens of that particular State. We recognize that States need to establish a realistic workable process to notify their citizens, public and health care providers of change in scope-of-practice. However, we are opposed to incorporating stringent guidelines that could possibly make this a cumbersome, burdensome process. States currently have mechanisms and administrative rules in place for public notification such as hearings, notices, executive orders, statement of needs, notice of periodic review of rules, and notice of proposed rulemaking, that can be applied to this situation.

Comment: If the opt-out process is adopted, the gubernatorial attestation process should be simple, and not involve burdensome administrative requirements or roadblocks.

Response: We agree. The governor's letter to the Administrator of CMS will be accepted on face value, with no independent CMS scrutiny or analysis of the governors' underlying rationale.

Comment: Commenters emphasized this exemption would establish an unusual situation where a Medicare CoP would not apply to all participating hospitals nationwide. Commenters further questioned if this proposal was consistent with the intent of Congress as expressed in Section 1861(e)(9) of the Social Security Act (the Act), stating it would give the governor absolute veto power of existing State laws.

Response: First, surgery and anesthesia services are optional services for hospitals, so anesthesia CoP does not apply to all hospitals, only those that offer these services. Second, this rule does not change the requirement that hospitals must have physicians available at all times and that all Medicare patients are under the care of a physician as defined in Section 1861(r) of the Act. Therefore, the patient's medical and/or surgical care continues to be the responsibility of his or her assigned physician.

Comment: Many commenters told us they were adamantly opposed to the proposed standard permitting a withdrawal of the opt-out at any time. Commenters argued the ability of a governor to rescind a previously granted opt-out at any time would leave the State's hospitals, ASCs, CAHs, providers, healthcare workers and patients in constant turmoil and uncertainty. Commenters stated this could perpetually put hospitals in limbo concerning CRNA supervision requirements, and also questioned CMS's ability to validate compliance with such a system. Commenters further argued that other issues need to be considered, such as potential study or monitoring efforts being undermined, or constant pressure from State medical and anesthesiologist societies. It was suggested, that once opt-outs were

granted, the opt-outs stay in place, and that any subsequent action be pursued through the States' existing state legislative/and or regulatory process. Alternatively, it was suggested that once opt-out were granted, it be required to stay in place for at least a year before it could be withdrawn at a governor's request.

Response: We agree that citizens and the health care community should be kept abreast of such changes. As stated earlier, States already have administrative rules in place governing public notification, and we are not imposing prescriptive burdensome guidelines or interfering with State authority in this area. Since this rule permits governors to opt-out of the Federal supervision requirement at any time, we believe governors should be able to rescind the opt-out at their decision.

Comment: One commenter stated their State (Oregon) is seeking a more permanent solution, like the one published in the January 18, 2001 final rule. The commenter stated that the opt-out method of the July 5, 2001 proposed rule would be cumbersome and redundant as the State has a ''CRNA Practice Act'' (which allows hospitals to utilize CRNA services with or without physician supervision, in hospitals), signed into law in 1997, and includes consultation with the Boards of Medicine and Nursing as well as the Hospital Association and other stakeholders.

Response: Oregon and any other States that have such laws should experience decreased burden associated with this final rule. The 1997 Oregon law encompassed some of the same processes outlined in this final rule (for example, consultation with professional organizations, and the ability for CRNAs to practice independently in hospitals, after consideration of patient safety and benefits to its citizens). We applaud the past efforts in Oregon, and believe the State will continue to make prudent decisions regarding the delivery of anesthesia services that are in the best interest of the citizens of the State.

F. Waivers

Comment: Deferring to State law and reverting to the January 18, 2001 final rule would be the wisest course and the best public policy decision. If CMS does not revert back to the January 18, 2001 final rule, then it should provide automatic waivers for all States that do not require physician supervision of CRNA, and consider a scientifically-valid study, or monitoring effort in such States. Commenters stated this is a far better approach than the proposed opt-out/exemption process. Commenters argued this proposed rule politicizes the supervision issue, and makes it much more difficult to produce a pool of States with no Federal supervision requirement that could be studied. Commenters also requested this automatic waiver for those States that remove their supervision requirements subsequent to the group of States initially granted automatic waivers.

Response: There is no evidence to suggest that governors in States with current laws and practices allowing unsupervised CRNA practice would not opt-out of the Federal supervision requirement.

G. Access

Comment: Commenters in support of the proposed rule, stated that rural access should not be considered a valid argument in removing physician supervision, stating this argument does not supercede patient safety, which can only be provided through physician supervision.

Response: We are sensitive to the issue of access of anesthesia services for beneficiaries. This rule will give States the flexibility to improve access in states that consider this an important issue. Regarding patient safety, this final rule is consistent with our efforts to improve the quality of care furnished through Federal programs, while at the same time recognizing States' traditional domain in establishing professional licensure and scope-of-practice laws.

H. Utilization of Anesthesiologist Assistants

Comment: A commenter questioned the increasing utilization of anesthesiologist assistants (AAs), and wanted clarification of a method to study outcomes related to their services. Commenters pointed out that anesthesiologists are beginning to employ AAs who have 2 years or less of post high school training, and question if this decision is based on safety.

Response: This regulation is not meant to change the scope-of-practice of AAs or the manner in which they function, nor does this regulation seek authority to allow AAs to practice without physician supervision. This concern is out of the scope of this regulation.

IV. Provisions of the Final Rule

This final rule implements changes suggested in our July 5, 2001 proposed rule (66 FR 35395) and clarifies several issues concerning the administration of anesthesia about which we solicited comments in the proposed rule. These changes affect the physician supervision requirements for certified registered nurse anesthetists furnishing anesthesia services in hospitals (42 CFR 482.52), critical access hospitals (42 CFR 485.639), and ambulatory surgical centers (42 CFR 416.42) that participate in the Medicare and Medicaid programs. Under this final rule, the current physician supervision requirement will be maintained, unless the governor of a State, in consultation with the State's Boards of Medicine and Nursing, exercises the option of exemption from this requirement, consistent with State law. We believe these changes will improve the quality of care furnished through Federal programs, while recognizing the States' traditional domain in establishing professional licensure and scope-of-practice laws.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

VI. Waiver of the 30-Day Delay of Recission Effective Date

In accordance with Section 553(d) of the Administrative Procedure Act (5 U.S.C. Section 553(d)), final rules ordinarily are not effective until at least 30 days after their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the finding and its reasons in the rule issued.

On July 5, 2001, we proposed changes to the final rule on CRNA practice published on January 18, 2001, which was to become effective November 14, 2001. We find good cause to waive the 30-day delay in the effective date of the provision in this rule rescinding the January 18, 2001 final rule. Failure to waive the delay in effective date would create an anomalous situation in which the provisions of the January 18, 2001 final rule would be in effect for only a few days before being explicitly amended on the effective date of today's final rule. The rescission is an integral operational part of this final rule. A delay in the effective date for the rescission would be impractical to administer because facility guidance and quality monitoring are not designed to accommodate rapid changes in applicable standards. Therefore, we find

that a 30-day delay in the effective date of the rescission is impracticable, unnecessary, and contrary to the public interest.

VII. Regulatory Impact Analysis

A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). This rule is not considered to have a significant economic impact on hospitals and, therefore, is not considered a major rule. There are no requirements for hospitals, CAHs, and ASCs to initiate new processes of care, reporting, or to increase the amount of time spent on providing or documenting patient care services. This proposed rule would provide hospitals, CAHs, and ASCs with more flexibility in how they provide quality anesthesia services, and encourage implementation of the best practice protocols.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having annual receipts of $5 million to $25 million or less annually (65 FR 69432). For purposes of the RFA, all non-profit hospitals, CAHs, and other hospitals with revenues of $25 million or less annually are considered to be small entities. Ambulatory surgical centers with revenues of $7.5 million or less annually are also considered to be small entities. Individuals and States are not included in the definition of small entities. In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

We are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, that exceeds the inflation-adjusted threshold of $110 million. This rule places no additional costs for implementation on the governments mentioned. It will allow the governors, through a letter to us, to opt-out of the physician supervision requirement of CRNAs and allow the CRNAs to practice independently where State law permits. If a letter to opt-out is submitted, we estimate each State will bear an additional burden of 4 hours for consultation and administrative preparation of the letter. This change is consistent with our policy of respecting State control and oversight of health care professions by deferring to State laws to regulate professional practice.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have examined this proposed rule and have determined that this rule will not have a negative impact on the rights, rules, and responsibilities of State, local, or tribal governments.

In accordance with the provisions of Executive Order 12866, this final rule was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 416

Health facilities, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 482

Grant programs-health, Health facilities, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 485

Grant programs-health, Health facilities, Medicaid, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services withdraws the rule amending 42 CFR chapter IV published in the **Federal Register** on January 18, 2001 (66 FR 4674) and amends 42 chapter IV as follows:

PART 416—AMBULATORY SURGICAL SERVICES

1. The authority citation for part 416 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 416.42, revise paragraph (b), and add a new paragraph (d) to read as follows:

§ 416.42 Condition for coverage—Surgical services.

* * * * *

(b) *Standard: Administration of anesthesia.* Anesthetics must be administered by only—

(1) A qualified anesthesiologist; or

(2) A physician qualified to administer anesthesia, a certified registered nurse anesthetist (CRNA) or an anesthesiologist's assistant as defined in § 410.69(b) of this chapter, or a supervised trainee in an approved educational program. In those cases in which a non-physician administers the anesthesia, unless exempted in accordance with paragraph (d) of this section, the anesthetist must be under the supervision of the operating physician, and in the case of an anesthesiologist's assistant, under the supervision of an anesthesiologist.

* * * * *

(d) *Standard: State exemption.* (1) An ASC may be exempted from the requirement for physician supervision of CRNAs as described in paragraph (b)(2) of this section, if the State in which the ASC is located submits a letter to CMS signed by the Governor, following consultation with the State's Boards of Medicine and Nursing, requesting exemption from physician supervision of CRNAs. The letter from the Governor must attest that he or she has consulted with State Boards of Medicine and Nursing about issues related to access to and the quality of anesthesia services in the State and has concluded that it is in the best interests of the State's citizens to opt-out of the current physician supervision

requirement, and that the opt-out is consistent with State law.

(2) The request for exemption and recognition of State laws, and the withdrawal of the request may be submitted at any time, and are effective upon submission.

PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS

1. The authority citation for part 482 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), unless otherwise noted.

2. In § 482.52, revise paragraph (a), and add a new paragraph (c) to read as follows:

§ 482.52 Condition of participation: Anesthesia services.

* * * * *

(a) *Standard: Organization and staffing.* The organization of anesthesia services must be appropriate to the scope of the services offered. Anesthesia must be administered only by—

(1) A qualified anesthesiologist;

(2) A doctor of medicine or osteopathy (other than an anesthesiologist);

(3) A dentist, oral surgeon, or podiatrist who is qualified to administer anesthesia under State law;

(4) A certified registered nurse anesthetist (CRNA), as defined in § 410.69(b) of this chapter, who, unless exempted in accordance with paragraph (c)of this section, is under the supervision of the operating practitioner or of an anesthesiologist who is immediately available if needed; or

(5) An anesthesiologist's assistant, as defined in § 410.69(b) of this chapter, who is under the supervision of an anesthesiologist who is immediately available if needed.

* * * * *

(c) Standard: State exemption. (1) A hospital may be exempted from the requirement for physician supervision of CRNAs as described in paragraph (a)(4) of this section, if the State in which the hospital is located submits a letter to CMS signed by the Governor, following consultation with the State's Boards of Medicine and Nursing, requesting exemption from physician supervision of CRNAs. The letter from the Governor must attest that he or she has consulted with State Boards of Medicine and Nursing about issues related to access to and the quality of anesthesia services in the State and has concluded that it is in the best interests of the State's citizens to opt-out of the current physician supervision requirement, and that the opt-out is consistent with State law.

(2) The request for exemption and recognition of State laws, and the withdrawal of the request may be submitted at any time, and are effective upon submission.

PART 485—CONDITIONS OF PARTICIPATION: SPECIALIZED PROVIDERS

1. The authority citation for part 485 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395 (hh)).

2. In § 485.639, paragraph (c) is revised and new paragraph (e) is added to read as follows:

§ 485.639 Condition of participation: Surgical services.

* * * * *

(c) *Administration of anesthesia.* The CAH designates the person who is allowed to administer anesthesia to CAH patients in accordance with its approved policies and procedures and with State scope-of-practice laws.

(1) Anesthesia must be administered by only—

(i) A qualified anesthesiologist;

(ii) A doctor of medicine or osteopathy other than an anesthesiologist; including an osteopathic practitioner recognized under section 1101(a)(7) of the Act;

(iii) A doctor of dental surgery or dental medicine;

(iv) A doctor of podiatric medicine;

(v) A certified registered nurse anesthetist (CRNA), as defined in § 410.69(b) of this chapter;

(vi) An anesthesiologist's assistant, as defined in § 410.69(b) of this chapter; or

(vii) A supervised trainee in an approved educational program, as described in §§ 413.85 or 413.86 of this chapter.

(2) In those cases in which a CRNA administers the anesthesia, the anesthetist must be under the supervision of the operating practitioner except as provided in paragraph (e) of this section. An anesthesiologist's assistant who administers anesthesia must be under the supervision of an anesthesiologist.

* * * * *

(e) Standard: State exemption.

(1) A CAH may be exempted from the requirement for physician supervision of CRNAs as described in paragraph (c)(2) of this section, if the State in which the CAH is located submits a letter to CMS signed by the Governor, following consultation with the State's Boards of Medicine and Nursing, requesting exemption from physician supervision for CRNAs. The letter from the Governor must attest that he or she has consulted with the State Boards of Medicine and Nursing about issues related to access to and the quality of anesthesia services in the State and has concluded that it is in the best interests of the State's citizens to opt-out of the current physician supervision requirement, and that the opt-out is consistent with State law.

(2)The request for exemption and recognition of State laws and the withdrawal of the request may be submitted at any time, and are effective upon submission.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)
(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: October 11, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: October 19, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 01–28439 Filed 11–9–01; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Modified Base (1% annual chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified BFEs are indicated on the following table and revise the Flood Insurance Rate Map(s) in effect for each listed community prior to this date.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards

Study Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: FEMA makes the final determinations listed below of the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Acting Administrator, Federal Insurance and Mitigation Administration has resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Acting Administrator, Federal Insurance and Mitigation Administration certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

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

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

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

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alaska: Unorganized Borough. (FEMA Docket No.: B–7415).	Municipality of Anchorage.	April 6, 2001, April 13, 2001, *Daily News Anchorage*.	The Honorable George P. Wuerch, Mayor, Municipality of Anchorage, P.O. Box 196650, Anchorage, Alaska 99519–6650.	March 14, 2001	020005
Arkansas: Faulkner. (FEMA Docket No.: B–7415).	City of Conway	April 5, 2001, April 13, 2001, *Log Cabin Democrat*.	The Honorable Tab Townsell, Mayor, City of Conway, City Hall, 1201 Oak Street, Conway, Arkansas 72032.	March 13, 2001	050078
Arkansas: Faulkner. (FEMA Docket No.: B–7415).	Unincorporated areas.	April 5, 2001, April 13, 2001, *Log Cabin Democrat*.	The Honorable John Wayne Carter, Faulkner County Judge, Faulkner County Court House, 801 Locust Avenue, Conway, Arkansas 72032.	March 13, 2001	050431
Arizona: Maricopa (FEMA Docket No.: B–7412).	City of Glendale ...	March 16, 2001, March 23, 2001, *Arizona Republic*.	The Honorable Elaine Scruggs, Mayor, City of Glendale, 5850 West Glendale Avenue, Glendale, Arizona 85301.	June 21, 2001	040045
Arizona: Maricopa (FEMA Docket No.: B–7412).	City of Peoria	March 15, 2001, March 22, 2001, *Arizona Republic*.	The Honorable John Keegan, Mayor, City of Peoria, 8401 West Monroe Street, Peoria, Arizona 85345.	June 21, 2001	040050
Arizona: Maricopa (FEMA Docket No.: B–7412).	City of Peoria	March 16, 2001, March 23, 2001, *Arizona Republic*.	The Honorable John Keegan, Mayor, City of Peoria, 8401 West Monroe Street, Peoria, Arizona 85345.	June 21, 2001	040050

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona: Maricopa (FEMA Docket No.: B–7415).	City of Scottsdale	April 6, 2001 April 13, 2001, *Arizona Republic*.	The Honorable Mary Manross, Mayor, City of Scottsdale, 3939 North Drinkwater Boulevard, Scottsdale, Arizona 85251.	March 13, 2001	045012
Arizona: Maricopa (FEMA Docket No.: B–7412).	Unincorporated areas.	March 15, 2001, March 22, 2001, *Arizona Republic*.	The Honorable Janice K. Brewer, Chairperson, Maricopa County Board of Supervisors, 301 West Jefferson, 10th Floor, Phoenix, Arizona 85003.	June 21, 2001	040037
Arizona: Maricopa (FEMA Docket No.: B–7415).	Unincorporated areas.	April 6, 2001, April 13, 2001, *Arizona Republic*.	The Honorable Janice K. Brewer, Chairperson, Maricopa County Board of Supervisors, 301 West Jefferson, 10th Floor, Phoenix, Arizona 85003.	July 5, 2001	040037
Arizona: Pima ..... (FEMA Docket No.: B-7415).	City of Tucson	March 23, 2001, March 30, 2001, *Tucson Citizen*.	The Honorable Robert Walkup, Mayor, City of Tucson, P.O. Box 27210, Tucson, Arizona 85726.	March 5, 2001	040076
California: Contra Costa. (FEMA Docket No.: B–7412).	Unincorporated areas.	February 7, 2001, February 14, 2001, *Contra Costa Times*.	The Honorable Gayle B. Uilkema, Chairperson, Contra Costa County, Board of Supervisors, c/o Clerk of the Board, 651 Pine Street, Martinez, California 94553.	May 15, 2001	060025
California: Contra Costa. (FEMA Docket No.: B–7412).	City of Walnut Creek.	February 7, 2001, February 14, 2001, *Contra Costa Times*.	The Honorable Kathy Hicks, Mayor, City of Walnut Creek, c/o City Manager, P.O. Box 8039, Walnut Creek, California 94596–8039.	May 15, 2001	065070
California: Los Angeles. (FEMA Docket No.: B–7415).	City of Los Angeles.	March 30, 2001, April 6, 2001, *Metropolitan News*.	The Honorable Richard J. Riordan, Mayor, City of Angeles, 200 North Main Street, Room 800, Los Angeles, California 90012.	March 6, 2001	060137
California: Los Angeles. (FEMA Docket No.: B-7415).	Unincorporated areas.	March 30, 2001, April 6, 2001, *Whittier Daily News*.	The Honorable Michael Antonovich, Chairperson, Los Angeles County Board of Supervisors, 500 West Temple Street, Suite 869, Los Angeles, California 90012.	March 9, 2001	065043
California: Sacramento. (FEMA Docket No.: B–7412).	Unincorporated areas.	February 23, 2001, March 2, 2001, *Sacramento Bee*.	The Honorable Roger Neillo, Chairman, Sacramento County Board of Supervisors, 700 H Street, Room 2450, Sacramento, California 95814.	January 30, 2001	060262
California: San Diego. (FEMA Docket No.: B–7415).	City of El Cajon	May 17, 2001, May 24, 2001, *East County Californian*.	The Honorable Mark Lewis, Mayor, City of El Cajon, 200 East Main Street, El Cajon, California 92020.	April 27, 2001	060289
California: San Diego. (FEMA Docket No.: B–7415).	Unincorporated areas.	May 17, 2001, May 24, 2001 *San Diego Union Tribune*.	The Honorable Bill Horn, Chairman, San Diego County Board of Supervisors, 1600 Pacific Highway, Room 335, San Diego, California 92101.	April 27, 2001	060284
California: Santa Clara. (FEMA Docket No.: B–7415).	City of Santa Clara	April 11, 2001, April 18, 2001, *Santa Clara Weekly*.	The Honorable Judy Nadler, Mayor, City of Santa Clara, City Hall, 1500 Warburton Avenue, Santa Clara, California 95050.	July 17, 2001	060350
California: Santa Clara. (FEMA Docket No.: B–7415).	City of Milpitas	May 31, 2001, June 7, 2001, *Milpitas Post*.	The Honorable Henry Manayan, Mayor, City of Milpitas, 455 East Calaveras Boulevard, Milpitas, California 95035.	May 15, 2001	060344
California: Ventura (FEMA Docket No.: B–7412).	City of Simi Valley	March 9, 2001, March 16, 2001, *Ventura County Star*.	The Honorable Bill Davis, Mayor, City of Valley, 2929 Tapo Canyon Road, Simi Valley, California 93063.	February 20, 2001	060421
Colorado: Boulder (FEMA Docket No.: B–7412).	City of Longmont ..	January 18, 2001, January 25, 2001 *Longmont Daily Times Call*.	The Honorable Leona Stoeker, Mayor, City of Longmont, 350 Kimbark Street, Longmont, Colorado 80501.	April 25, 2001	080027
Colorado: Boulder and Jefferson. (FEMA Docket No.: B–7415).	City of Broomfield	May 30, 2001, June 6, 2001, *Broomfield Enterprise*.	The Honorable William Berens, Mayor, City of Broomfield, One DesCombes Drive, Broomfield, Colorado 80020.	September 4, 2001.	085073

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Colorado: El Paso (FEMA Docket No.: B–7412).	Unincorporated areas.	February 16, 2001, February 23, 2001, *The Gazette*.	The Honorable Charles C. Brown, Chairman, El Paso County Board of Commissioners, 27 East Vermijo Avenue, Third Floor, Colorado Springs, Colorado 80903–2208.	May 24, 2001	080059
Colorado: Jefferson. (FEMA Docket No.: B–7412).	City of Golden	January 31, 2001, February 7, 2001 *Golden Transcript*.	The Honorable Jan C. Schenck, Mayor, City of Golden, 911 10th Street, Golden, Colorado 80401.	May 3, 2001	080090
Colorado: Jefferson. (FEMA Docket No.: B–7412).	Unincorporated areas.	February 1, 2001, February 8, 2001, *High Timber Times*.	The Honorable Michelle Lawrence, Chairperson, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Suite 5550, Golden, Colorado 80419.	May 3, 2001	080087
Colorado: Jefferson. (FEMA Docket No.: B–7412).	Unincorporated areas.	February 22, 2001, March 1, 2001 *High Timber Times*.	The Honorable Michelle Lawrence, Chairperson, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Suite 5550, Golden, Colorado 80419.	January 30, 2001	080087
Colorado: Jefferson. (FEMA Docket No.: B–7412).	Unincorporated areas.	March 1, 2001, March 8, 2001, *High Timber Times*.	The Honorable Michelle Lawrence, Chairperson, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Suite 5550, Golden, Colorado 80419.	June 6, 2001	080087
Colorado: La Plata (FEMA Docket No.: B–7412).	Unincorporated areas.	February 10, 2001, February 16, 2001, *Durango Herald*.	The Honorable Bob Lieb, La Plata County Commissioner, District 2, 1060 East Second Avenue, Durango, Colorado 81301.	May 19, 2001	080097
Idaho: Twin Falls .. (FEMA Docket No.: B–7412).	City of Twin Falls	March 8, 2001, March 15, 2001, *Twin Falls Times News*.	The Honorable Elaine Steel, Mayor, City of Twin Falls, P.O. Box 1907, Twin Falls, Idaho 83303–1907.	June 13, 2001	160120
Montana: Butte-Silver Bow County. (FEMA Docket No.: B–7415).	Unincorporated areas.	March 23, 2001, March 30, 2001, *Montana Standard*.	The Honorable Judy Jacobsen, Chief Executive Officer, Butte-Silver Bow County Courthouse, Room 106, 155 West Granite Street, Butte, Montana 59701.	March 1, 2001	300077
Nevada: Clark ..... (FEMA Docket No.: B–7415).	City of North Las Vegas.	May 18, 2001, May 25, 2001, *Las Vegas Review-Journal*.	The Honorable Michael L. Montandon, Mayor, City of North Las Vegas, P.O. Box 4086, North Las Vegas, Nevada 89030-4086.	April 27, 2001	320007
Nevada: Nye ..... (FEMA Docket No.: B–7415).	Unincorporated areas.	April 26, 2001, May 3, 2001, *Tonopah Times*.	The Honorable Jeff Taguchi, Chairman, Nye County Board of Commissioners, P.O. Box 153, Tonopah, Nevada 89049.	April 5, 2001	320018
Oregon: Jackson .. (FEMA Docket No.: B–7412).	City of Central Point.	February 22, 2001, March 1, 2001 *Medford Mail Tribune*.	The Honorable Bill Walton, Mayor, City of Central Point, 155 South Second Street, Central Point, Oregon 97502.	July 24, 2001	410092
Texas: Angelina ... (FEMA Docket No.: B–7415).	City of Lufkin	March 30, 2001, April 6, 2001 *Lufkin Daily News*.	The Honorable Louis A. Bronaugh, Mayor, City of Lufkin, 300 East Shepherd, Lufkin, Texas 75902.	June 28, 2001	480009
Texas: Collin ..... FEMA Docket No.: B–7412).	City of Allen	February 21, 2001, February 28, 2001, *Allen American*.	The Honorable Steve Terrell, Mayor, City of Allen, One Butler Circle, Allen, Texas 75013.	January 25, 2001	480131
Texas: Collin ..... (FEMA Docket No.: B–7412).	City of Celina	February 7, 2001, February 14, 2001, *Celina Record*.	The Honorable Mark Peterman, Mayor, City of Celina, 302 West Walnut, Celina, Texas 75009.	May 16, 2001	480133
Texas: Collin ..... (FEMA Docket No.: B–7415).	City of Murphy	August 16, 2000, August 23, 2000 *Wylie News*.	The Honorable Roy W. Bentle, Mayor, City of Murphy, 205 North Murphy Road, Murphy, Texas 75094.	July 25, 2000	480137
Texas: Collin ..... (FEMA Docket No.: B–7412).	City of Plano	February 14, 2001, February 21, 2001 *Plano Star Courier*.	The Honorable Jeran Akers, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086–0358.	January 25, 2001,	480140
Texas: Collin ..... (FEMA Docket No.: B–7412).	Unincorporated areas.	February 8, 2001, February 15, 2001, *McKinney Daily Courier-Gazette*.	The Honorable Ron Harris, Collin County Judge, 210 South McDonald Street, McKinney, Texas 75069.	May 16, 2001	480130
Texas: Dallas ..... (FEMA Docket No.: B–7412).	City of Coppell	February 16, 2001, February 23, 2001 *Coppell Gazette*.	The Honorable Candy Sheehan, Mayor, City of Coppell, 255 Parkway Boulevard, Coppell, Texas 75019.	May 23, 2001	480170

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Texas: Fort Bend (FEMA Docket No.: B–7419).	City of Missouri City. (00–06–727)	April 19, 2001, April 26, 2001, *Fort Bend Sun*.	The Honorable Allen Owen, Mayor, City of Missouri City, P.O. Box 666, Missouri City, Texas 77459.	March 23, 2001	480304
Texas: Fort Bend (FEMA Docket No.: B–7415).	City of Stafford	April 18, 2001, April 25, 2001 *Fort Bend Star*.	The Honorable Leonard Scarcella, Mayor, City of Stafford, City Hall, 2610 South Main Street, Stafford, Texas 77477.	March 23, 2001	480233
Texas: Fort Bend (FEMA Docket No.: B–7419).	Unincorporated areas. (00–06–727P)	April 19, 2001 April 26, 2001 *Fort Bend Sun*.	The Honorable James Adolphus, Fort Bend County Judge, 301 Jackson Street, Suite 719, Richmond, Texas 77469.	March 23, 2001	480228
Texas: Johnson .... (FEMA Docket No.: B–7328).	Unincorporated areas.	May 31, 2000, June 7, 2000, *Cleburne Times Review*.	The Honorable Roger Harmon, Johnson County Judge, Johnson County Courthouse, Two North Main Street, Cleburne, Texas 76031.	September 5, 2000.	480879
Texas: Travis ..... (FEMA Docket No.: B–7412).	City of Austin	March 2, 2001, March 9, 2001, *Austin American Statesman*.	The Honorable Kirk P. Watson, Mayor, City of Austin, Municipal Offices, P.O. Box 1088, Austin, Texas 78767–1088.	February 12, 2001	480624
Texas: Williamson (FEMA Docket No.: B–7412).	City of Leander	February 21, 2001, February 28, 2001 *Hill Country News*.	The Honorable Larry Barnett, Mayor, City of Leander, P.O. Box 319, Leander, Texas 78646.	January 24, 2001	481536
Virginia: Rockingham. (FEMA Docket No.: B–7415).	City of Harrisonburg.	April 12, 2001, April 19, 2001 *Daily News Record*.	The Honorable Carolyn W. Frank, Mayor, City of Harrisonburg, 374 South Carlton Street, Harrisonburg, Virginia 22801.	March 28, 2001	510076
Virginia: Rockingham. (FEMA Docket No.: B–7415).	Unincorporated areas.	April 12, 2001, April 19, 2001, *Daily News Record*.	The Honorable Pablo Cuevas, Chairman, Rockingham County Board of Supervisors, 543 Elm Street, Broadway, Virginia 22815.	March 28, 2001	510133
Wyoming: Teton ... (FEMA Docket No.: B–7415).	Town of Jackson ..	October 25, 2000, November 1, 2000 *Jackson Hole News*.	The Honorable Barney Oldfield, Mayor, Town of Jackson, P.O. Box 1687, Jackson, Wyoming 83001.	January 30, 2001	560052

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: October 29, 2001.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 01–28298 Filed 11–9–01; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–B–7422]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Acting Administrator, Federal Insurance and Mitigation Administration reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain

management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Acting Administrator, Federal Insurance and Mitigation Administration certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared

Regulatory Classification

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

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

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

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community Number
Arizona: Maricopa	City of Avondale (01–09–018P).	August 10, 2001, August 17, 2001, *Arizona Republic*.	The Honorable Ronald J. Drake, Mayor, City of Avondale, 525 North Central Avenue, Avondale, Arizona 85323.	July 24, 2001	040038
Arizona: Maricopa	City of Avondale (01–09–497P).	September 12, 2001, September 19, 2001, *Arizona Republic*.	The Honorable Ronald J. Drake, Mayor, City of Avondale, 525 North Central Avenue, Avondale, Arizona 85323.	August 23, 2001 ..	040038
Arizona: Maricopa	City of Goodyear (01–09–497P).	September 12, 2001, September 19, 2001, *Arizona Republic*.	The Honorable Bill Arnold, Mayor, City of Goodyear, 119 North Litchfield Road, Goodyear, Arizona 85338.	August 23, 2001 ..	040046
Arizona: Maricopa	City of Goodyear (01–09–124P).	March 14, 2001, March 21, 2001, *West Valley View*.	The Honorable Bill Arnold, Mayor, City of Goodyear, 119 North Litchfield Road, Goodyear, Arizona 85338.	February 27, 2001	040046
Arizona: Maricopa	City of Scottsdale (01–09–632P).	September 19, 2001, September 26, 2001, *Arizona Republic*.	The Honorable Mary Manross, Mayor, City of Scottsdale, 3939 North Drinkwater Boulevard, Scottsdale, Arizona 85251.	August 31, 2001 ..	045012
Arizona: Pima	Unincorporated Areas (01–09–430P).	August 23, 2001, August 30, 2001, *Arizona Daily Star and Tucson Citizen*.	The Honorable Raul Grijalva, Chairman, Pima County Board of Supervisors, 130 West Congress, 11th Floor, Tucson, Arizona 85701.	August 7, 2001	040073
California: Marin ...	City of Novato (01–09–674P).	August 8, 2001, August 15, 2001, *Novato Advance*.	The Honorable James W. Henderson, Mayor, City of Novato, 900 Sherman Avenue, Novato, California 94945.	July 18, 2001	060178
California: San Diego.	City of Poway (00–09–080P).	August 9, 2001, August 16, 2001, *Poway News Chieftain*.	The Honorable Mickey Cafagna, Mayor, City of Poway, 13325 Civic Center Drive, Poway, California 92064.	July 25, 2001	060702
Colorado: Jefferson.	City of Arvada (01–08–059P).	August 30, 2001, September 6, 2001, *Arvada Sentinel*.	The Honorable Ken Fellman, Mayor, City of Arvada, City Hall, 8101 Ralston Road, Arvada, Colorado 80002.	December 5, 2001	085072
Colorado: Jefferson.	City of Lakewood (01–08–331P).	August 9, 2001, August 16, 2001, *Lakewood Sentinel*.	The Honorable Steve Burkholder, Mayor, City of Lakewood, 480 South Allison Parkway, Lakewood, Colorado 80226–3127.	July 25, 2001	085075
Colorado: Jefferson.	City of Westminster (99–08–419P).	September 27, 2001, October 4, 2001, *Westminster Window*.	The Honorable Nancy M. Heil, Mayor, City of Westminister, 4800 West 92nd Avenue, Westminister, Colorado 80031.	September 20, 2001.	080008

State and county	Location and case No.	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community Number
Colorado: Larimer	City of Fort Collins (00–08–365P).	June 8, 2001, June 15, 2001, *Fort Collins Coloradoan*.	The Honorable Ray Martinez, Mayor, City of Fort Collins, P.O. Box 580, Fort Collins, Colorado 80522–0580.	August 23, 2001 ..	080102
Nevada: Clark	City of Mesquite (01–09–997P).	September 19, 2001, September 26, 2001, *Las Vegas Review-Journal*.	The Honorable Charles Home, Mayor, City of Mesquite, 10 East Mesquite Boulevard, Mesquite, Nevada 89027.	September 10, 2001.	320035
Nevada: Douglas	Unicorporated Areas (01–09–231P).	September 12, 2001, September 19, 2001, *Record Courier*.	Mr. Daniel C. Holler, County Manager, Douglas County, P.O. Box 218, Minden, Nevada 89423–0218.	August 16, 2001 ..	320008
Oregon: Multnomah.	City of Milwaukie (01–10–191P).	September 13, 2001, September 20, 2001, *The Oregonian*.	The Honorable Carolyn Tomei, Mayor, City of Milwaukie, 10722 Southeast Main Street, Milwaukie, Oregon 97222.	December 19, 2001.	410019
Oregon: Multnomah.	City of Portland (01–10–191P).	September 13, 2001, September 20, 2001, *The Oregonian*.	The Honorable Vera Katz, Mayor, City of Portland, 1221 Southwest Fourth Avenue, Suite 340, Portland, Oregon 97204.	December 19, 2001.	410183
Oregon: Multnomah.	Unincorporated Areas (01–10–191P).	September 13, 2001, September 20, 2001, *The Oregonian*.	The Honorable Diane Linn, Chairperson, Multnomah County Board of Commissioners, 501 Southeast Hawthorne Boulevard, Suite 600, Portland, Oregon 97214.	December 19, 2001.	410179
South Dakota: Union.	Unincorporated Areas (99–08–326P).	January 18, 2001, January 25, 2001, *Leader Courier*.	The Honorable Roger Boldenow, Chairman, Union County Board of Commissioners, P.O. Box 519, Elk Point, South Dakota 57025–0519.	December 28, 2000.	460242
Texas: Bexar	City of San Antonio (01–06–1953X).	September 27, 2001, October 4, 2001, *San Antonio Express News*.	The Honorable Edward D. Garza, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283–3966.	January 2, 2002 ...	480045
Texas: Dallas	City of Carrollton (00–06–1211P), (00–06–1214P), (00–06–1216P).	February 16, 2001, February 23, 2001, *Northwest Morning News (Formerly Metrocrest News)*.	The Honorable Milburn Gravley, Mayor, City of Carrollton, P.O. Box 110535, Carrollton, Texas 75011–0535.	May 24, 2001	480167
Texas: Lubbock	City of Lubbock	September 22, 2000, September 29, 2000, *Lubbock Avalanche*.	The Honorable Windy Sitton, Mayor, City of Lubbock, P.O. Box 491, Lubbock, Texas 79408.	December 28, 2000.	480452
Texas: Lubbock	City of Wolfforth (01–06–1799P).	September 27, 2001, October 4, 2001, *Lubbock Avalanche Journal*.	The Honorable Sylvia Preston, Mayor, City of Wolfforth, 382 East Highway 62, Wolfforth, Texas 79382.	September 5, 2001.	480918
Utah: Washington	City of Santa Clara (99–08–278P).	August 10, 2001, August 17, 2001, *The Spectrum*.	The Honorable Fred Rowley, Mayor, City of Santa Clara, P.O. Box 699, Santa Clara, Utah 84765.	November 15, 2001.	490178
Utah: Washington	City of St. George (99–08–278P).	August 10, 2001, August 17, 2001, *The Spectrum*.	The Honorable Daniel D. McArthur, Mayor, City of St. George, 175 East 200 North, St. George, Utah 84770.	November 15, 2001.	490177
Washington: Skamania.	City of North Bonneville (01–10–488P).	September 19, 2001, September 26, 2001, *Skamania County Pioneer*.	The Honorable John W. Kirk, Mayor, City of North Bonneville, P.O. Box 7, North Bonneville, Washington 98639.	September 13, 2001.	530256

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: October 29, 2001.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 01–28393 Filed 11–9–01; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 46

RIN 0940–AA05

Protection of Human Research Subjects

AGENCY: Department of Health and Human Services (DHHS).

ACTION: Final Rule.

SUMMARY: The Department of Health and Human Services (DHHS) is withdrawing Subpart B of its human subjects protection regulations published on January 17, 2001 and is issuing this replacement rule. These regulations provide additional protections for pregnant women and human fetuses involved in research. The final rule continues the special protections for pregnant women and human fetuses that have existed since 1975 and makes limited changes in terminology referring

to neonates, clarifies provisions for paternal consent when research is conducted involving fetuses, clarifies language that applies to research on newborns of uncertain viability, and corrects technical errors.

DATES: The final rule, Protection of Human Subjects, published in the **Federal Register** on January 17, 2001, at 66 FR 3878 is withdrawn as of November 13, 2001. The amendment published in this final rule is effective December 13, 2001.

FOR FURTHER INFORMATION CONTACT: Irene Stith-Coleman, Ph.D., Office for Human Research Protections (OHRP) 200 Independence Avenue, S.W., Room 733–E, Washington, DC 20201. Telephone 202–260–1587.

SUPPLEMENTARY INFORMATION:

Background

The Department of Health and Human Services (DHHS) regulates research involving human subjects conducted or supported by the agency through regulations codified at Title 45, part 46, of the Code of Federal Regulations. Subpart B of 45 CFR part 46, promulgated on August 8, 1975, pertains to research involving fetuses, pregnant women, and human in vitro fertilization. The 1975 regulations were jointly published in the **Federal Register** with the report and recommendations of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, Research on the Fetus (40 FR 33526). Subsequent changes were incorporated January 11, 1978 (43 FR 1758), November 3, 1978 (43 FR 51559), and June 1, 1994 (59 FR 28276).

On January 17, 2001, the Department published in the **Federal Register** a Final Rule, with an effective date of March 19, 2001 (66 FR 3878), intended to amend subpart B of 45 CFR part 46. This preamble refers to that rule as ''the January rule.'' The January rule's effective date was delayed by 60 days on March 19, 2001, in accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled A Regulatory Review Plan, published in the **Federal Register** on January 24, 2001. (66 FR 15352). The effective date of the January rule was further delayed by 180 days on May 18, 2001 to give the Department an opportunity to obtain comment on three modifications to the rule. (66 FR 27559). Simultaneous with publication of this final rule, the January rule is being withdrawn. Given the imminence of the effective date of the final rule as amended, seeking public comment on the withdrawal of the January rule would have been impracticable, as well as contrary to the public interest in the orderly promulgation and implementation of regulations, to allow time for implementation of this final rule.

On July 6, 2001, the Department published in the **Federal Register** a Notice of Proposed Rulemaking (66 FR 35576) seeking public comment on three limited proposed changes in the January rule: (1) Requiring paternal consent (with specified exceptions) for participation in federally funded research that is directed solely at a fetus; (2) modifying the definition of ''fetus'' to describe only the stage prior to delivery; and (3) modifying language to make clear that neonates of uncertain viability may be subjected to added risk only if the research is intended to enhance the probability of survival of the particular neonate to the point of viability.

Discussion of Comments

During the public comment period that ended September 4, 2001, the Department received 21 public comments on the proposed rule from interested parties. The comments are summarized as follows:

Paternal Consent for Participation in Research Directed Solely at the Fetus

The Department proposed requiring paternal consent (with specified exceptions) for participation in federally-funded research that is directed solely at the fetus. One commenter endorsed the change, saying that it is appropriate. Eight commenters objected to the change. Of these, two indicated that paternal consent should be required for any research that involves more than minimal risk to the fetus, and six indicated paternal consent should not be required in any research involving the fetus because to do so is contrary to clinical standards, does not recognize a woman's autonomy or her interest in protecting her fetus, presumes exclusion of pregnant women from participating in research, could delay participation in research, and could require pregnant women to disclose HIV status to fathers when such disclosure is not ordinarily required. These six commenters also stated that potential benefit to the mother and the fetus is not separable; and that determination of benefit is subjective.

The Department finds that modification of the consent provisions as proposed is the most respectful of the parents' joint interests in their fetus's health. The preamble to the January rule explained that consent requirements for research involving pregnant women were modified to address cases in which a requirement for the father's consent had been a barrier to participation in research which held potential benefit for both pregnant women and their fetuses. We believe that this problem is addressed by the clarification in this rule that only the mother's consent is required for participation in research that may benefit both the pregnant woman and the fetus. In addition, a father's consent would not be needed for a woman to participate in a research activity that would benefit her health.

Two commenters pointed out that consent requirements are not addressed for research with no prospect of benefit for the mother or her fetus, when the risk to the fetus is not greater than minimal and the purpose of the research is the development of important biomedical knowledge which cannot be obtained by any other means. The Department has modified the rule to clarify that only maternal consent is required in this circumstance, consistent with the other consent requirements of this section. The Department finds that requiring consent of both parents when risk to the fetus is no greater than minimal, and the purpose of the research is the development of important biomedical knowledge that cannot be obtained by any other means, would potentially impede important research and would not create additional protections for the fetus.

Three commenters stated that the qualification that paternal consent need not be obtained if he is unable to consent because of ''unavailability, incompetence, or temporary incapacity'' is unclear, and questioned whether paternal consent is required in cases of rape. The Department has modified the rule to clarify that paternal consent is not required in cases of rape and incest.

Use of the Terms Fetus and Neonate

The Department proposed using the terms ''fetus'' to describe an infant prior to delivery, and ''neonate'' to describe an infant following delivery. Four commenters endorsed use of the term ''neonate'' to refer to an infant after delivery; one of these commenters added that the change is consistent with clinical definitions. Six commenters objected, stating that use of the term neonate is confusing, conflicts with traditional medical terminology, will cause research conducted under subpart B to overlap with research conducted under subpart D, and will cause mislabeling of fetal deaths.

The Department finds that using the term ''fetus'' only for those infants that

have not been delivered is preferable because it is more consistent with the ordinary understanding of that word and that it is appropriate to distinguish between infants that have and have not been delivered by introducing the term neonate for an infant that has been delivered. This definitional change does not alter the strong protections the rule gives to pregnant women and fetuses, or change the regulatory framework that has been established to guide decisions regarding conduct of federally-supported research. The Department recognizes that the term ''neonate'' customarily refers to the first 28 days of life following delivery. The rule is not intended to alter this customary definition. The rule categorizes research involving neonates of uncertain viability or nonviable neonates as covered by subpart B, and research involving viable neonates as covered by subpart D. The Department notes that subpart B applies only to research. Because the vast majority of fetuses and neonates are not involved in any research protocol, subpart B is not likely to alter the ways that fetal deaths generally are labeled and reported throughout the medical community.

Research Involving Neonates of Uncertain Viability

The Department proposed to clarify that research involving risk is permitted on neonates of uncertain viability only when it is intended to increase the probability of survival. One commenter supported this change. Four commenters objected, stating that the level of risk for neonates of uncertain viability should not be less than that for viable neonates, and that research involving these subjects should be covered under subpart D. Three of these commenters also stated that a ''no-risk'' standard for research is not feasible. The Department finds that it is appropriate to provide greater protections for neonates of uncertain viability and to make clear that these neonates may be subjected to added risk only if the research is intended to enhance the particular neonate's probability of survival to the point of viability. The Department has modified language concerning research that develops important biomedical knowledge that cannot be obtained by other means to clarify that such research can only be conducted on neonates of uncertain viability and nonviable neonates when it will pose no added risk. This language is consistent with statutory requirements under 42 U.S.C. 289g.

Further, three commenters proposed alternative definitions of viability, and one commented that determination of viability is not a one-time decision. The Department finds that the definition provided in the rule provides appropriate protection to neonates in this vulnerable status, and intends that the determination of viability be made at the time of enrollment in any relevant research.

General Comments

Six commenters stated that language from HHS appropriations statutes regarding research involving embryos should be incorporated into the regulations and that either a definition of ''embryo'' should be added to the regulations or the definition of ''fetus'' should be revised. One commenter noted that the definition of fetus contained in the regulations is confusing, as it includes embryos. And two commenters stated general opposition to any research involving embryos. The Department finds that the current definition of fetus contained in the regulations appropriately includes embryos in utero, and that research involving embryos is otherwise adequately addressed by existing statutory requirements.

Four commenters stated that the regulations should incorporate language from 42 U.S.C. 289g(b) regarding the risk standard for aborted fetuses and fetuses carried to term. The Department finds that existing regulations make no distinction between fetuses intended to be aborted and those to be carried to term and ensures that decisions regarding whether to carry the fetus to term are separate from the research. The Department also finds that these risk standards are appropriately addressed by existing statutes. These four commenters also stated that the regulations should retain the requirement that risk to the fetus should be no more than needed to meet the health needs of the mother or fetus. The Department believes that the existing standard, that the risk posed is the least possible for achieving objectives of research, more appropriately covers all research that may be conducted under this section. In some cases, the objective of the research is to potentially benefit the mother or her fetus. In other cases, the objective of the research is to develop important biomedical knowledge which cannot be obtained by any other means.

Four commenters stated that the regulations should incorporate statutes governing fetal tissue research. The Department finds that research involving fetal tissue is adequately addressed by existing statutory requirements, and that these requirements are referenced appropriately in section 46.206 of the rule. These four commenters, as well as two other commenters, noted that the provisions in the regulation concerning fetal tissue research inappropriately refer to the material as ''neonatal'' material. The Department has corrected this drafting error.

One commenter objected to the requirement that, where scientifically appropriate, preclinical studies on pregnant animals and clinical studies on non-pregnant women be conducted to provide data for assessing potential risks to pregnant women and fetuses because it may delay important research. The Department finds that such studies may provide important data regarding assessment of risks to pregnant women and fetuses.

One commenter observed that requirements regarding inducements and decisions to terminate a pregnancy are not relevant to research involving neonates. The Department has corrected this drafting error by deleting the previous 46.205(a)(3) and (4).

One commenter noted that the regulations do not directly address in vitro fertilization research, although this topic is listed in the title and a definition is provided. The Department has deleted in vitro fertilization research from the title and the definitions.

One commenter supported the Department's distinction between therapeutic and nontherapeutic research in this rule; and two commenters opposed making such a distinction. The Department has retained existing regulatory language, finding that such a distinction is a valid factor in assessing this type of proposed research.

Five commenters objected to the provision permitting the Secretary to conduct or fund research involving pregnant women, fetuses, or neonates that does not otherwise meet the requirements of the rule when the research presents an opportunity to understand, prevent, or alleviate a serious problem affecting the health or welfare of these subjects, will be conducted in accordance with sound ethical principles and with informed consent. The Department has retained this provision. While such research would not normally be supported, it is important to retain the flexibility to support such research to protect and advance the health and well-being of these subjects. This provision replaces a former requirement for review of such research by an ethics advisory board, which was nullified by 1993 legislation, Pub. L. 103–43. Moreover, the Secretary will, as required under the current section, consult with experts and seek public comment prior to determining

whether such research should be supported by the Department. Further, any such research must be conducted in accordance with sound ethical principles.

Two commenters objected to permitting use of exemptions found under subpart A of the regulations in research conducted under subpart B. The Department has retained this provision, finding that permitting these exemptions is consistent with other provisions of the rule, and will not increase risks to subjects covered by subpart B.

One commenter objected to the order of the definitions. The Department has retained alphabetical order for ease of reference.

One commenter noted that the change in presumption for inclusion in research, as modified in the January rule, creates an appearance of promoting research over protection of subjects. The Department has retained existing language, finding that it is important to promote a presumption of inclusion rather than exclusion, and to respect autonomy of research subjects.

One commenter questioned the deletion of the requirement for review by an Ethics Advisory Board in the January rule. As stated above, this change was made in light of 1993 legislation nullifying this requirement, Pub. L. 103–43.

One commenter questioned the delay of the effective date of the January rule, stating that the delay was implemented without public comment in a final rule published on May 16 (66 FR 27599). As stated in that notice of delay of effective date, the Department determined that notice and comment requirements of 5 U.S.C. 553 did not apply to that action because it was a rule of procedure, or, alternatively, because it fell within the good cause exception to rule making requirements because obtaining public comment was impracticable, unnecessary, and contrary to the public interest. See 5 U.S.C. 553(b)(3(B). Moreover, an opportunity for comment has been provided in connection with the issuance of these regulations.

Summary of Comments

After considering the comments, the Department is adopting the rule as proposed except for the changes noted above. Language is added to clarify that only maternal consent is required for research that does not involve any prospect of benefit for the mother or her fetus and the purpose of the research is the development of important biomedical knowledge which cannot be obtained by any other means and the risk to the fetus is not greater than minimal. Language is added to clarify that paternal consent is not required in cases of rape and incest. The term ''added'' is incorporated to clarify that research involving nonviable neonates and neonates of uncertain viability that may develop important biomedical knowledge that cannot be obtained by any other means may be conducted only when such research poses no added risk. Drafting errors, as noted above, are corrected.

The rule is effective December 13 2001. All initial and ongoing projects reviewed by Institutional Review Boards (IRBs) after the effective date under Assurances with DHHS, Office for Human Research Protections (OHRP) must be reviewed in accordance with these rules.

Executive Order 12866

Executive Order 12866 requires that all regulatory actions reflect consideration of the costs and benefits they generate and that they meet certain standards, such as avoiding the imposition of unnecessary burdens on the affected public. If an action is deemed to fall within the scope of the definition of the term ''significant regulatory action'' contained in Sec. 3(f) of the Order, a pre-publication review by the Office of Management and Budget's (OMB's) Office of Information and Regulatory Affairs (OIRA) is necessary. OMB deemed this rule a ''significant regulatory action,'' as defined by Executive Order 12866. Therefore, the rule was submitted to OIRA for review prior to its publication in the **Federal Register**.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. Chapter 6) requires that regulatory actions be analyzed to determine whether they create a significant impact on a substantial number of small entities. This rule primarily affects individual research subjects and institutions that receive funding from the Department of Health and Human Services for research involving human subjects. It will not have the effect of imposing significant additional costs on small research institutions that are within the definition of small entities. Therefore, the Secretary certifies that this rule will not have significant impact on a substantial number of small entities and that preparation of an initial regulatory flexibility analysis is not required.

Paperwork Reduction Act

This rule does not contain any new information collection requirements that are subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

List of Subjects in 45 CFR Part 46

Health—clinical research, medical research.

Dated: October 26, 2001.

Arthur J. Lawrence,

Acting Principal Deputy Assistant Secretary for Health.

Approved: October 29, 2001.

Tommy G. Thompson,

Secretary of Health and Human Services.

Accordingly, the Department of Health and Human Services amends part 46 of the Regulations for the Protection of Human Subjects (45 CFR part 46) as follows:

PART 46—[AMENDED]

1. Authority citation for 45 CFR part 46 is revised to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 289(a).

2. Subpart B of 45 CFR Part 46 is revised to read as follows:

Subpart B—Additional Protections for Pregnant Women, Human Fetuses and Neonates Involved in Research

Sec.
46.201 To what do these regulations apply?
46.202 Definitions.
46.203 Duties of IRBs in connection with research involving pregnant women, fetuses, and neonates.
46.204 Research involving pregnant women or fetuses.
46.205 Research involving neonates.
46.206 Research involving, after delivery, the placenta, the dead fetus or fetal material.
46.207 Research not otherwise approvable which presents an opportunity to understand, prevent, or alleviate a serious problem affecting the health or welfare of pregnant women, fetuses, or neonates.

Subpart B—Additional Protections for Pregnant Women, Human Fetuses and Neonates Involved in Research

§ 46.201 To what do these regulations apply?

(a) Except as provided in paragraph (b) of this section, this subpart applies to all research involving pregnant women, human fetuses, neonates of uncertain viability, or nonviable neonates conducted or supported by the Department of Health and Human Services (DHHS). This includes all research conducted in DHHS facilities by any person and all research conducted in any facility by DHHS employees.

(b) The exemptions at § 46.101(b)(1) through (6) are applicable to this subpart.

(c) The provisions of § 46.101(c) through (i) are applicable to this subpart. Reference to State or local laws in this subpart and in § 46.101(f) is intended to include the laws of federally recognized American Indian and Alaska Native Tribal Governments.

(d) The requirements of this subpart are in addition to those imposed under the other subparts of this part.

§ 46.202 Definitions.

The definitions in § 46.102 shall be applicable to this subpart as well. In addition, as used in this subpart:

(a) Dead fetus means a fetus that exhibits neither heartbeat, spontaneous respiratory activity, spontaneous movement of voluntary muscles, nor pulsation of the umbilical cord.

(b) Delivery means complete separation of the fetus from the woman by expulsion or extraction or any other means.

(c) Fetus means the product of conception from implantation until delivery.

(d) Neonate means a newborn.

(e) Nonviable neonate means a neonate after delivery that, although living, is not viable.

(f) Pregnancy encompasses the period of time from implantation until delivery. A woman shall be assumed to be pregnant if she exhibits any of the pertinent presumptive signs of pregnancy, such as missed menses, until the results of a pregnancy test are negative or until delivery.

(g) Secretary means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom authority has been delegated.

(h) Viable, as it pertains to the neonate, means being able, after delivery, to survive (given the benefit of available medical therapy) to the point of independently maintaining heartbeat and respiration. The Secretary may from time to time, taking into account medical advances, publish in the **Federal Register** guidelines to assist in determining whether a neonate is viable for purposes of this subpart. If a neonate is viable then it may be included in research only to the extent permitted and in accordance with the requirements of subparts A and D of this part.

§ 46.203 Duties of IRBs in connection with research involving pregnant women, fetuses, and neonates.

In addition to other responsibilities assigned to IRBs under this part, each IRB shall review research covered by this subpart and approve only research which satisfies the conditions of all applicable sections of this subpart and the other subparts of this part.

§ 46.204 Research involving pregnant women or fetuses.

Pregnant women or fetuses may be involved in research if all of the following conditions are met:

(a) Where scientifically appropriate, preclinical studies, including studies on pregnant animals, and clinical studies, including studies on nonpregnant women, have been conducted and provide data for assessing potential risks to pregnant women and fetuses;

(b) The risk to the fetus is caused solely by interventions or procedures that hold out the prospect of direct benefit for the woman or the fetus; or, if there is no such prospect of benefit, the risk to the fetus is not greater than minimal and the purpose of the research is the development of important biomedical knowledge which cannot be obtained by any other means;

(c) Any risk is the least possible for achieving the objectives of the research;

(d) If the research holds out the prospect of direct benefit to the pregnant woman, the prospect of a direct benefit both to the pregnant woman and the fetus, or no prospect of benefit for the woman nor the fetus when risk to the fetus is not greater than minimal and the purpose of the research is the development of important biomedical knowledge that cannot be obtained by any other means, her consent is obtained in accord with the informed consent provisions of subpart A of this part;

(e) If the research holds out the prospect of direct benefit solely to the fetus then the consent of the pregnant woman and the father is obtained in accord with the informed consent provisions of subpart A of this part, except that the father's consent need not be obtained if he is unable to consent because of unavailability, incompetence, or temporary incapacity or the pregnancy resulted from rape or incest.

(f) Each individual providing consent under paragraph (d) or (e) of this section is fully informed regarding the reasonably foreseeable impact of the research on the fetus or neonate;

(g) For children as defined in § 46.402(a) who are pregnant, assent and permission are obtained in accord with the provisions of subpart D of this part;

(h) No inducements, monetary or otherwise, will be offered to terminate a pregnancy;

(i) Individuals engaged in the research will have no part in any decisions as to the timing, method, or procedures used to terminate a pregnancy; and

(j) Individuals engaged in the research will have no part in determining the viability of a neonate.

§ 46.205 Research involving neonates.

(a) Neonates of uncertain viability and nonviable neonates may be involved in research if all of the following conditions are met:

(1) Where scientifically appropriate, preclinical and clinical studies have been conducted and provide data for assessing potential risks to neonates.

(2) Each individual providing consent under paragraph (b)(2) or (c)(5) of this section is fully informed regarding the reasonably foreseeable impact of the research on the neonate.

(3) Individuals engaged in the research will have no part in determining the viability of a neonate.

(4) The requirements of paragraph (b) or (c) of this section have been met as applicable.

(b) Neonates of uncertain viability. Until it has been ascertained whether or not a neonate is viable, a neonate may not be involved in research covered by this subpart unless the following additional conditions are met:

(1) The IRB determines that:

(i) The research holds out the prospect of enhancing the probability of survival of the neonate to the point of viability, and any risk is the least possible for achieving that objective, or

(ii) The purpose of the research is the development of important biomedical knowledge which cannot be obtained by other means and there will be no added risk to the neonate resulting from the research; and

(2) The legally effective informed consent of either parent of the neonate or, if neither parent is able to consent because of unavailability, incompetence, or temporary incapacity, the legally effective informed consent of either parent's legally authorized representative is obtained in accord with subpart A of this part, except that the consent of the father or his legally authorized representative need not be obtained if the pregnancy resulted from rape or incest.

(c) Nonviable neonates. After delivery nonviable neonate may not be involved in research covered by this subpart unless all of the following additional conditions are met:

(1) Vital functions of the neonate will not be artificially maintained;

(2) The research will not terminate the heartbeat or respiration of the neonate;

(3) There will be no added risk to the neonate resulting from the research;

(4) The purpose of the research is the development of important biomedical knowledge that cannot be obtained by other means; and

(5) The legally effective informed consent of both parents of the neonate is obtained in accord with subpart A of this part, except that the waiver and alteration provisions of § 46.116(c) and (d) do not apply. However, if either parent is unable to consent because of unavailability, incompetence, or temporary incapacity, the informed consent of one parent of a nonviable neonate will suffice to meet the requirements of this paragraph (c)(5), except that the consent of the father need not be obtained if the pregnancy resulted from rape or incest. The consent of a legally authorized representative of either or both of the parents of a nonviable neonate will not suffice to meet the requirements of this paragraph (c)(5).

(d) Viable neonates. A neonate, after delivery, that has been determined to be viable may be included in research only to the extent permitted by and in accord with the requirements of subparts A and D of this part.

§ 46.206 Research involving, after delivery, the placenta, the dead fetus or fetal material.

(a) Research involving, after delivery, the placenta; the dead fetus; macerated fetal material; or cells, tissue, or organs excised from a dead fetus, shall be conducted only in accord with any applicable Federal, State, or local laws and regulations regarding such activities.

(b) If information associated with material described in paragraph (a) of this section is recorded for research purposes in a manner that living individuals can be identified, directly or through identifiers linked to those individuals, those individuals are research subjects and all pertinent subparts of this part are applicable.

§ 46.207 Research not otherwise approvable which presents an opportunity to understand, prevent, or alleviate a serious problem affecting the health or welfare of pregnant women, fetuses, or neonates.

The Secretary will conduct or fund research that the IRB does not believe meets the requirements of § 46.204 or § 46.205 only if:

(a) The IRB finds that the research presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of pregnant women, fetuses or neonates; and

(b) The Secretary, after consultation with a panel of experts in pertinent disciplines (for example: science, medicine, ethics, law) and following opportunity for public review and comment, including a public meeting announced in the **Federal Register**, has determined either:

(1) That the research in fact satisfies the conditions of § 46.204, as applicable; or

(2) The following:

(i) The research presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of pregnant women, fetuses or neonates;

(ii) The research will be conducted in accord with sound ethical principles; and

(iii) Informed consent will be obtained in accord with the informed consent provisions of subpart A and other applicable subparts of this part.

[FR Doc. 01–28440 Filed 11–9–01; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AH79

Migratory Bird Hunting; Late Seasons and Bag and Possession Limits for Certain Migratory Game Birds; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; correction.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter Service or we) published a document in the September 28, 2001, **Federal Register** prescribing the hunting seasons, hours, areas, and daily bag and possession limits for general waterfowl seasons and those early seasons for which States previously deferred selection. This document corrects errors in the season dates and other pertinent information for the States of Illinois, North Carolina, South Carolina, Texas, and Vermont.

DATES: This rule was effective on September 28, 2001.

FOR FURTHER INFORMATION CONTACT: Jon Andrew, Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, (703) 358–1714.

SUPPLEMENTARY INFORMATION: In the September 28, 2001, **Federal Register** (66 FR 49748), we published a final rule prescribing hunting seasons, hours, areas, and daily bag and possession limits for general waterfowl seasons, certain other migratory bird seasons, and those early seasons for which States previously deferred selection. The rule contained errors in the entries for Illinois, North Carolina, South Carolina, Texas, and Vermont, which are discussed briefly below and corrected by this notice.

We received public comment on the proposed rules for the seasons and limits established by the September 28 final rule. We addressed these comments in final rules published in the August 21, 2001, (66 FR 44010) and September 27, 2001, (66 FR 49478) **Federal Registers**. The corrections are typographical in nature and involve no substantial changes to the substance in the contents of the prior proposed and final rules.

In rule FR Doc. 01–24292 published September 28, 2001 (66 FR 49748), make the following corrections:

§ 20.105 [Corrected]

1. On page 49756 under the heading Vermont, subheading Canada Geese, the subheadings ''Lake Champlain and Interior Zones'' and ''Connecticut River Zone'' are inserted; across from the subheading Lake Champlain and Interior Zones, the season dates of ''Oct. 27–Nov. 25'' are inserted; across from the subheading Connecticut River Zone, the season dates of ''Oct. 2–Nov. 4 & Nov. 21–Dec. 1'' are inserted.

2. On page 49756 under the heading Vermont, subheading Light Geese, the subheadings ''Lake Champlain and Interior Zones'' and ''Connecticut River Zone'' are inserted; across from the subheading Lake Champlain and Interior Zones, the season dates of ''Oct. 10–Dec. 28 & Mar. 1–Mar. 10'' are inserted; across from the subheading Connecticut River Zone, the season dates of ''Oct. 2–Dec. 16'' are inserted.

3. On page 49756 under the heading West Virginia, subheading Canada Geese, subheading Zone 2, the season dates of ''Dec. 21 Jan. 31'' are corrected to read ''Dec. 21–Jan.31.''

4. On page 49757 under the heading Illinois, subheading Brant, the bag and possession limits are corrected to read ''1 and 2.'' Remove the ''2'' from under the subheading Brant.

5. On page 49762 under the heading Texas, subheading Geese, subheading East Tier, subheading Light Geese, the season dates ''Oct.28–Jan.21'' are corrected to read ''Oct. 27–Jan. 20.''

6. On page 49766 under the heading North Carolina, the season dates for the youth waterfowl hunting day are

corrected to read ''Jan. 26 & 27.'' Remove ''Jan. 26'' from under the subheading Ducks and geese.

7. On page 49766 under the heading South Carolina, the season dates for the youth waterfowl hunting day are corrected to read ''Jan. 26 & 27.'' Remove ''Jan. 26 & 27'' from under the subheading Ducks and geese.

Dated: October 24, 2001.

Joseph E. Doddridge,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 01–28296 Filed 11–9–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 010413094–1094–01; I.D. 060701A]

RIN 0648–AP10

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Deep-Sea Red Crab Fishery

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

ACTION: Extension of the expiration date of an emergency interim rule.

SUMMARY: NMFS informs the public that the emergency interim rule published on May 8, 2001, as amended on July 23, 2001, to govern fishing in the Atlantic deep-sea red crab (Chaceon quinquedens) (red crab) fishery from May 18, 2001, through November 14, 2001, is extended for an additional 180 days to continue protection of red crab while permanent measures are being developed by the New England Fishery Management Council (Council). The extension adjusts the total allowable catch (TAC) for its 180-day duration to 2.16 million lb (979.8 mt); maintains a possession limit of 65,000 lb (29.5 mt) of whole red crab or its equivalent, a trap/pot limit of 600 pots, and an incidental catch of 100 lb (45.4 kg) of whole red crab per fishing trip. The extension also continues the requirements for a letter of authorization, for vessel reporting via an interactive voice response system, and for submission of vessel trip reports for the red crab fishery. The intended effect of extending this rule is to continue to prevent or eliminate overfishing and provide immediate protection of the red crab stock in the previously unregulated Atlantic deep-sea red crab fishery in the Northeast region while a Federal fishery management plan (FMP) is being developed.

DATES: The expiration date of the emergency interim rule, published May 8, 2001 (66 FR 23182), as amended on July 23, 2001 (66 FR 38165), is extended effective November 15, 2001, through May 14, 2002.

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe, Fishery Policy Analyst, 978–281–9272, fax 978–281–9135, e-mail *martin.jaffe@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

At its January 23, 2001, meeting, the Council requested that the Secretary of Commerce (Secretary) use his authority under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act to promulgate emergency regulations to address the potential for a rapid increase in the harvesting of red crab and to halt or prevent overfishing, while providing immediate protection to the red crab resource as the Council develops an FMP for red crab. An emergency interim rule to implement management measures for the red crab fishery was published on May 8, 2001 (66 FR 23182), effective May 18, 2001, through November 14, 2001. A full discussion of the status of the red crab stock and the need for emergency interim action is found in the preamble to the emergency interim rule and is not repeated here.

On July 23, 2001, NMFS amended the emergency interim rule (66 FR 38165) by revising the conversion factor for determining live weight landings where red crab are landed in a butchered state. Based on comments subsequently received, additions/modifications to those conversions may again be needed in the long term and will be fully addressed in the FMP under development.

On August 2, 2001, 83.9 percent of the red crab total allowable catch (TAC) was landed and, based on projections that the TAC would be reached as of August 17, 2001, NMFS closed the directed fishery effective on August 17, 2001.

After promulgating the initial emergency interim rule, NMFS was sued in the Federal District Court of Virginia by the owners of two large crab processor vessels on grounds that emergency rulemaking was not justified and that the rule was not supported by the record. On a motion to change venue by the intervener New England Red Crab Harvesters Association, the lawsuit was recently transferred to Massachusetts. In promulgating this extension to the emergency interim rule, NMFS has taken into account all issues covered in this lawsuit and concluded that the measures included in this rule are necessary for a risk-averse approach to protecting the red crab resource.

This action extends the emergency interim measures for 180 days, effective November 15, 2001. Emergency interim measures extended by this action include a TAC of 2.16 million lb (979.8 mt). This TAC is based on one-half of an annual TAC of 5.0 million lb (2,268 mt) reduced by the overage caught during the initial emergency period (which was approximately 340,000 lb (154.22 mt)). NMFS reduced the TAC for the extension period by the amount of the overage (340,000 lb (154.22 mt)) from the initial period in order to ensure that the annual TAC of 5.0 million lb is not exceeded. Other measures, which remain the same as in the initial emergency interim rule, include: a possession/landing limit of 65,000 lb (29.5 mt) of whole red crab, or its whole weight equivalent, per vessel per fishing trip; a trap/pot limit of 600 pots per vessel; and an incidental catch limit of 100 lb (45.4 kg) of red crab per fishing trip. This extension also continues the requirements for a letter of authorization, vessel reporting via an interactive voice response system, and submission of vessel trip reports for the red crab fishery.

Comments and Responses

Comment 1: By allowing the continuation of fishing by vessels that entered the fishery after the March 1, 2000, control date, the emergency rule does not protect the viability of the existing fishery nor is it consistent with national and international fishery policy.

Response: The emergency rule contains measures that NMFS believes will prevent or eliminate overfishing of the red crab stock in the short term from Cape Hatteras Light, NC, northward to the U.S.-Canada border. A moratorium on vessels that entered the red crab fishery after the control date is a controversial and time-consuming action to implement and would be better addressed in the Red Crab FMP currently under development.

Comment 2: The emergency rule does not prevent substantial damage to the historical participants in the Atlantic red crab fishery.

Response: The emergency rule establishes a 65,000-lb (29.5-mt) possession limit, which has been estimated to be the average hold capacity of the red crab vessels that had

been fishing at least 1 year prior to and including the control date of March 1, 2000. This trip limit was selected to allow the greatest number of vessels with a recent history in the fishery to continue to fish while not precluding red crab fishing by any vessel that chooses to fish under the emergency provisions.

Comment 3: If the emergency rule is extended it should be modified to limit the issuance of letters of authorization to vessels that had a history of substantial participation in the red crab fishery prior to March 1, 2000, as requested by the Council.

Response: At its January 23, 2001, meeting, the Council approved a motion to request that the Secretary use his authority to promulgate emergency regulations to halt or prevent potential overfishing, while providing immediate protection to the red crab resource as the Council develops an FMP for red crab. The management measures implemented by this emergency rule are intended to help prevent a derby-type fishery and are intended to allow the greatest number of vessels with a recent history in the fishery to continue to fish while not precluding red crab fishing by any vessel that chooses to fish under the emergency provisions.

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

Dated: November 7, 2001.

Rebecca Lent,

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

[FR Doc. 01–28391 Filed 11–7–01; 4:52 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 66, No. 219
Tuesday, November 13, 2001

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–251–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of two existing airworthiness directives (AD), applicable to certain Boeing Model 737 series airplanes, that currently include replacing the main rudder power control unit (PCU) and PCU vernier control rod bolts; testing the main rudder PCU to detect certain discrepancies and to verify proper operation of the PCU; and revising the FAA-approved Airplane Flight Manual procedures to correct a jammed or restricted flight control condition. Instead, this new proposal would require installation of a new rudder control system and changes to the adjacent systems to accommodate that new rudder control system. This proposal is prompted by FAA determinations that the existing system design architecture is unsafe due to inherent failure modes, including single-jam modes and certain latent failures or jams, which, when combined with a second failure or jam, could cause an uncommanded rudder hardover event and consequent loss of control of the airplane. Additionally, the current rudder operational procedure is not effective throughout the entire flight envelope. The actions specified by the proposed AD are intended to prevent the identified unsafe condition.

DATES: Comments must be received by January 14, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–251–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–251–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

FOR FURTHER INFORMATION CONTACT: Kenneth W. Frey, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–2673; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–251–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–251–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On June 23, 1997, the FAA issued AD 97–14–04, amendment 39–10061 (62 FR 35068, June 30, 1997), applicable to certain Boeing Model 737–100, –200, –300, –400, and ''500 series airplanes. That AD includes the following requirements:

- Replacement of the main rudder power control unit (PCU) with a newly designed unit.
- Tests of the main rudder PCU to detect excessive internal leakage of hydraulic fluid, stalling, or reversal, and to verify proper operation of the PCU.
- Replacement of the vernier control rod bolts with newly designed bolts.

The actions of AD 97–14–04 were prompted by extensive laboratory testing indicating that a single jammed secondary slide in the main rudder PCU servo valve could result in an uncommanded rudder hardover event, opposite to the pilot-commanded input. That AD also was prompted by reports of fracturing of the vernier control rod bolts as a result of the shank of the bolt running into the threads on the nutplate during installation of the rod. The requirements of that AD are intended to prevent certain single jams in the dual concentric servo valve from causing uncommanded rudder hardovers, loss of hinge moment due to excessive internal leakage in the rudder control system, and fracturing of the vernier control rod bolts, all of which could reduce the controllability of the airplane.

On October 20, 2000, the FAA issued AD 2000–22–02, amendment 39–11948 (65 FR 64134, October 26, 2000), applicable to all Boeing Model 737 series airplanes. That AD supersedes AD 96–26–07, amendment 39–9871 (62 FR 15, January 2, 1997), to require revising the FAA-approved Airplane Flight Manual (AFM) procedure in AD 96–26–07 to simplify the instructions for correcting a jammed or restricted flight control condition. AD 2000–22–02 was prompted by an FAA determination that the procedure inserted in the AFM by AD 96–26–07 was not defined adequately. The actions specified in AD 2000–22–02 are intended to ensure that the flight crew is advised of the procedures necessary to address a condition involving a jammed or restricted rudder. To correct the format for certain AFM material described in AD 2000–22–02, on November 9, 2000, the FAA issued AD 2000–22–02 R1, amendment 39–11948 (65 FR 69239, November 16, 2000).

Actions Since Issuance of Previous Rules

Since the issuance of AD 97–14–04, the National Transportation Safety Board (NTSB) has identified the most probable cause of two major airplane accidents as a jammed secondary slide in the main rudder PCU servo valve in combination with overtravel of the primary slide. While that AD addressed what was considered to be the most likely cause of uncommanded rudder hardovers, the FAA recognized that other causes were still possible.

Subsequently, the FAA determined that the existing system design architecture is unsafe due to inherent failure modes, including single-jam modes and certain latent failures or jams, which, when combined with a second failure or jam, could cause an uncommanded rudder hardover event and consequent loss of control of the airplane. These failure modes remain even following accomplishment of the actions required by AD 97–14–04.

In addition, the FAA has received information from the Independent 737 Flight Controls Engineering Test and Evaluation Board (ETEB) verifying the existence of the failure modes described above in the rudder system of all Model 737 series airplanes that can cause an uncommanded rudder hardover.

Because of the existing design architecture, the FAA issued the previously described AD 2000–22–02 R1 to include a special non-normal operational ''Uncommanded Rudder'' procedure, which provides necessary instructions to the flight crew for control of the airplane during an uncommanded rudder hardover event. The revised rudder procedure included in AD 2000–22–02 R1 is implemented to provide the flight crew with a means to recover control of the airplane following certain failures of the rudder control system. However, such a procedure, which is unique to the Model 737 series airplane, adds to the workload of the flight crew at a critical time when the flight crew is attempting to recover from an uncommanded rudder movement or other system malfunction. While that procedure effectively addresses certain rudder system failures, the FAA finds that such a procedure will not be effective in preventing an accident if the rudder control failure occurs during takeoff or landing.

For these reasons, the FAA has determined that the need for a unique operational procedure and the inherent failure modes in the existing rudder control system, when considered together, present an unsafe condition. In light of these reasons, the FAA proposes to eliminate the unsafe condition by mandating incorporation of a newly designed rudder control system. The manufacturer is currently redesigning the rudder system to eliminate these rudder failure modes. The redesigned rudder control system will incorporate design features that will increase system redundancy, and will add an active fault monitoring system to detect and annunciate to the flight crew single jams in the rudder control system. If a single failure or jam occurs in the linkage aft of the torque tube, the new rudder design will allow the flight crew to control the airplane, using normal piloting skills, without operational procedures that are unique to this airplane model.

FAA's Conclusions

The FAA has identified failure modes in the Model 737 rudder control system that could cause loss of control of the airplane if a single jam occurs, or if a single failure combined with a latent failure occurs. For these reasons, the FAA concludes that a full redesign of the rudder is warranted, based on the knowledge that single jams and single failures with latent failures in the flight control system can cause loss of control of the airplane.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 97–14–04 and AD 2000–22–02 R1 to require installation of a new rudder control system and applicable changes to the adjacent systems to accommodate the new rudder control system on all Model 737 series airplanes. These actions would be required to be accomplished in accordance with a method approved by the FAA. Boeing indicates that a new rudder control system is currently being developed, which the FAA intends to evaluate for possible approval as an alternative method of compliance to this proposed AD.

The new design for the Model 737 rudder control system located at the aft end of the airplane will include the installation of new or modified components for the rudder control system. Such components will include an aft torque tube, hydraulic actuators, and associated control rods; and additional wiring throughout the airplane to support failure annunciation of the rudder control system in the flight deck. The new design also will incorporate two separate inputs, each with an override mechanism, to two separate servo valves on the main rudder PCU. The input to the standby PCU also will include an override mechanism. In addition, changes to the adjacent systems will be necessary, such as changes to the flight deck indication and standby hydraulic system control.

Cost Impact

There are approximately 4,500 Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 2,000 airplanes of U.S. registry would be affected by this proposed AD.

The new installation action that is proposed in this AD would take approximately 700 hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $140,000 per airplane. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $364,000,000 (over the proposed 5-year compliance time), or $182,000 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish the action in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10061 (62 FR 35068, June 30, 1997) and amendment 39–11948 (65 FR 69239, November 16, 2000), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 2001–NM–251–AD. Supersedes AD 97–14–04, Amendment 39–10061; and AD 2000–22–02 R1, Amendment 39–11948.

Applicability: All Model 737 series airplanes; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent an uncommanded rudder hardover event and consequent loss of control of the airplane due to inherent failure modes, including single-jam modes, and certain latent failure or jams combined with a second failure or jam; accomplish the following:

Installation

(a) Within 5 years after the effective date of this AD, do the actions required by paragraphs (a)(1) and (a)(2) of this AD, in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

(1) Install a new rudder control system that includes new components such as an aft torque tube, hydraulic actuators, and associated control rods, and additional wiring throughout the airplane to support failure annunciation of the rudder control system in the flight deck. The system also must incorporate: two separate inputs, each with an override mechanism, to two separate servo valves on the main rudder power control unit (PCU); and an input to the standby PCU that will also include an override mechanism.

(2) Make applicable changes to the adjacent systems to accommodate the new rudder control system.

Alternative Methods of Compliance

(b)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 97–14–04, amendment 39–10061, are not considered to be approved as alternative methods of compliance with this AD.

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

Special Flight Permits

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

Issued in Renton, Washington, on November 6, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–28334 Filed 11–9–01; 8:45 am]

BILLING CODE 4910–13–U

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–B–7420]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFE and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any

existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Acting Administrator, Federal Insurance and Mitigation Administration certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

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

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

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

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376, § 67.4

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation	Elevation in feet *(NGVD)		Communities affected
		Effective	Modified	
CALIFORNIA **San Diego County and Incorporated Areas**				
Alvarado Creek	At Pennsylvania Lane extension, approximately 1,000 feet downstream of 70th Street.	None	*379	City of La Mesa, City of San Diego.
	Approximately 2,000 feet downstream of Lake Murray Boulevard.	None	*407	
	Approximately 900 feet downstream of Comanche Boulevard.	None	*425	
	Approximately 300 feet upstream of Fletcher Parkway	None	*454	

ADDRESSES

City of La Mesa

Maps are available for inspection at the Department of Public Works/Community Development, City Hall, 8130 Allison Avenue, La Mesa, California.

Send comments to The Honorable Art Madrid, Mayor, City of La Mesa, P.O. Box 937, La Mesa, California 91944–0937.

City of San Diego

Maps are available for inspection at the City Development Services Center, 1222 First Avenue, Third Floor, San Diego, California.

Send comments to The Honorable Richard M. Murphy, Mayor, City of San Diego, 200 C Street, 11th Floor, San Diego, California, 92101.

NEBRASKA **Colfax County and Incorporated Areas**				
Shell Creek	Approximately 800 feet downstream of the County Bridge located at the west section-line of the southwest ¼ of section 9 T17N–R4E.	None	*1,331	Colfax County (Unincorporated Areas) and City of Schuyler.
	Approximately 2,000 feet downstream of U.S. Highway 30.	*1,348	*1,348	
	Approximately 4,600 feet downstream of State Highway 15.	*1,369	*1,368	
	At County Bridge on Colfax/Platte County boundary located approximately 300 feet south of middle of west section line of section 19.	None	*1,445	

ADDRESSES

Colfax County (Unincorporated Areas)

Maps are available for inspection at the County Map Repository, 411 East 11th Street, Schuyler, NE 68661.

Send comments to The Honorable Paul Pekarek, Chairman, Colfax County Board of Commissioners, 411 East 11th Street, Schuyler, NE 68661.

City of Schuyler

Maps are available for inspection at the Community Map Repository, 1103 B Street, Schuyler, NE 68661.

Flooding source(s)	Location of referenced elevation	Elevation in feet *(NGVD)		Communities affected
		Effective	Modified	
Send comments to The Honorable David F. Reinecke, Mayor, City of Schuyler, Municipal Building, 1103 B Street, Schuyler, NE 68661.				
OKLAHOMA **Oklahoma County and Incorporated Areas**				
Chisholm Creek	Approximately 3,900 feet downstream of Danforth Street.	*1,045	*1,052	City of Edmond. City of Oklahoma City.
Chisholm Creek Tributary 3 (Pond Creek).	Just upstream of Memorial Road	*1,122	*1,124	
	Just downstream of Hefner Road	*1,167	*1,167	
	At confluence with Chisholm Creek	*1,040	*1,049	City of Edmond.
	Just upstream of Danforth Road	*1,074	*1,075	City of Oklahoma City.

ADDRESSES

City of Edmond

Maps are available for inspection at 100 East First Street, Edmond, Oklahoma.
Send comments to The Honorable Robert Rudkin, Mayor, City of Edmond, P.O. Box 2970, Edmond, Oklahoma 73073–2970

City of Oklahoma City

Maps are available for inspection at 420 West Main Street, Oklahoma City, Oklahoma.
Send comments to The Honorable Kirk Humphreys, Mayor, City of Oklahoma City, 200 North Walker, Suite 302, Oklahoma City, Oklahoma 73102.

TEXAS **Travis County and Incorporated Areas**				
Colorado River/Lake Travis	Portions of Colorado River/Lake Travis from approximately 4 miles upstream to approximately 21 miles upstream of Mansfield Dam.	*716	*716	Travis County (Unincorporated Areas), City of Jonestown, City of Largo Vista, City of Lakeway.
Cow Creek	From confluence with Colorado River/Lake Travis to approximately 3 miles upstream.	*716	*716	Travis County (Unincorporated Areas).
Flat Creek	From confluence with Colorado River/Lake Travis to approximately 2,100 feet upstream.	*716	*716	Travis County (Unincorporated Areas).

ADDRESSES
Travis County (Unincorporated Areas)

Maps are available for inspection at 411 West 13th Street, 8th Floor, Permit Office, Austin, Texas.
Send comments to The Honorable Samuel T. Biscoe, Travis County Judge, P.O. Box 1748, Austin, Texas 78767–1748.

City of Jonestown

Maps are available for inspection at City Hall, 18649 FM 1431, Suite 4A, Jonestown, Texas.
Send comments to The Honorable Sam Billings, 18649 FM 1431, Suite 4a, Jonestown, Texas 78645.

City of Lago Vista

Maps are available for inspection at City Hall, 5803 Thunderbird, Lago Vista, Texas.
Send comments to The Honorable Dennis Jones, P.O. Box 4727, Lago Vista, Texas 78645.

City of Lakeway

Maps are available for inspection at City Hall, 104 Cross Creek, Lakeway, Texas.
Send comments to The Honorable Charles Edwards, Mayor, City of Lakeway, 104 Cross Creek, Lakeway, Texas 78734.

UTAH **Salt Lake County and Incorporated Areas**				
Willow Creek (West)	Just upstream of 11400 South Street	*4,358	*4,362	City of Draper.
Midas Creek	Approximately 100 feet upstream of 12300 South Street.	*4,410	*4,409	
	Approximately 1,250 feet upstream of 150 East Road	None	*4,322	
	At confluence with Jordan River	None	*4,322	
	Approximately 250 feet upstream of 3600 West Street	None	*4,603	Salt Lake County (Unincorporated Areas), City of Riverton, City of South Jordan.

ADDRESSES
Salt Lake County (Unincorporated Areas)

Maps are available for inspection at 2001 South State Street, Suite N 3300, Salt Lake City, Utah.
Send comments to The Honorable Nancy Workman, Mayor, Salt Lake County, 2001 South State Street, Suite N 2100, Salt Lake City, Utah 84109.

City of Draper

Flooding source(s)	Location of referenced elevation	Elevation in feet *(NGVD)		Communities affected
		Effective	Modified	
Maps are available for inspection at the Engineering Department, 12441 South 900 East, Draper, Utah. Send comments to The Honorable Richard D. Alsop, Mayor, City of Draper, 12441 South 900 East, Draper, Utah 84020.				
City of Riverton				
Maps are available for inspection at City Hall, 949 East 12400 South Street, Riverton, Utah. Send comments to The Honorable Sandra Lloyd, Mayor, City of Riverton, 12765 South 1400 West, Riverton, Utah 84064.				
City of South Jordan				
Maps are available for inspection at 10996 South Redwood Road, South Jordan, Utah. Send comments to The Honorable Dix McMullin, Mayor, City of South Jordan, 11175 South Redwood Road, South Jordan, Utah 84095.				

Depth in feet above ground.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: October 29, 2001.

Robert F. Shea,

Acting Administrator, Federal Insurance, and Mitigation Administration.

[FR Doc. 01–28297 Filed 11–9–01; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–B–7421]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Acting Administrator, Federal Insurance and Mitigation Administration certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

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

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

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

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376, § *67.4*.

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. Elevation in feet. (NGVD) # Elevation in feet. (MSL 1972)	
				Existing	Modified
Alaska	Anchorage (Municipality) Anchorage Division.	Alyeska Creek	At Mount Hood Drive, Approximately 70 feet Upstream of Olympic Circle Entrance.	None	*121
				None	*335
#Depth in feet above ground. Maps are available for inspection at 4700 South Bragg Street, Anchorage, Alaska. Send comments to The Honorable George Wuerch, Mayor, Municipality of Alaska, P.O. Box 196650, Anchorage, Alaska 99519–6650.					
Hawaii	Maui County	Unnamed Stream at Kuau Point.	Approximately 720 feet downstream of Hana Highway.	None	*14
			Approximately 750 feet upstream of Hana Highway.	None	*29
#Depth in feet above ground. Maps are available for inspection at the Department of Planning, 250 South High Street, Wailuku, Hawaii. Send comments to The Honorable James ''Kimo'' Apana, Mayor, Maui County, 200 South High Street, Wailuku, Hawaii 96793.					
Missouri	City of De Soto	Joachim Creek	Approximately 3,500 feet downstream of the New State Highway 110 Bridge.	*472	*474
			Approximately 550 upstream of the Highway E.	*525	*525
#Depth in feet above ground. Maps are available for inspection at City of De Soto, City Hall, 17 Boyd Street, De Soto, Missouri. Send comments to The Honorable Werner Stichling, Mayor, City of De Soto, City Hall, 17 Boyd Street, De Soto, Missouri 63020.					
Missouri	Jefferson County	Joachim Creek	Approximately 3,500 feet downstream of the New State Highway 110 Bridge.	None	*474
			Approximately 1,700 feet upstream of the County Highway E.	*527	*528
#Depth in feet above ground. Maps are available for inspection at Jefferson County, Building and Zoning Commission, 300 Second Street, Hillsboro, Missouri. Send comments to The Honorable Samuel J. Rauls, Presiding Commissioner, P.O. Box 100, Hillsboro, Missouri 63050.					
New Mexico	City of Farmington, San Juan County.	Animas River	Approximately 1,300 feet downstream of Miller Avenue.	None	+5,276
			Just upstream of Broadway Street	None	+5,304
			Approximately 4,300 feet upstream of Browning Parkway.	None	+5,361
		San Juan River	Approximately 8,000 feet downstream of Route 371.	None	+5,223
			Approximately 2,200 feet downstream of Route 371.	None	+5,242
		Wyper Arroyo	Approximately 100 feet upstream of U.S. Highway 550.	None	+5,499
			Just upstream of confluence of Wyper Arroyo Tributary.	None	+5,599
			Approximately 3,800 feet upstream of confluence of Wyper Arroyo of Tributary.	None	+5,668
		Wyper Arroyo Tributary	Just upstream of confluence with Wiper Arroyo.	None	+5,559
			Approximately 3,450 feet upstream of the confluence with Wiper Arroyo.	None	+5,662
		Carl Arroyo	Approximately 1,700 feet downstream of U.S. Route 550.	None	+5,451
			Just upstream of Winnifred Drive	None	+5,535
			Approximately 3,900 feet Upstream of Winnifred Drive.	None	+5,635
		Hood Arroyo	Approximately 1,800 feet downstream of Hubbard Street.	None	+5,403
			Just upstream of Pinon Hills Boulevard	None	+5,530
			Approximately 850 feet Upstream of Hogan Avenue.	None	+5,714
		Hood Arroyo Tributary	Just upstream of Hogan Avenue	None	+5,640
			Approximately 4,200 feet upstream of Hogan Avenue.	None	+5,820
		Porter Arroyo	Approximately 1,300 feet downstream of Windsor Drive.	None	+5,509

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. Elevation in feet. (NGVD) # Elevation in feet. (MSL 1972)	
				Existing	Modified
			Just upstream of confluence of Porter Arroyo Tributary C.	None	+5,622
			Approximately 4,200 feet upstream of North College Road.	None	+5,796
		Porter Arroyo Tributary C	At confluence with Porter Arroyo	None	+5,620
			Approximately 1,300 feet upstream of confluence with Porter Arroyo.	None	+5,654
		Porter Arroyo Tributary B	At confluence with Porter Arroyo	None	+5,645
			Approximately 1,100 feet upstream of confluence with Porter Arroyo.	None	+5,682
		Porter Arroyo Tributary A	At confluence with Porter Arroyo near North College Road.	None	+5,670
			Approximately 2,100 feet upstream of confluence with Porter Arroyo.	None	+5,752
		Butler Arroyo	Just upstream of 30th Street	None	+5,508
			Approximately 4,000 feet upstream of 30th Street.	None	+5,606
		Dustin Arroyo	Approximately 400 feet downstream of 30th Street.	None	+5,489
			Approximately 700 feet upstream of Cerrillos Drive.	None	+5,667
		Farmers Mutual Ditch	Approximately 300 feet downstream of Westland Park Drive.	None	+5,227
			Approximately 1,500 feet Westland Park Drive, near its divergence from San Juan River.	None	+5,236
		Westland Park Drive Runoff.	Approximately 800 feet downstream of Westland Park Drive.	None	+5,225
			Approximately 150 feet upstream of Westland Park Drive.	None	+5,235

#Depth in feet above ground.

Maps are available for inspection at City Hall, 800 Municipal Drive, Farmington, New Mexico.

Maps are available for inspection at the Office of the Building Inspector, 100 South Oliver, Aztec, New Mexico.

Send Comments to The Honorable William E. Stanley, Mayor, City of Farmington, 800 Municipal Drive, Farmington, New Mexico 87401.

Send comments to The Honorable Steve Neville, Chairman, San Juan County, Board of Commissioners, 100 South Oliver, Aztec, New Mexico 87410.

New Mexico	Chaves County (Unincorporated).	Rio Hondo River Areas	At confluence with South Berrendo Creek	*3,510	*3,507
			Approximately 9,500 feet upstream of Roswell Relief Route.	None	*3,704

#Depth in feet above ground.

Maps are available for inspection at Chaves County Courthouse, Planning Department, 401 North Main Street, Roswell, New Mexico.

Send comments to The Honorable Herbert Quintata, Chaves County Manager, P.O. Box 1817, Roswell, New Mexico 88201.

New Mexico	City of Roswell	Rio Hondo River	Approximately 1,550 feet downstream of Atkinson Avenue.	None	+3,544
			Approximately 3,000 feet upstream of Sunset Avenue.	#2	+3,620

#Depth in feet above ground.

Maps are available for inspection at City Hall, Engineering Department, 401 North Main Street, Roswell, New Mexico.

Send comments to Mayor Bill Owen, 425 North Richardson Avenue, Roswell, New Mexico 88201.

Oklahoma	City of Yukon	North Canadian River Tributary A.	Approximately 3,000 feet below Von Elm Place.	None	*1,260
			Approximately 500 feet downstream of U.S. Highway 66.	*1,284	*1,285
		Main Stem Turtle Creek ...	Approximately 3,500 feet downstream of U.S. Highway 66.	*1,271	*1,271
			Just upstream of U.S. Highway 66	*1,286	*1,286
			At confluence of West Branch Turtle Creek and Middle Branch Turtle Creek.	*1,293	*1,293
		Middle Branch of Turtle Creek.	At confluence with Main Stem Turtle Creek.	*1293	*1293

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. Elevation in feet. (NGVD) # Elevation in feet. (MSL 1972)	
				Existing	Modified
			Just downstream upstream of Vandament Avenue.	*1,310	*1,310
			Approximately 1,500 feet upstream of Vandament Avenue.	*1,316	*1,318
			Approximately 3,800 feet upstream of Vandament Avenue.	None	*1,332
		East Branch of Turtle Creek.	At confluence with Main Stem Turtle Creek.	*1,277	*1,277
			At confluence of Cornwell Branch	*1,287	*1,288
			Just downstream of Chicago Rock Island and Pacific Railroad.	*1,296	*1,297
			Approximately 300 feet upstream of Vandament Avenue.	None	*1,322
		West Branch of Turtle Creek.	At confluence with Main Stem Turtle Creek.	*1,293	*1,293
			Just upstream of Yukon Avenue	*1,311	*1,311
			Approximately 1,500 feet upstream of Yukon Avenue.	None	*1,321
		Cornwell Branch of East Branch Turtle Creek.	At confluence with East Branch Turtle Creek.	None	*1,288
			At intersection of Yukon Avenue and Czech Hall Road.	None	*1,298
			Approximately 270 feet upstream of the intersection of Bass Avenue and Czech Hall Road.	None	*1,319
		Holly Branch of Middle Branch Turtle Creek.	At confluence with Middle Branch Turtle Creek.	None	*1,314
			Approximately 1,400 feet upstream of Holly Avenue.	None	*1,338
		North Canadian River Tributary B.	Approximately 900 feet downstream of Main Street (U.S. Highway 66).	None	*1,286
			Approximately 1,350 feet upstream of Main Street (U.S. Highway 66).	None	*1,297
		North Canadian River Tributary B, West Branch.	At confluence with North Canadian River Tributary B.	None	*1,291
			Approximately 1,150 feet upstream of confluence with North Canadian River Tributary B.	None	*1,302
		North Canadian River Tributary C.	Approximately 1,100 feet downstream of Main Street (U.S. Highway 66).	None	*1,286
			Approximately 3,200 feet upstream of Main Street (U.S. Highway 66).	None	*1,309
		North Canadian River Tributary C, West Branch 1.	At confluence with North Canadian River Tributary C.	None	*1,289
		Just downstream of Oil Field Road.	None	*1,322	
		North Canadian River Tributary C, West Branch 2.	At confluence with North Canadian River Tributary C.	None	*1,306
			Just downstream of Church Hill Road	None	*1,332

#Depth in feet above ground.

Maps are available for inspection at 528 West Main Street, Yukon, Oklahoma.

Send comments to The Honorable Steve Friesen, Mayor, City of Yukon, P.O. Box 850500, Yukon, Oklahoma 73085.

Oregon	Talent (City) Jackson County.	Wagner Creek	At confluence with Bear Creek	*1,562	*1,562
			Just upstream of Rouge Valley Highway 99.	*1,590	*1,593
			Just downstream of Rapp Road	None	*1,652

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. Elevation in feet. (NGVD) # Elevation in feet. (MSL 1972)	
				Existing	Modified
#Depth in feet above ground.					
Maps are available for inspection City Hall, P.O. Box 445, Talent Oregon.					
Send comments to The Honorable Marian Telerski, Mayor, City of Talent, P.O. Box 445, Talent Oregon 97450.					
Utah	Unincorporated Areas of Utah County.	Jordan River	Approximately 3,100 feet downstream of the Golf Cart Bridge at Camp Williams Military Reservation.	*4,490	*4,491
			At Cedar Fort Road	*4,494	*4,493
			Approximately 1,400 feet upstream of Saratoga Road.	*4,495	*4,494
#Depth in feet above ground.					
Maps are available for inspection at the County Public Works Building, 2855 South State Street, Provo, Utah.					
Send comments to The Honorable Gary Herbert, Chairman, Utah County Board of Commissioners, County Administration Building, 100 East Center Street, Room 2300, Provo, Utah 84606.					
Utah	City of Saratoga Springs.	Jordan River	Approximately 3,100 feet downstream of Saratoga Road.	*4,495	*4,493
			Approximately 1,400 feet upstream of Saratoga Road.	*4,495	*4,494
#Depth in feet above ground.					
Maps are available for inspection at City Hall, City Manager's office, 2015 South Redwood, Lehi, Utah.					
Send comments to The Honorable Tim Parker, Mayor, City of Saratoga Springs, 2015 South Redwood Road, Saratoga Springs, Utah 84043.					
Utah	City of Lehi	Jordan River	Approximately 1,500 feet downstream of the Golf Cart Bridge at Camp Williams Military Reservation.	*4,490	*4,491
			Approximately 1,500 feet downstream of Saratoga Road.	*4,494	*4,493
#Depth in feet above ground.					
Maps are available for inspection at the Building and Planning Department, 99 West Main Street, Lehi, Utah.					
Send comments to The Honorable Kenneth Greenwood, Mayor, City of Lehi, City Hall, 153 North 100 East, Lehi, Utah 84043.					
Washington	Chelan County (Unincorporated Areas).	Wenatchee River	At confluence with Chumstick Creek	*1,078	*1,079
#Depth in feet above ground.					
Maps are available for inspection at County Planning Department, 411 Washington Street, Wenatchee, Washington.					
Send comments to The Honorable John Hunter, Chairman, Chelan County Board of Commissioners, County Courthouse, 350 Orondo Street, Wenatchee, Washington 98801.					
Washington	City of Leavenworth.	Wenatchee River	At confluence with Icicle Creek	*1,111	*1,111
#Depth in feet above ground.					
Maps are available for inspection at City Hall, Department of Community Development, 70 Highway 2, Leavenworth, Washington.					
Send comments to The Honorable William Bauer, Mayor, City of Leavenworth, City Hall, P.O. Box 287, Leavenworth, Washington 98826.					
Washington	Skokomish Indian Tribe.	Skokomish River	Just downstream of State Route 106	None	*16
			Approximately 3,000 feet upstream of U.S. Route 101.	None	*31
#Depth in feet above ground.					
Maps are available for inspection at Natural Resources Office, North 541 Tribal Center Road, Shelton, Washington.					
Send comments to The Honorable Denny Hurtado, Chairman, Skokomish Tribal Council, North 80 Tribal Center Road, Shelton, Washington 98584.					

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: November 5, 2001.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 01–28392 Filed 11–9–01; 8:45 am]

BILLING CODE 6718–04–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Part 2553

RIN 3045–AA31

Retired and Senior Volunteer Program; Amendments

AGENCY: Corporation for National and Community Service.

ACTION: Proposed rule.

SUMMARY: The amendments to the Regulation governing the Retired and Senior Volunteer Program include: improving access of persons with limited English speaking proficiency; and increasing sponsor flexibility to use project resources as needed.

DATES: Submit comments on or before January 14, 2002.

ADDRESSES: Send comments to the Corporation for National and Community Service, National Senior Service Corps, Attn: Mr. John B. Keller, 9th Floor, 1201 New York Avenue, NW., Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: John B. Keller, 202–606–5000, ext. 285.

SUPPLEMENTARY INFORMATION:

Background

The Regulation that is the subject of this amendment implemented changes to the Domestic Volunteer Service Act of 1973, as amended, and established or clarified minimum program requirements. The following changes to the Regulation are now being proposed:

(1) Executive Order 13166 issued August 11, 2000, requires that each Federal agency develop a plan to improve access to its programs by eligible persons who, as a result of national origin, are limited in their English proficiency. The Corporation's intent is to amend the regulations to improve access of persons with limited English proficiency.

(2) RSVP sponsors requested increased flexibility to use project resources as needed to respond to critical community needs. The Corporation concurs with this request and supports amending the regulation to permit such flexibility.

List of Subjects in 45 CFR Part 2553

Aged, Grant programs-social programs, Volunteers.

For the reasons set forth in the preamble, the Corporation for National and Community Service proposes to amend 45 CFR part 2553 as follows:

PART 2553—THE RETIRED AND SENIOR VOLUNTEER PROGRAM

1. The authority citation for Part 2553 continues to read as follows:

Authority: 42 U.S.C. 4950 *et seq.*

2. Revise § 2553.23 (c)(2)(iv) to read as follows:

§ 2553.23 What are a sponsor's program responsibilities?

* * * * *

(c) * * *

(2) * * *

(iv) That states the station assures it will not discriminate against RSVP volunteers or in the operation of its program on the basis of race; color; national origin, including individuals with limited English proficiency; sex; age; political affiliation; religion; or on the basis of disability, if the participant or member is a qualified individual with a disability; and

* * * * *

§ 2553.72 [Amended]

3. In § 2553.72, remove paragraph (e).

4. Revise § 2553.73(i) to read as follows:

§ 2553.73 What are grants management requirements?

* * * * *

(i) Written Corporation State Office approval/concurrence is required for a change in the approved service area.

Dated: November 1, 2001.

Tess Scannell,

Acting Director, National Senior Service Corps.

[FR Doc. 01–28254 Filed 11–9–01; 8:45 am]

BILLING CODE 6050–$$–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 01–278; FCC 01–290]

Part 15 Biennial Review

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial.

SUMMARY: This document responds to a petition filed by National Association for Amateur Radio (ARRL). The petition requested that the Commission modify its rules that have or may have a significant economic impact on a substantial number of small entities. The Commission believes that these rules are sufficient to protect against harmful interference to authorized radio services and that additional advisory language in the Commission's rules is unnecessary. The ARRL petition is denied.

FOR FURTHER INFORMATION CONTACT: Hugh Van Tuyl, Office of Engineering and Technology, (202) 418–7506.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order,* ET Docket No. 01–278, FCC 01–290, adopted October 2, 2001, and released October 15, 2001. The full text of this Commission decision is available on the Commission's Internet site at www.fcc.gov. It is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's duplication contractor, Qualex International, (202) 863–2893, Room CY–B402, 445 12th Street, SW., Washington, DC 20554.

Summary of the Order

1. In this *Order*, we deny a petition filed by the National Association for Amateur Radio (ARRL). The Regulatory Flexibility Act requires federal agencies to conduct periodic reviews of rules that have or might have a significant economic impact on a substantial number of small entities. Pursuant to section 610 of the Regulatory Flexibility Act, agencies must publish a list of such rules in the **Federal Register** and invite public comment on the rules. The Commission released a Public Notice on September 24, 1999 identifying rules for possible modification or elimination under the Regulatory Flexibility Act. *See Public Notice FCC Seeks Comment Regarding Possible Revision or Elimination of Rules under the Regulatory Flexibility Act*, 5 U.S.C. 610, Mimeo 95371, 64 FR 55671, October 14, 1999.

2. In response to this public notice, ARRL requested that the Commission modify § 15.17 of the rules. Section 15.17 of the rules provides a warning to manufacturers that they should consider the proximity and high power of both government and non-government operations when selecting operating frequencies.

3. In reviewing rules for modification or elimination under the Regulatory Flexibility Act, the Commission considers the following factors: ''(1) the

continued need for the rule, (2) the nature of complaints or comments received concerning the rule from the public, (3) the complexity of the rule, (4) the extent to which the rule overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.''

4. Section 15.17 was originally adopted in 1989, and has not been modified since that time. This is a simple rule enacted to alert manufacturers to the possibility that high-power radio services could cause interference to devices operating under part 15 of the rules. Since that time, the number of manufacturers and the number of part 15 devices have increased. Because this rule is merely advisory, there is no compliance burden on manufacturers and there is no conflict or overlap between this rule and other federal state or local requirements.

5. ARRL believes that the rule continues to be necessary because it alerts manufacturers of radio frequency devices of possible electromagnetic compatibility issues prior to obtaining an equipment authorization. However, ARRL believes that the rule addresses only half of the cautionary information to manufacturers, and that the rule should also caution manufacturers to avoid specification of operating frequencies for their devices that could result in interference to sensitive radio services. It states that this change could avoid the need for and cost of after-market interference resolution.

6. We continue to believe that this rule provides noteworthy guidance to manufacturers on the possibility of receiving interference. ARRL acknowledges the increasing importance of the rule; and, while we are sympathetic to ARRL's suggestion, we believe that the matter raised is already adequately covered in the rules. For example, part 15 contains limits that are designed to minimize the risk of interference caused to all authorized radio services. Further, part 15 equipment is required to operate on a non-interference basis, and users of such equipment must cease operation in the event that interference occurs. We believe that these rules are sufficient to protect against harmful interference to authorized radio services and that additional advisory language in § 15.17 is unnecessary. Therefore, the ARRL request to modify section 15.17 is denied.

7. The petition filed by the The National Association for Amateur Radio *is denied.*

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–28413 Filed 11–9–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–2572, MM Docket No. 01–313, RM–10251]

Digital Television Broadcast Service; Tulsa, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by KTUL, LLC, licensee of television station KTUL–TV, NTSC channel 8, Tulsa, Oklahoma, requesting the substitution of DTV 10 for station KTUL–TV's assigned DTV channel 58. DTV Channel 10 can be allotted to Tulsa, Oklahoma, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (35–58–08 N. and 95–36–59 W.). As requested, we propose to allot DTV Channel 10 to Tulsa with a power of 7.0 and a height above average terrain (HAAT) of 497 meters.

DATES: Comments must be filed on or before December 31, 2001, and reply comments on or before January 15, 2002.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Thomas P. Van Wazer, Sidley, Austin, Brown & Wood, 1722 Eye Street, NW., Washington, DC 20006 (Counsel for KTUL, LLC).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–313, adopted November 2, 2001, and released November 7, 2001. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via-e-mail qualexint@aol.com.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—TELEVISION BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Oklahoma is amended by removing DTV Channel 58 and adding DTV Channel 10 at Tulsa.

Federal communications commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 01–28417 Filed 11–9–01; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 66, No. 219

Tuesday, November 13, 2001

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

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Notice of Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation will meet on Friday, November 16, 2001. The meeting will be held in Potomac Rooms I and II, Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC, beginning at 8:30 a.m.

The Council was established by the National Historic Preservation Act of 1966 (16 U.S.C. section 470) to advise the President and the Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The Council's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Housing and Urban Development, and Transportation; the Administrators of the Environmental Protection Agency and General Services Administration; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; a Native Hawaiian; and eight non-Federal members appointed by the President.The agenda for the meeting includes the following:

I. Chairman's Welcome

II. Chairman's Report

III. Section 106 and Energy Issues

A. Energy Initiatives with the Federal Regulatory Commission—Report and Possible Action
B. Program Comment for Historic Natural Gas Pipelines—Action

IV. Improving Federal Stewardship

A. Report of Task Force on Balancing Cultural and Natural Values in National Parks—Report and Action
B. Army Alternate Procedures—Report
C. Preservation of Manhattan Project Historic Properties—Report and Possible Action
D. Preservation, the Military Construction Process, and Defense Mobilization—Report and Possible Action

V. Section 106 Issues

A. Management of the Missouri River Mainstem System—Report and Possible Action
B. Smithsonian Institution and Section 106—Report and Action

VI. Executive Director's Report

VII. New Business

VIII. Adjourn

Note: The meetings of the Council are open to the public. If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., Room 809, Washington, DC, 202–606–8503, at least seven (7) days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., #809, Washington, DC 20004.

Dated: November 6, 2001.

John M. Fowler,

Executive Director.

[FR Doc. 01–28299 Filed 11–9–01; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[FV–01–330]

United States Standards for Grades of Frozen Field Peas and Frozen Black-Eye Peas

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) is revising the United States Standards for Grades of Frozen Field Peas and Frozen Black-Eye Peas. Specifically, USDA is providing for the ''individual attributes'' procedure for product grading with sample sizes, acceptable quality levels (AQL's), tolerances and acceptance numbers (number of allowable defects) in the grade standards. This revision will also provide a uniform format consistent with other recently revised U.S. grade standards by adopting definitions for terms and replacing textual descriptions with easy-to-read tables and other editorial changes. These changes will improve use of the standards.

EFFECTIVE DATE: December 13, 2001.

FOR FURTHER INFORMATION CONTACT: Randle A. Macon, Processed Products Branch, Fruit and Vegetable Programs, AMS, USDA, STOP 0247, 1400 Independence Ave., SW., Washington, DC 20250–0247; ph.: (202) 720–5021; fax; (202) 690–1527; or e-mail to *randle.macon@usda.gov*. The current United States Standards for Grades of Frozen Field Peas and Frozen Black-Eye Peas, along with the revision, are available either through the above address or by accessing AMS's Web site on the Internet at *www.ams.usda.gov/fv/ppb.html*. The United States Standards for Grades of Frozen Field Peas and Frozen Black-Eye Peas do not appear in the Code of Federal Regulations.

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), as amended, directs and authorizes the Secretary of Agriculture ''to develop and improve standards of quality, condition, quantity, grade and packaging and recommend and demonstrate such standards to encourage uniformity and consistency in commercial practices. * * *'' AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request. The United States Standards for Grades of Fruits and Vegetables do not appear in the Code of Federal Regulations but are maintained by USDA.

AMS is revising the U.S. Standards for Grades of Frozen Field Peas and Frozen Black-Eye Peas using the procedures that appear in part 36 of Title 7 of the Code of Federal Regulations (7 CFR part 36).

Proposed by the Petitioner

The petitioner, the American Frozen Food Institute (AFFI), petitioned the USDA to revise the U.S. Grade

Standards for Frozen Field Peas and Frozen Black-Eye Peas. It was specifically requested that the ''individual attributes'' system of grading, be incorporated into the revision. ''Individual attributes'' provide statistically derived acceptable quality levels (AQL's) based on the tolerances in the grade standards.

The current standards are based on an older ''attributes'' model. It is proposed that the standards be modified to convert them to the improved ''individual attributes'' grading system, similar to the U.S. grade standards for canned green and wax beans (58 FR 4295, January 14, 1993).

AMS prepared a discussion draft of the frozen field peas, frozen black-eye peas standard, and distributed copies for input to AFFI and the National Food Processors Association (NFPA). Input from the above groups was used to develop the proposed standards.

Proposed by Fruit and Vegetable Programs, AMS

Based on the results of the information gathered, AMS prepared and published a notice proposing to revise the U.S. Grade Standards for Frozen Field Peas and Frozen Black-Eye Peas in the **Federal Register** February 9, 2000, with a 60-day comment period, proposing changes to the United States Standards for Grades of Frozen Field Peas and Frozen Black-Eye Peas in the **Federal Register** (65 FR 7486).

AMS received comments on the Notice from AFFI. AFFI recommended changing part of the product description to include a provision that ''Frozen peas may contain succulent, unshelled pods of the field pea plant or small sieve round type succulent pods of the green bean plant as an optional ingredient used as a garnish.'' The purpose of the recommendation is to make the standards consistent with current industry practices. Changes in mechanical harvesting have lowered the supply of ''snaps'' (immature pods) from the field pea plant. Snaps were customarily used as a garnish. In order to maintain the custom, the industry wants to use the succulent pod of the green pea plant, which are readily available, using current harvesting practices. This recommendation has merit. Accordingly, we are incorporating this change into the standard.

AFFI also recommended that the second category for ''Color Defectives'' in Table Ii, ''AQL's and Tolerances for Defects in White Acre Frozen Peas'', of the proposed draft of the grade standards be eliminated along with the corresponding footnotes. We are dropping the footnote and the second category, as AFFI recommends, because both were left in the table inadvertently. Since Table II refers to White acre peas only, footnote 2/ ''For Crowder Peas Only'' and the second category ''Color Defectives'' (for crowder peas), do not apply.

Based on these changes, the revisions would modify the standards to present them in a simplified easy-to-use format. Consistent with recent revisions of other U.S. grade standards, definitions of terms and easy-to-read tables would replace the textual descriptions. These changes are intended to facilitate better understanding and more uniform application of the grade standards.

This revision becomes effective 30 days after date of publication of this notice in the **Federal Register**.

Authority: 7 U.S.C. 1621–1627.

Dated: November 6, 2001.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 01–28271 Filed 11–9–01; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF AGRICULTURE

Forest Service

Forest Counties Payments Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Forest Counties Payments Committee has scheduled a meeting on November 14, 2001, to discuss how it will provide Congress with the information specified in Section 320 of the Fiscal Year 2001 Interior and Related Agencies Appropriations Act. In order to develop its recommendations to Congress, the Committee would like to hear from both elected officials and the general public. The meeting will consist of a business session, which is open to public attendance, from 8:30 a.m. to 12 noon and a public input session from 1 p.m. until 5 p.m.

DATES: The meeting will be held on November 14, 2001.

ADDRESSES: The meeting will be held at the Doubletree Club Hotel, 475 West Parkcenter Boulevard, Boise, Idaho 83706.

Those who cannot be present may submit written responses to the questions listed under **SUPPLEMENTARY INFORMATION** in this notice to Randle G. Phillips, Executive Director, Forest Counties Payments Committee, P.O. Box 34718, Washington, DC 20043–4713, or electronically to rphillips01@fs.fed.us.

FOR FURTHER INFORMATION CONTACT: Randle G. Phillips, Executive Director, Forest Counties Payments Committee, (202) 208–6574; or via e-mail at rphillips01@fs.fed.us.

SUPPLEMENTARY INFORMATION: Section 320 of the 2001 Interior and Related Agencies Appropriations Act (Pub L. 106–389) authorizes the payments to States and counties from monies derived from receipts collected on Federal lands. These payments are to be used for the benefit of public education and other public purposes. The Act also created a Forest Counties Payments Committee to gather input from the public and elected officials to help develop recommendations to Congress on a long-term solution for making payments to eligible States and counties in which Federal lands are situated. The Committee will evaluate the methods and use of these payments. The Committee will also consider the impact on eligible States and counties of revenues from the historic multiple use of Federal lands; evaluate the economic, environmental, and social benefits which accrue to counties containing Federal lands; evaluate the expenditures by counties on activities occurring on Federal lands which are Federal responsibilities; and monitor payments and implementation of the Act.

At the November 14 meeting in Boise, the Committee asks that respondents provide information that is responsive to the following questions:

1. Do counties receive their fair share of federal revenue-sharing payments made to eligible States?

2. What difficulties exist in complying with, and managing all of the federal revenue-sharing payments programs? Are some more difficult than others?

3. What economic, social, and environmental costs do counties incur as a result of the presence of public lands within their boundaries?

4. What economic, social, and environmental benefits do counties realize as a result of public lands within their boundaries?

5. What are the economic and social effects from changes in revenues generated from public lands over the past 15 years, as a result of changes in management on public lands in your State or county?

6. What actions has your State or county taken to mitigate any impacts associated with declining economic conditions, or revenue-sharing payments?

7. What effects, both positive and negative, have taken place with education and highway programs that are attributable to the management of

public lands within your State or county?

8. What relationship, if any, should exist between federal revenue-sharing programs, and management activities on public lands?

9. What alternatives exist to provide equitable revenue-sharing to States and counties and promote ''sustainable forestry''?

10. What has been your experience regarding implementation of Pub L. 106–291, The Secure Rural Schools and Community Self-Determination Act?

Dated: Novemmber 5, 2001.

Tim DeCoster,

Acting Deputy Chief, Programs and Legislation.

[FR Doc. 01–28410 Filed 11–9–01; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Newfound and Sandymush Creeks Watershed Project Buncombe and Madison County, NC

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of a Finding Of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Newfound and Sandymush Creeks Watershed Project, Buncombe and Madison County, North Carolina.

FOR FURTHER INFORMATION CONTACT: Mary K. Combs, State Conservationist, Natural Resources Conservation Service, 4405 Bland Road, Suite 205, Raleigh, North Carolina 27609, telephone (919) 873–2101.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mary K. Combs, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purpose is to reduce sediment and nutrient damage. The planned works of improvement include 378 acres of Sod Rotation, 208 acres of Grassed Waterways/Field Borders, 520 acres of Cropland Conversion to Grass, 680 acres of Grassland Management and Improvement, 23 acres of Stream Protection Systems for cropland, 46 Stream Protection Systems for livestock operations, 9 Animal Waste Management Systems for dairies and 3 Animal Feed Waste Management Systems for beef operations. The project will treat 2,600 acres of cropland, improve 680 acres of grassland, stabilize 6,900 linear feet of stream bank and install 12 animal waste treatment systems.

The Notice of a Finding Of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Jacob Crandall, Assistant State Conservationist for Water Resources at 4405 Bland Road, Suite 205, Raleigh, North Carolina 27609.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Mary K. Combs,

State Conservationist.

[FR Doc. 01–28263 Filed 11–9–01; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Change to Section IV of the Virginia Field Office Technical Guide

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture.

ACTION: Notice of availability of proposed changes in the Virginia NRCS Field Office Technical Guide for review and comment.

SUMMARY: It has been determined by the NRCS State Conservationist for Virginia that changes must be made in the NRCS Field Office Technical Guide specifically in practice standards: #560, Access; #326, Clearing and Snagging; #324, Deep Tillage; #432, Dry Hydrant; #412, Grassed Waterway; #603, Herbaceous Wind Barriers; #468, Lined Waterway or Outlet; #512, Pasture and Hayland Planting; #378, Pond; #521C, Pond Sealing or Lining, Bentonite Treatment; #521B, Pond Sealing or Lining, Soil Dispersant; #533, Pumping Plant for Water Control; #344, Residue Use; #391, Riparian Forest Buffer; #646, Shallow Water Management; #606, Subsurface Drain; #608, Surface Drainage, Main or Lateral; #313, Waste Storage Facility; #359, Waste Treatment Lagoon; and #644, Wetland Wildlife Habitat Management to account for improved technology. These practices will be used to plan and install conservation practices on cropland, pastureland, woodland, and wildlife land.

DATES: Comments will be received for a 30-day period commencing with the date of this publication.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to M. Denise Doetzer, State Conservationist, Natural Resources Conservation Service (NRCS), 1606 Santa Rosa Road, Suite 209, Richmond, Virginia 23229–5014; Telephone number (804) 287–1665; Fax number (804) 287–1736. Copies of the practice standards will be made available upon written request to the address shown above or on the Virginia NRCS web site: *http://www.va.nrcs.usda.gov/DataTechRefs/Standards&Specs/EDITStds/EditStandards.htm.*

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State technical guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days, the NRCS in Virginia will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Virginia regarding disposition of those comments and a final determination of change will be made to the subject standards.

Dated: October 30, 2001.

M. Denise Doetzer,

State Conservationist, Natural Resources Conservation Service, Richmond, Virginia.

[FR Doc. 01–28262 Filed 11–9–01; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–821]

Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany: Notice of Initiation of Changed Circumstances Review and Consideration of Revocation of the Antidumping Duty Order

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

ACTION: Notice of initiation of changed circumstances review.

SUMMARY: In accordance with 19 CFR 351.216(b), KBA North America, Inc. Web Press Division, a U.S. producer of subject merchandise and an interested party in this proceeding, requested a changed circumstances review. In response to this request, the Department of Commerce is initiating a changed circumstances review on large newspaper printing presses and components thereof, whether assembled or unassembled, from Germany.

EFFECTIVE DATE: November 13, 2001.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Kate Johnson, Office 2, AD/CVD Enforcement Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–4929, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations at 19 CFR part 351 (2001).

SUPPLEMENTARY INFORMATION:

Background

On September 24, 2001, Koenig & Bauer AG and KBA North America, Inc. Web Press Division (KBA NA; collectively, K&B) requested that the Department revoke the antidumping duty order on large newspaper printing presses (LNPP) and components thereof, whether assembled or unassembled, from Germany through initiation of a changed circumstances review. K&B provided information that the petitioner in this proceeding, Goss Graphics System, Inc. (Goss), closed its sole U.S. production facility on August 31, 2001, and is no longer a producer of the merchandise subject to the antidumping duty order. On November 2, 2001, KBA NA stated that it accounts for substantially all of the production of the domestic like product and no longer has an interest in the continuation of the antidumping order. In addition, prior to K&B's request, on September 19, 2001, MAN Roland Druckmaschinen AG and MAN Roland Inc. (collectively, MAN Roland) requested that the Department revoke the antidumping duty order on LNPP and components thereof, whether assembled or unassembled, from Germany through a changed circumstances review. MAN Roland provided information similar to K&B's regarding the status of Goss's U.S. production facility. Both K&B and MAN Roland submitted additional material regarding Goss on October 19, 2001, and MAN Roland provided further information on October 29, 2001. Accordingly, both K&B and MAN Roland believe that the order should be revoked with respect to any entries of LNPPs that have not yet been the subject of a completed administrative review.

On October 3, 2001, the Department requested Goss to state for the record whether it is a domestic producer of LNPPs. Goss responded on October 19, 2001, stating that it continues to perform certain manufacturing functions at a U.S. facility and thus continues to be a manufacturer, producer, or wholesaler in the United States within the meaning of section 771(9) of the Act. On that basis, Goss contends that the requests for a changed circumstances review should be rejected.

Scope of the Order

The products covered by the order are large newspaper printing presses, including press systems, press additions and press components, whether assembled or unassembled, whether complete or incomplete, that are capable of printing or otherwise manipulating a roll of paper more than two pages across. A page is defined as a newspaper broadsheet page in which the lines of type are printed perpendicular to the running of the direction of the paper or a newspaper tabloid page with lines of type parallel to the running of the direction of the paper.

In addition to press systems, the scope of the order includes the five press system components. They are: (1) A printing unit, which is any component that prints in monocolor, spot color and/or process (full) color; (2) a reel tension paster (RTP), which is any component that feeds a roll of paper more than two newspaper broadsheet pages in width into a subject printing unit; (3) a folder, which is a module or combination of modules capable of cutting, folding, and/or delivering the paper from a roll or rolls of newspaper broadsheet paper more than two pages in width into a newspaper format; (4) conveyance and access apparatus capable of manipulating a roll of paper more than two newspaper broadsheet pages across through the production process and which provides structural support and access; and (5) a computerized control system, which is any computer equipment and/or software designed specifically to control, monitor, adjust, and coordinate the functions and operations of large newspaper printing presses or press components.

A press addition is comprised of a union of one or more of the press components defined above and the equipment necessary to integrate such components into an existing press system.

Because of their size, large newspaper printing press systems, press additions, and press components are typically shipped either partially assembled or unassembled, complete or incomplete, and are assembled and/or completed prior to and/or during the installation process in the United States. Any of the five components, or collection of components, the use of which is to fulfill a contract for large newspaper printing press systems, press additions, or press components, regardless of degree of assembly and/or degree of combination with non-subject elements before or after importation, is included in the scope of this order. Also included in the scope are elements of a LNPP system, addition or component, which taken altogether, constitute at least 50 percent of the cost of manufacture of any of the five major LNPP components of which they are a part.

For purposes of the order, the following definitions apply irrespective of any different definition that may be found in Customs rulings, U.S. Customs law or the *Harmonized Tariff Schedule of the United States* (HTSUS): the term ''unassembled'' means fully or partially unassembled or disassembled; and (2) the term ''incomplete'' means lacking one or more elements with which the LNPP is intended to be equipped in order to fulfill a contract for a LNPP system, addition or component.

This scope does not cover spare or replacement parts. Spare or replacement parts imported pursuant to a LNPP contract, which are not integral to the

original start-up and operation of the LNPP, and are separately identified and valued in a LNPP contract, whether or not shipped in combination with covered merchandise, are excluded from the scope of this order. Used presses are also not subject to this order. Used presses are those that have been previously sold in an arm's-length transaction to a purchaser that used them to produce newspapers in the ordinary course of business.

Further, this order covers all current and future printing technologies capable of printing newspapers, including, but not limited to, lithographic (offset or direct), flexographic, and letterpress systems. The products covered by this order are imported into the United States under subheadings 8443.11.10, 8443.11.50, 8443.30.00, 8443.59.50, 8443.60.00, and 8443.90.50 of the HTSUS. Large newspaper printing presses may also enter under HTSUS subheadings 8443.21.00 and 8443.40.00. Large newspaper printing press computerized control systems may enter under HTSUS subheadings 8471.49.10, 8471.49.21, 8471.49.26, 8471.50.40, 8471.50.80, and 8537.10.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Initiation of Changed Circumstances Review

Pursuant to section 782(h)(2) of the Act, the Department may revoke an antidumping or countervailing duty order based on a review under section 751(b) of the Act (*i.e.,* a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request which shows changed circumstances sufficient to warrant a review. 19 CFR 351.222(g) provides that the Department will conduct a changed circumstances review under 19 CFR 351.216, and may revoke an order (in whole or in part), if it determines that producers accounting for substantially all of the production of the domestic like product to which the order (or the part of the order to be revoked) pertains have expressed a lack of interest in the relief provided by the order, in whole or in part, or if changed circumstances exist sufficient to warrant revocation.

In this case, the Department finds that the information submitted provides sufficient evidence of changed circumstances to warrant a review. Given KBA NA's assertions, we will consider whether there is interest in continuing the order on the part of the U.S. industry.

The Department will publish in the **Federal Register** a notice of preliminary results of changed circumstances review, in accordance with 19 CFR 351.221(c)(3)(i), which will set forth the factual and legal conclusions upon which our preliminary results are based, and a description of any action proposed based on those results. Interested parties may submit comments for consideration in the Department's preliminary results not later than 20 days after publication of this notice. Responses to those comments may be submitted not later than 10 days following submission of the comments. All written comments must be submitted in accordance with 19 CFR 351.303, and must be served on all interested parties on the Department's service list in accordance with 19 CFR 351.303. The Department will also issue its final results of review within 270 days after the date on which the changed circumstances review is initiated, in accordance with 19 CFR 351.216(e), and will publish these results in the **Federal Register**.

While the changed circumstances review is underway, the current requirement for a cash deposit of estimated antidumping duties on all subject merchandise will continue unless and until it is modified pursuant to the final results of this changed circumstances review.

This notice is in accordance with sections 751(b)(1) of the Act and 19 CFR 351.216 and 351.222.

Dated: November 5, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–28405 Filed 11–9–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–504]

Porcelain-On-Steel Cookware From Mexico: 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 the petitioner, Columbian Home Products, LLC (formerly General Housewares Corporation), the Department of Commerce is conducting an administrative review of the antidumping duty order on porcelain-on-steel cookware from Mexico. This review covers Cinsa, S.A. de C.V. and Esmaltaciones de Norte America, S.A. de C.V., manufacturers/exporters of the subject merchandise to the United States and the period December 1, 1999, through November 30, 2000 (fourteenth review period).

We preliminarily determine that sales have been made below normal value. Interested parties are invited to comment on these preliminary results. If these preliminary results are adopted in our final results of administrative review, we will instruct the Customs Service to assess antidumping duties on all appropriate entries.

EFFECTIVE DATE: November 13, 2001.

FOR FURTHER INFORMATION CONTACT: Rebecca Trainor, or Katherine Johnson, Office 2, AD/CVD Enforcement Group I, Import Administration—Room B099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4007 or (202) 482–4929, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

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

Background

On October 10, 1986, the Department published in the **Federal Register**, 51 FR 36435, the final affirmative antidumping duty determination on certain porcelain-on-steel (POS) cookware from Mexico. We published an antidumping duty order on December 2, 1986, 51 FR 43415.

On December 20, 2000, the Department published in the **Federal Register** a notice advising of the opportunity to request an administrative review of this order for the period December 1, 1999, through November 30, 2000 (the POR), 65 FR 79802. The Department received a request for an administrative review of Cinsa, S.A. de C.V. (Cinsa) and Esmaltaciones de Norte America, S.A. de C.V. (ENASA) from Columbian Home Products, LLC (CHP), formerly General Housewares Corporation (GHC) (hereinafter, the petitioner), and from the respondents,

Cinsa and ENASA. We published a notice of initiation of the review on January 31, 2001, 66 FR 8368.

On February 2, 2001, the Department issued an antidumping duty questionnaire to Cinsa and ENASA. We issued supplemental questionnaires on May 17, and July 26, 2001. On April 2, June 7, and August 9, 2001, we received responses to the original questionnaire and to our two supplemental questionnaires. The Department is conducting this review in accordance with section 751(a) of the Act.

Scope of the Order

The products covered by this order are porcelain-on-steel cookware, including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. This merchandise is currently classifiable under *Harmonized Tariff Schedule of the United States* (HTSUS) subheading 7323.94.00. Kitchenware currently classifiable under HTSUS subheading 7323.94.00.30 is not subject to the order. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Fair Value Comparisons

To determine whether sales of POS cookware by Cinsa and ENASA to the United States were made at less than normal value, we compared constructed export price (CEP) to the normal value, as described in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice.

Pursuant to section 777A(d)(2) of the Act, we compared the CEPs of individual U.S. transactions to the weighted-average normal value of the foreign like product where there were sales made in the ordinary course of trade at prices above the cost of production (COP), as discussed in the ''Cost of Production Analysis'' section, below.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Cinsa and ENASA covered by the description in the ''Scope of the Order'' section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market within the contemporaneous window period, which extends from three months prior to the U.S. sale until two months after the sale. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we compared individual cookware pieces with identical or similar pieces, and cookware sets to identical or similar sets. Within these groupings, we matched foreign like products based on the physical characteristics reported by the respondents in the following order: quality, gauge, cookware category, model, shape, wall shape, diameter, width, capacity, weight, interior coating, exterior coating, grade of frit (a material component of enamel), color, decoration, and cover, if any.

Constructed Export Price

We calculated CEP in accordance with section 772(b) of the Act because the subject merchandise was first sold by Cinsa's and ENASA's affiliated reseller, Cinsa International Co. (CIC), after importation into the United States. We based CEP on packed prices to unaffiliated purchasers in the United States. We made deductions from the starting price, where appropriate, for billing adjustments, rebates, U.S. and foreign inland freight, U.S. and Mexican brokerage and handling expenses, and U.S. duty in accordance with section 772(c)(2) of the Act and 19 CFR 351.402(a). We set certain rebates to zero, as explained in our Preliminary Results Calculation Memo, on file in Room B–099 of the Commerce Department. We made further deductions, where appropriate, for credit, commissions, advertising, and indirect selling expenses that were associated with economic activities occurring in the United States, pursuant to section 772(d)(1) of the Act and 19 CFR 351.402(b). For those sales for which the payment date was not reported, we calculated credit based on the average number of days between shipment and payment using the sales for which payment information was reported. We calculated inventory carrying costs for those sales for which no values were reported, using data reported in the questionnaire response. We made an adjustment for profit in accordance with section 772(d)(3) of the Act.

Normal Value

Based on a comparison of the aggregate quantity of home market and U.S. sales, we determined that the quantity of the foreign like product sold in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States, pursuant to section 773(a) of the Act. Therefore, we based normal value on the price (exclusive of value-added tax) at which the foreign like product was first sold for consumption in the home market, in accordance with section 773(a)(1)(B)(i) of the Act.

Cost of Production Analysis

The Department disregarded certain sales made by Cinsa and ENASA for the period December 1, 1998, through November 30, 1999 (the most recently completed review of Cinsa and ENASA), pursuant to a finding in that review that sales failed the cost test (*see Porcelain-on-Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review,* 66 FR 12926 (March 1, 2001)). Thus, in accordance with section 773(b)(2)(A)(ii) of the Act, there are reasonable grounds to believe or suspect that respondents Cinsa and ENASA made sales in the home market at prices below the cost of producing the merchandise in the current review period. As a result, the Department initiated investigations to determine whether the respondents made home-market sales during the POR at prices below their COP within the meaning of section 773(b) of the Act.

A. Calculation of COP

We calculated the COP on a product-specific basis, based on the respective sums of Cinsa's and ENASA's cost of materials and fabrication for the foreign like product, plus amounts for home-market SG&A and packing costs in accordance with section 773(b)(3) of the Act. Because Cinsa's and ENASA's fiscal year is different from the POR by only one month, we allowed the respondents to report costs based on their fiscal year 2000 costs.

We relied on COP information submitted by Cinsa and ENASA, except in the following instance where it was not appropriately quantified or valued: enamel frit prices from an affiliated supplier did not approximate fair market value prices; therefore, we increased Cinsa's and ENASA's enamel frit prices to account for the portion of the reported cost savings to affiliated parties which was not due to market-based savings. *See* the Preliminary Results Calculation Memo for further details.

B. Test of Home Market Prices

We compared the adjusted weighted-average COP figures for the POR to home market sales of the foreign like product, as required by section 773(b) of the Act, in order to determine whether these sales were made at prices below the COP. In determining whether to

disregard home market sales made at prices below the COP, we examined in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made: (1) In substantial quantities within an extended period of time, and (2) at prices which did not permit the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP (net of selling expenses) to the home market prices, less any applicable movement charges, rebates, discounts, and direct and indirect selling expenses.

C. Results of COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of the respondent's sales of a given product during the POR were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where twenty percent or more of the respondent's sales of a given product during the POR were at prices less than the COP, we disregarded the below-cost sales where such sales were found to be made at prices which would not permit the recovery of all costs within a reasonable period of time (in accordance with section 773(b)(2)(D) of the Act).

The results of our cost tests for Cinsa and ENASA indicated for certain home market models, less than twenty percent of the sales of the model were at prices below COP. We therefore retained all sales of these models in our analysis and used them as the basis for determining normal value. Our cost tests also indicated that for certain other home market models, more than twenty percent of home market sales within an extended period of time were at prices below COP and would not permit the full recovery of all costs within a reasonable period of time. In accordance with section 773(b)(1) of the Act, we therefore excluded the below-cost sales of these models from our analysis and used the remaining sales as the basis for determining normal value.

Price-To-Price Comparisons

For both respondents, we calculated normal value based on the value-added tax-exclusive, home market gross unit price and deducted, where appropriate, inland freight and rebates in accordance with section 773(a)(6) of the Act and 19 CFR 351.401. We made a deduction for credit expenses, where appropriate, pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We also deducted commissions and the lesser of comparison-market indirect selling expenses and the indirect selling expenses deducted from CEP (the CEP offset) pursuant to section 773(a)(7)(B) of the Act and 19 CFR 351.412(f). For those comparison-market sales for which the payment date was not reported, we calculated credit based on the average number of days between shipment and payment using the sales for which payment information was reported. For those sales for which no inventory carrying costs were reported, we calculated inventory carrying costs based on information contained in the questionnaire response. We made no adjustment for packing expenses, because respondents reported that these expenses are identical in both markets, and the databases did not contain values in the packing data fields for all sales. We made adjustments to normal value, where appropriate, for differences in costs attributable to differences in the physical characteristics of the merchandise, pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. *See* the Preliminary Results Calculation Memo for further details of our calculations.

Level of Trade and 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 comparison market at the same level of trade (LOT) as the export price or CEP transaction. The normal value LOT is that of the starting-price sales in the comparison market or, when normal value is based on constructed value, that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. For export price, the U.S. LOT is also the level of the starting-price sale, which is usually from the exporter to an unaffiliated U.S. customer. 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. *See Micron Technology, Inc.* v. *United States,* 243 F. 3d 1301, 1314–1315 (Fed. Cir. 2001). To determine whether normal value sales are at a LOT different from export price or 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 LOT, 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 LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. 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 Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

In this review, Cinsa and ENASA had only CEP sales. They reported that comparison-market and CEP sales were made at different LOTs, and that comparison-market sales were made at a more advanced LOT than were sales to CIC in the United States. The respondents requested that the Department make a CEP offset in lieu of a LOT adjustment, as they were unable to quantify the price differences related to sales made at the different LOTs.

Cinsa and ENASA reported four channels of distribution in the home market: (1) Direct sales to customers from the Saltillo plant; (2) sales shipped from their Mexico City warehouse; (3) sales to Pacific zone customers; and (4) sales shipped to supermarkets and discount stores. In analyzing the data in the home market sales listing by distribution channel and sales function, we found that the four home market channels are all handled by Cinsa's and ENASA's affiliated distributer, COMESCO, and did not differ significantly with respect to selling functions. Similar services were offered to all or some portion of customers in each channel. Based on this analysis, we find that the four home market channels of distribution comprise a single LOT.

All CEP sales were made through the same distribution channel: by the Mexican exporter to CIC, the U.S. affiliated reseller, which then sold the merchandise directly to unaffiliated purchasers in the United States. The same selling functions/services were provided by Cinsa and ENASA to all customers in this distribution channel. Therefore, we preliminarily determine that all CEP sales constitute a single LOT in the United States.

To determine whether sales in the comparison market were at a different LOT than CEP sales, we examined the selling functions performed at the CEP level, after making the appropriate deductions under section 772(d) of the Act, and compared those selling functions to the selling functions performed in the home-market LOT.

In the comparison market, Cinsa and ENASA sold subject merchandise to their affiliated distributor, COMESCO, which then resold the POS product to unaffiliated customers. In the United

States, Cinsa sold its and ENASA's subject merchandise to its affiliate, CIC, which then resold the subject merchandise directly to unaffiliated purchasers. Therefore, we compared the selling functions and the level of activity associated with Cinsa's sales to CIC with the sales by COMESCO to unaffiliated purchasers in the Mexican market. We found that several of the functions performed in making the starting-price sale in the comparison market either were not performed in connection with sales to CIC (*e.g.,* market research, order solicitation, after sale services/warranties, and advertising), or were only performed to a small degree in connection with sales to CIC (*e.g.,* inventory maintenance), thus supporting respondents' contention that different LOTs exist between comparison-market and CEP sales.

These differences also support the respondents' assertion that the comparison-market merchandise is sold at a more advanced LOT (*see* the Preamble to the Department's Regulations, 62 FR 27295, 27371 (May 19, 1997) (''Each more remote level must be characterized by an additional layer of selling activities, amounting in the aggregate to a substantially different selling function.'') Furthermore, many of the same selling functions that are performed at the comparison-market LOT are performed, not at the CEP LOT, but by the respondents' U.S. affiliate. Based on this analysis, we preliminarily conclude that the comparison-market and CEP channels of distribution are sufficiently different to determine that two different LOTs exist, and that the comparison-market sales are made at a more advanced LOT than are the CEP sales.

Because there is only one LOT in the home market, it is not possible to determine if there is a pattern of consistent price differences between the sales on which normal value is based and comparison market (*i.e.,* home market) sales at the LOT of the export transaction. Accordingly, because the data available do not form an appropriate basis for making a level of trade adjustment, but the level of trade in the home market is at a more advanced stage of distribution than the level of trade of the CEP, we have made a CEP offset to normal value in accordance with section 773(a)(7)(B) of the Act. The CEP offset is calculated as the lesser of:

1. The indirect selling expenses on the comparison-market sale, or

2. The indirect selling expenses deducted from the starting price in calculating CEP.

Currency Conversion

We made currency conversions in accordance with section 773A of the Act based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the weighted-average dumping margins for the period December 1, 1999, through November 30, 2000, are as follows:

Manufacturer/exporter	Period	Margin [percent]
Cinsa	12/1/99—11/30/00	16.42
ENASA	12/1/99—11/30/00	15.66

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. *See* 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication. *See* 19 CFR 351.310(c). If requested, a hearing will be held 44 days after the publication of this notice, or the first workday thereafter.

Issues raised in the hearing will be limited to those raised in the respective case briefs and rebuttal briefs. Case briefs from interested parties and rebuttal briefs, limited to the issues raised in the respective case briefs, may be submitted not later than 30 days and 37 days, respectively, from the date of publication of these preliminary results. *See* 19 CFR 351.309(c) and (d). Parties who submit case briefs 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. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice.

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B–099, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c).

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of this review. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties. We will instruct the Customs Service to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis.* For assessment purposes, we intend to calculate importer-specific assessment rates for the subject merchandise by aggregating the dumping margins calculated for all U.S. sales examined and dividing this amount by the total entered value of the sales examined.

Cash Deposit Requirements

The following cash 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 this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be those established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash

deposit rate for all other manufacturers or exporters will continue to be 29.52 percent, the ''All Others'' rate made effective by the LTFV investigation. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

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

This administrative review and notice is published in accordance with section 751(a)(1) of the Act and 19 CFR 351.221.

Dated: November 2, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–28404 Filed 11–9–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency (MBDA)

[Docket No. 980901228–1253–02]

RIN 0640–ZA04

Identification of Currently Funded Projects Eligible To Be Extended for an Additional Year of Funding in Light of MBDA's Intent To Revise The Minority Business Opportunity Committee (MBOC) Program

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: This notice announces the Minority Business Development Agency's (MBDA) amendment of a prior **Federal Register** notice published by MBDA that established the total project award period for cooperative agreements under the Minority Business Opportunity Committee (MBOC) program as three (3) years. MBDA amends the award period to provide for an additional year of funding. This extension of time will permit MBDA needed time to develop a revision of the work requirements and performance measures for the MBOC program. This notice also identifies certain MBOCs currently funded through December 31, 2001, that will be eligible for an additional year of funding beyond the three (3) years normally allowed between competitions. It is MBDA's intent to revise the scope of the program to include use of state-of-the-art information technology to collect and disseminate information for and about minority businesses and markets, and to install Performance Measures that can be electronically validated and verified.

DATES: November 13, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Boykin (202) 482–1712.

SUPPLEMENTARY INFORMATION: Under Executive Order 11625, MBDA provides business development services to persons who are members of groups determined by the U. S. Department of Commerce to be socially or economically disadvantaged, and to business concerns owned and controlled by such individuals. The MBOC program is one vehicle MBDA utilizes to accomplish this mission. The MBOC program creates conditions in the public and private sector marketplace that foster significant minority business and economic success. The MBOC is a locally based organization dedicated to the planning, coordination, creation, and delivery of resources to facilitate effective participation of the minority business sector in the community and globally. The principal functions of the MBOC are to serve as a focal point for the development of mutually beneficial approaches to insure minority business participation in the community; to identify and facilitate economic and business opportunities; to identify barriers to economic growth and to develop strategies for overcoming these barriers; to serve as community advocate for minority businesses; and to serve as a mentoring entity for ready to grow businesses.

To ensure that the program objectives stated above are carried out more effectively, MBDA shall revise the work requirements to require the use of state-of-the-art technology to verify and validate performance and to collect and disseminate information for and about minority business and markets. MBDA intends to implement the new work requirements for the MBOC Program through competition to be published in the **Federal Register** and on MBDA's website (www.mbda.gov) in the summer/fall of 2002. The anticipated start date for new awards is January 1, 2003. Consequently, there will be no new competition for MBOCs during 2001.

As part of the transition, MBDA intends to provide an additional year of funding, on a non-competitive basis, to current, eligible MBOCs that will be completing the third year of operation on 12/31/01. Such additional funding will be at the total discretion of MBDA, based on such factors as the MBOC's performance, the availability of funds and Agency priorities. Normally MBOCs would undergo a new competition after three years of operation. The additional year of funding, as announced in this Notice, will allow MBDA the necessary time to develop its revised program and to apply the new work requirements to all MBOCs effective 1/1/03. Therefore, MBDA's prior **Federal Register** notice (63 FR 47480) is hereby amended to allow for the extension of the total project award period of cooperative agreements under the MBOC program to four (4) years. The following MBOCs are affected by this notice and will be eligible for an additional year (1/1/2002 through 12/31/2002) of funding on a non-competitive basis: Puerto Rico MBOC (Economic Bank of Puerto Rico); Brooklyn/Queens MBOC (Brooklyn Economic Development Corporation); Los Angeles MBOC (City of Los Angeles); South Texas MBOC (Rio Grande Valley Empowerment Zone Corporation); Kansas City MBOC (The City of Kansas City, Missouri); Birmingham MBOC (City of Birmingham, Alabama); and Austin MBOC (Texas Association of Minority Business Enterprises).

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), are applicable to this notice.

Executive Order 12866

This notice was determined to be not significant for purposes of E.O. 12866.

Administrative Procedure Act

The provisions of the Administrative Procedure Act requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this notice is a matter relating to public property, loans, grants, benefits, or contracts 5 U.S.C. 553(a)(2),

Regulatory Flexibility Act

Because a notice of proposed rulemaking and opportunities for public comment are not required to be given for this notice by 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 are inapplicable.

Executive Order 13132

This notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Authority: 15 U.S.C. 1512 and Executive Order 11625.

Dated: November 5, 2001.

Juanita E. Berry,

Federal Register Liaison Officer, Minority Business Development Agency.

Ronald N. Langston,

National Director, Minority Business Development Agency.

[FR Doc. 01–28408 Filed 11–9–01; 8:45 am]

BILLING CODE 6050–$$–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Bangladesh

November 6, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 13, 2001.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing, special shift, and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Also see 65 FR 69910, published on November 21, 2000.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 6, 2001.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 15, 2000, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on January 1, 2001 and extends through December 31, 2001.

Effective on November 13, 2001, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
335	166,960 dozen.
341	3,352,706 dozen.
363	36,752,512 numbers.
369–S [2]	2,547,036 kilograms.
635	504,848 dozen.
847	354,102 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2000.

[2] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.01–28269 Filed 11–9–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in the Republic of Korea

November 6, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 13, 2001.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryover and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Also see 65 FR 69740, published on November 20, 2000.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 6, 2001.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 14, 2000, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man–made fiber, silk blend and other vegetable fiber textiles and textile products produced or manufactured in the Republic of Korea and exported during the twelve-month period which began on January 1, 2001 and extends through December 31, 2001.

Effective on November 13, 2001, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Group II	
237, 239pt. [2], 331–348, 350–352, 359–H [3], 359pt. [4], 431, 433–438, 440–448, 459–W [5], 459pt. [6], 631, 633–652, 659–H [7], 659–S [8] and 659pt. [9], as a group.	614,819,761 square meters equivalent.
Sublevels within Group II	
647/648	1,381,058 dozen.
Group III	
831, 833–838, 840–844, 847–858 and 859pt. [10], as a group.	17,504,651 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2000.

[2] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[3] Category 359–H: only HTS numbers 6505.90.1540 and 6505.90.2060.

[4] Category 359pt.: all HTS numbers except 6505.90.1540, 6505.20.2060 (Category 359–H); and 6406.99.1550.

[5] Category 459–W: only HTS number 6505.90.4090.

[6] Category 459pt.: all HTS numbers except 6505.90.4090 (Category 459–W); 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[7] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[8] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[9] Category 659pt.: all HTS numbers except 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010, 6211.12.1020 (Category 659–S); 6406.99.1510 and 6406.99.1540.

[10] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–28268 Filed 11–9–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in Romania

November 6, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 13, 2001.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Also see 65 FR 77594, published on December 12, 2000.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 6, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 5, 2000, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products produced or manufactured in Romania and exported during the twelve-month period which began on January 1, 2001 and extends through December 31, 2001.

Effective on November 13, 2001, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
435	17,062 dozen.
443	54,494 numbers.
444	16,637 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2000.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.01–28270 Filed 11–9–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Removing a Limit on Imports of Combed Cotton Yarn from Pakistan

November 8, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs removing a limit on imports of combed cotton yarn, produced or manufactured in Pakistan.

EFFECTIVE DATE: November 9, 2001.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

In a notice published on December 31, 1998, the Government of the United States announced that it had requested consultations with the Government of

Pakistan on combed cotton yarn in Category 301, produced or manufactured in Pakistan. (63 FR 72288) As no solution was agreed upon in consultations, the Government of the United States limited imports in this category for the twelve-month period beginning on March 17, 1999 and extending through March 16, 2000 at a level of 5,262,665 kilograms. (March 12, 1999 64 FR 12290) This limit was extended for a second year on March 14, 2000 (65 FR 14544) and for a third year on February 28, 2001 (66 FR 13307). Pakistan challenged this limit under the World Trade Organization (WTO) dispute settlement process and, on October 8, 2001, the WTO Appellate Body affirmed a dispute settlement panel decision that certain aspects of the U.S. determination to impose the limit were not consistent with the WTO Agreement on Textiles and Clothing. In the letter published below, the Chairman of CITA directs the Commissioner of Customs to remove the limit on combed cotton yarn in Category 301, produced or manufactured in Pakistan.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Also see 65 FR 66972, published on November 8, 2000.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 8, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and Executive Order 11651 of March 30, 1972, as amended, CITA has decided that the limit on combed cotton yarn in Category 301 produced or manufactured in Pakistan should be removed. Therefore, you are directed, effective on November 9, 2001, to eliminate the limit for combed cotton yarn in Category 301, produced or manufactured in Pakistan.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–28504 Filed 11–08–01; 1:19 pm]

BILLING CODE 3510–DR–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program 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 program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed. Copies of the information collection requests can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by January 14, 2002.

ADDRESSES: Send comments to the Corporation for National and Community Service, Shelly Ryan, Program Coordinator, 1201 New York Avenue, NW., Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: Shelly Ryan at (202) 606–5000, ext. 549 or *sryan@cns.gov.*

SUPPLEMENTARY INFORMATION: Currently, the Corporation is soliciting comments concerning the proposed applications entitled:

a. The AmeriCorps*VISTA Application Instructions;

b. The National Senior Service Corps Application Instructions;

c. The AmeriCorps*National, State and Indian Tribes and U.S. Territories Application Instructions;

d. The AmeriCorps Promise Fellows Application Instructions;

e. The AmeriCorps Education Awards Programs Application Instructions; and

f. The Innovative and Demonstration Programs Application Instructions.

The Corporation 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;
- 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 submissions of responses.

Background

The Corporation publishes application guidelines and notices of funding availability that include information about the funding and requirements. The application instructions provide the information, instructions and forms that potential applicants need to complete an application to the Corporation for funding.

The Corporation does not currently have the capability to accept applications submitted electronically. However, we are in the process of building an electronic grants system that will meet the requirements of Pub. L. 106–107. As part of the development process, the Corporation is redesigning its application forms and instructions to reflect the electronic system design so that current grantees and applicants can become familiar with the new format.

Current Action

Part I

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: Revised collection.

Agency: Corporation for National and Community Service.

Title: AmeriCorps*VISTA Project Application Instructions.

OMB Number: 3045–0038.

Agency Number: None.

Affected Public: Eligible public, private, and faith-based nonprofit organizations.

Total Respondents: 2,200.

Frequency: Once per year.
Average Time Per Response: 15 hours.
Estimated Total Burden Hours: 33,000 hours.
Total Burden Cost (capital/startup): None.
Total Burden Cost (operating/maintenance): None.

Part II

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: Revised collection.
Agency: Corporation for National and Community Service.
Title: National Senior Service Corps Application Instructions.
OMB Number: 3045–0035.
Agency Number: None.
Affected Public: Eligible applicants to the Corporation for funding.
Total Respondents: 1,513.
Frequency: Annually.
Average Time Per Response: 13.2 hours.
Estimated Total Burden Hours: 20,027 hours.
Total Burden Cost (capital/startup): None.
Total Burden Cost (operating/maintenance): $6,497.

Part III

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: Revised collection.
Agency: Corporation for National and Community Service.
Title: AmeriCorps*National, State, Indian Tribes and U.S. Territories Application Instructions.
OMB Number: 3045–0047.
Agency Number: None.
Affected Public: Eligible applicants to the Corporation for funding.
Total Respondents: 2,000.
Frequency: Once per year.
Average Time Per Response: Ten (10) hours.
Estimated Total Burden Hours: 20,000 hours.
Total Burden Cost (capital/startup): None.
Total Burden Cost (operating/maintenance): None.

Part IV

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: Revised collection.
Agency: Corporation for National and Community Service.
Title: AmeriCorps Promise Fellows Application Instructions.
OMB Number: 3045–0073.
Agency Number: None.
Affected Public: Eligible applicants to the Corporation for funding.
Total Respondents: 90.
Frequency: Once per year.
Average Time Per Response: 25 hours.
Estimated Total Burden Hours: 2,250 hours.
Total Burden Cost (capital/startup): None.
Total Burden Cost (operating/maintenance): None.

Part V

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: Revised collection.
Agency: Corporation for National and Community Service.
Title: AmeriCorps Education Awards Program Application Instructions.
OMB Number: 3045–0065.
Agency Number: None.
Affected Public: Eligible applicants to the Corporation for funding.
Total Respondents: 200.
Frequency: Once per year.
Average Time Per Response: Eight (8) hours.
Estimated Total Burden Hours: 1,600 hours.
Total Burden Cost (capital/startup): None.
Total Burden Cost (operating/maintenance): None.

Part VI

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: New collection.
Agency: Corporation for National and Community Service.
Title: Innovative and Demonstration Application Instructions.
OMB Number: None.
Agency Number: None.
Affected Public: Eligible applicants to the Corporation for funding.
Total Respondents: 200.
Frequency: Once per year.
Average Time Per Response: 20 hours.
Estimated Total Burden Hours: 4,000 hours.
Total Burden Cost (capital/startup): None.
Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: November 6, 2001.

Nancy Talbot,
Director, Program Planning and Development.

[FR Doc. 01–28255 Filed 11–9–01; 8:45 am]
BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: DoD, Office of the Assistant Secretary of Defense, Command, Control, Communication and Intelligence—Defense Security Service.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Command, Control, Communication and Intelligence—announces a proposed new public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 14, 2001.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Defense Security Service (DSS), Planning & Programming, ATTN: Ms. Stephanie Greene, Alexandria, VA 22314–1651.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call DSS, Planning & Programming at (703) 325–4718.

Title and OMB Number: Defense Security Service Customer Satisfaction

Survey; OMB No. 0704–[To Be Determined].

Needs and Uses: The purpose of the information collection requirement is to obtain information to ascertain the level of satisfaction private sector industrial and federal users have with the products and services DSS provides. This survey is necessary to meet the requirements of the FY2000–2003 Defense Management Council (DMC) Performance Contract. The DMC Performance Contract requires the Defense Security Service (DSS) to develop and administer customer satisfaction surveys for each of its three primary business areas: the Personnel Security Investigations Program (PSI), the Industrial Security Program (ISP), and the Security Education and Training Program. DSS is also in the process of implementing the Government Performance and Results Act (GPRA) based initiatives, as recommended by GAO, which involves the development of performance measures and metrics as a way to identify and evaluate program outcomes. A key indicator of Agency and program performance is customer satisfaction. Thus, DSS is also conducting this survey to support the GPRA implementation process. Information obtained through this collection will be used for the agency's will be used for the agency's planning and programming processes. Survey will administered on-line via the Internet. Information will be collected and analyzed by the Hay Group.

Affected Public: Private Sector cleared DoD Contractor facilities.

Annual Burden Hours: 2,500 (~2,080 private sector and ~420 Federal & DoD).

Number of Respondents: 6,000 (5,000 private sector and 1,000 Federal & DoD).

Responses per Respondents: 1.

Average Burden per Response: 25 minutes.

Frequency: Biennial.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are private industry and federal users of DSS products and services and who have direct contact with DSS personnel. The new DSS form records customer perceptions of the level of the quality, usefulness and professionalism of the goods and services delivered. The information, which will be collected electronically, will be used for agency and program level planning, programming and budgeting decisions as well as to comply with DoD's Defense Management Counsel, GPRA, and GAO requirements. If the information is not collected, DSS will be missing vital information necessary to plan, program and respond to customer's and DoD's needs well.

Dated: November 5, 2001.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–28265 Filed 11–9–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Federal Advisory Committee for the End-to-End Review of the U.S. Nuclear Command and Control System

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of forthcoming meetings of the Federal Advisory Committee for the End-to-End Review of the U.S. Nuclear Command and Control System (NCSS). The purpose of these meetings is to conduct a comprehensive and independent review of the NCCS positive measures to assure authorized use of nuclear weapons when directed by the President while assuring against unauthorized or inadvertent use. This meeting will be closed to the public.

DATES: November 13–14, 2001 and November 25–26, 2001.

ADDRESSES: Room 3C912, Pentagon, Washington DC.

FOR FURTHER INFORMATION CONTACT: Mr. William L. Jones, U.S. Nuclear Command and Control System Support Staff (NSS), Skyline 3, 5201 Leesburg Pike, Suite 500, Falls Church, Virginia 22041, (703) 681–8681.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 01–28457 Filed 11–8–01; 12:26 pm]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Boards Membership

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of a Performance Review Board for the Department of the Army.

EFFECTIVE DATE: November 13, 2001.

FOR FURTHER INFORMATION CONTACT: David Stokes, U.S. Army Senior Executive Service Office, Assistant Secretary of the Army, Manpower & Reserve Affairs, 111 Army, Washington, DC 20310–0111, telephone (703) 697–3549.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The members of the Performance Review Board for the US NATO Field Element (Army) are:

1. Mr. Al Volkman, Director, OUSD/AT&L Intl Programs, Office of the Secretary of Defense.
2. Mr. Leo Michel, Director, NATO Policy, Office of the Secretary of Defense.
3. Mr. Steve Austin, OUSD ICAT&L PA, Office of the Secretary of Defense.
4. Mr. Jeffrey Starr, OSD/PI, Office of the Secretary of Defense.
5. Mr. Peter Verga, (alternate) Deputy Under Secretary of Defense for Policy Integration, Office of the Secretary of Defense.

John Hall,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 01–28374 Filed 11–9–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

National Board of the Fund for the Improvement of Postsecondary Education, Department of Education

ACTION: Notice of meeting.

SUMMARY: This notice provides the proposed agenda of a forthcoming meeting of the National Board of the Fund for the Improvement of Postsecondary Education. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This notice is published less than 15 days prior to the date of the meeting as a result of special administrative clearances.

DATE AND TIME: November 16, 2001, 12:30 p.m. to 4 p.m.

ADDRESSES: Sheraton San Diego Hotel & Marina, 1380 Harbor Island Drive, San Diego, CA. Telephone: (619) 692–2200.

FOR FURTHER INFORMATION CONTACT: Donald Fischer, U.S. Department of

Education, 1990 K Street NW., Washington, DC 20006–8544. Telephone: (202) 502–7500 or by e-mail: *donald__fischer@ed.gov.* Individuals who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday).

Individuals with disabilities may obtain this document in an alternate format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: The National Board of the Fund for the Improvement of Postsecondary Education is established under Title VII, Part B, section 742 of the Higher Education Amendments of 1998 (20 U.S.C. 1138a). The National Board of the Fund is authorized to recommend to the Director of the Fund and the Assistant Secretary for Postsecondary Education priorities for funding and procedures for grant awards.

On Friday, November 16, 2001, from 1:30 p.m. to 4 p.m. the Board will meet in open session. The proposed agenda for the open portion of the meeting will include discussions of the Fund's programs and special initiatives.

On Friday, November 16, 2001, from 12:30 p.m. to 1:30 p.m. the meeting will be closed to the public for the purpose of discussing personnel matters associated with the work of the Board. This portion of the meeting will be closed under the authority of section 10(d) of the Federal Advisory Act (Pub. L. 92–463; 5 U.S.C.A. Appendix 2) and under exemptions (2) and (6) of the Government in the Sunshine Act (Public Law 94–409), 5 U.S.C. 552b (c)(2) and (6). The review and discussion of Board personnel matters will relate solely to the internal personnel rules and practices of an agency, and may disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session.

The meeting site is accessible to individuals with disabilities. An individual with a disability who will need an auxiliary aid or service to participate in the meeting (*e.g.,* interpreting service, assistive listening device or materials in an alternate format) should notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although the Department will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

Records are kept of all Board proceedings, and are available for public inspection at the office of the Fund for the Improvement of Postsecondary Education, 8th Floor, 1990 K Street NW., Washington, DC 20006–8544 from the hours of 8 a.m. to 4:30 p.m.

Maureen A. McLaughlin,

Deputy Assistant Secretary for Policy, Planning, and Innovation, Office of Postsecondary Education.

[FR Doc. 01–28407 Filed 11–9–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–30–000]

Algonquin Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

November 6, 2001.

Take notice that on October 31, 2001, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Twelfth Revised Sheet No. 40, to become effective on December 1, 2001.

Algonquin is filing to revise its Fuel Reimbursement Percentages (''FRPs'') for the calendar period beginning December 1, 2001, pursuant to section 32 of the General Terms and Conditions of its FERC Gas Tariff. Algonquin states that, based on the latest actual annual data for Company Use Gas and throughput quantities for twelve month period ended July 31, 2001, the FRPs have increased slightly, by 0.01% in the FRP for the Winter period and by 0.21% for the non-Winter period.

Algonquin further states that it is submitting the calculation of the deferral allocation, pursuant to section 32.5(c) which provides that Algonquin will calculate surcharges or refunds designed to amortize the net monetary value of the balance in the FRQ Deferred Account at the end of the previous accumulation period. Algonquin states that, for the period August 1, 2000 through July 31, 2001, the FRQ Deferred Account resulted in a net debit balance that will be recovered as a surcharge to Algonquin's customers, based on the allocation of the account balance over the actual throughput during the accumulation period, exclusive of backhauls.

Algonquin states that copies of this filing were mailed to all affected customers of Algonquin and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–28288 Filed 11–9–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–32–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 6, 2001.

Take notice that on October 31, 2001, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Eleventh Revised Sheet No. 44, with a proposed effective date of December 1, 2001.

Columbia submits the instant filing pursuant to the provisions of section 35, Retainage Adjustment Mechanism (RAM), of the General Terms and Conditions (GTC) of its Tariff. Eleventh Revised Sheet No. 44 sets forth the retainage factors applicable to Columbia's services. In this Periodic RAM Filing, Columbia is filing to reduce the applicable transportation retainage percentage for the reasons set forth in the filing.

Columbia states that copies of its filing have been mailed to all firm

customers, interruptible customers, affected state commissions, and parties on the official service list in Docket No. RP01–262.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at http://www.ferc.gov using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–28290 Filed 11–9–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT02–3–000]

Distrigas of Massachusetts LLC; Notice of Proposed Changes in FERC Gas Tariff

November 6, 2001.

Take notice that on October 31, 2001, Distrigas of Massachusetts LLC (DOMAC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet, to become effective December 1, 2001:

Twelfth Revised Sheet No. 94

DOMAC states that the purpose of this filing is to record semiannual changes in DOMAC's index of customers.

DOMAC states that it copies of the filing has been served on all current customers under the tariff and on affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at http://www.ferc.gov using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–28282 Filed 11–9–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP02–35–000 and RP00–15–004]

Dominion Transmission, Inc.; Notice of Tariff Filing

November 6, 2001.

Take notice that on October 31, 2001, Dominion Transmission, Inc. (DTI) tendered for filing the following tariff sheets to comply with the requirements of section 5.1 of the ''Stipulation and Agreement Amending Rate Case Settlement'' filed on October 5, 1999, in Docket Nos. RP97–406, *et al., CNG Transmission Corp.,* 89 FERC 61,304 (1999) (RP00–15 Settlement):

First Revised Sheet No. 1070
Second Revised Sheet No. 1118

DTI requests waiver of the notice requirements to permit an effective date of November 1, 2001, for its proposed tariff sheets.

DTI states that section 5.1 of the RP00–15 Settlement requires DTI to update its list of Account No. 858 transactions contained in section 15.7 of the General Terms and Conditions (''GT&C'') of its FERC Gas Tariff, in the event that DTI enters into a successor transaction with Tennessee Gas Pipeline Company (Tennessee). DTI reports that it has just finalized a new service agreement with Tennessee to succeed the parties' old service agreement effective November 1, 2001. In addition to modifying the list of transactions set forth on GT&C section 15.7, DTI has modified GT&C section 11B.2.B.1, as shown on First Revised Sheet No. 1070, in order to reflect the revised transaction with Tennessee.

DTI states that copies of its letter of transmittal and enclosures have been served upon DTI's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–28293 Filed 11–9–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–34 –000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

November 6, 2001.

Take notice that on October 31, 2001, Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing as part of its FERC Gas Tariff, Second

Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of December 1, 2001:

Seventh Revised Sheet No. 5
Sixth Revised Sheet No. 6
Sixth Revised Sheet No. 7

Eastern Shore states that this rate filing is being made to effectuate changes in the rates applicable to Eastern Shore's transportation services under Rate Schedules FT, ST, T–1 and IT, respectively, in accordance with section 4(d) of the Natural Gas Act, 15 U.S.C. 717c(d), and subpart C of part 154 of the Commission's regulations thereunder, 18 CFR part 154, subpart C. The rate changes are expected to increase revenues derived from firm transportation services by $836,595 when compared with the tariff rates currently in effect.

Eastern Shore states that this filing is being made in compliance with the requirements of Article XII of the August 1, 1997 Stipulation and Agreement (S & A) in Docket Nos. CP96–128–000, CP96–128–001, CP96–128–003, RP97–32–000, RP97–32–001, RP97–32–004, RP97–231–000, RP97–231–001, RP97–231–002, TA98–1–23–000 and TA98–3–23–000 (not consolidated). Such S & A was approved by the Commission in its letter order dated October 15, 1997.

Eastern Shore further states that the proposed rates are based on an overall cost of service of $14,238,063 which reflects actual experience for the twelve months of actual operations for the period ended June 30, 2001, adjusted for known and measurable changes anticipated to occur during the nine-month adjustment period ending March 31, 2002. The rate base for Eastern Shore's system as of March 31, 2002, adjusted for known and measurable changes through such date, is $43,431,243. The cost of service also reflects an overall rate of return of 11.94 percent, consisting of a cost of debt of 7.88 percent and a return on common equity of 14.75 percent utilizing a test period capital structure of 40.90 percent debt and 59.10 percent common equity. The depreciation expense component of Eastern Shore's cost of service reflects the same depreciation rates utilized in its prior rate proceeding.

Eastern Shore states that copies of the filing have been served upon its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at http://www.ferc.gov using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–28292 Filed 11–9–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–15–000]

Kern Gas Transmission Company; Notice of Application

November 6, 2001.

Take notice that on October 26, 2001, Kern River Gas Transmission Company (Kern River), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP02–15–000, an application, pursuant to section 7(c) of the Natural Gas Act (NGA) for authorization to construct and operate the new Kramer Junction Delivery Point, located in San Bernardino County, California, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket # '' from the RIMS menu and follow the instructions (call (202) 208–2222 for assistance).

Kern River proposes to construct and operate the new Kramer Junction Delivery Point in San Bernardino County, California, consisting of a 20-inch tap on the 42-inch mainline portion of the Common Facilities, jointly owned by Kern River and Mojave Pipeline Company and a meter station in 200 by 250-foot fenced station yard. Kern River indicates that the metering facilities will include 3 10-inch turbine meters, a 12-inch flow control valve, and appurtenances. Kern River states that the proposed delivery point has a maximum design delivery capacity of approximately 500 Mmcf/d at 650 psig from the Common Facilities mainline into the new Adelanto Lateral, planned by Southern California Gas Company (SoCalGas).

Kern River avers that the proposed Kramer Junction Delivery Point will establish an alternative to Kern River's existing Wheeler Ridge Delivery Point into the SoCalGas system, where take-away capacity currently is constrained. Kern River asserts that its shippers (both existing and prospective expansion shippers) have already contracted for approximately 328 Mmcf/d of firm delivery capacity to the proposed Kramer Junction Delivery Point.

Kern River estimates the cost of the proposed delivery point facilities at $2,115,211. Kern River indicates that, pursuant to a Facilities Agreement, SoCalGas will reimburse Kern River for all of the actual costs of the proposed facilities, plus associated income taxes by making a lump sum payment upon completion of construction.

Any questions regarding this application should be directed to Gary Kotter, Manager, Kern River Gas Transmission Company, P.O. Box 58900, Salt Lake City, Utah 84158, at (801) 584–7117.

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 November 16, 2001, 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 385.211 and 385.214) 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. 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.

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 commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, Commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

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 ion 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 to file comments or to intervene as early in the process as possible.

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's review process, a final Commission order approving or denying a certificate will be issued.

David P. Boergers,

Secretary.

[FR Doc. 01–28281 Filed 11–9–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–28–000]

Natural Gas Pipeline Company of America; Notice of Tariff Filing

November 6, 2001.

Take notice that on October 31, 2001, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Eighteenth Revised Sheet No. 22, to be effective December 1, 2001.

Natural states that the filing is submitted pursuant to section 21 of the General Terms and Conditions (GT&C) of its Tariff as the seventeenth semiannual limited rate filing under section 4 of the Natural Gas Act and the Rules and Regulations of the Federal Energy Regulatory Commission promulgated thereunder. The rate adjustments filed for are designed to recover Account No. 858 stranded costs incurred by Natural under contracts for transportation capacity on other pipelines. Costs for any Account No. 858 contracts specifically excluded under section 21 are not reflected in this filing.

Natural states that copies of the filing are being mailed to its customers and interested 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. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-iling'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–28286 Filed 11–9–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–16–000]

PSEG Energy Resources & Trade LLC v. New York Independent System Operator, Inc.; Notice of Complaint

November 6, 2001.

Take notice that on November 5, 2001, PSEG Energy Resources & Trade LLC (PSEG ER&T) submitted for filing a complaint against the New York Independent System Operator, Inc. (NYISO), requesting that the Commission restore the original market clearing prices for energy for May 9, 2000.

PSEG ER&T states that it has served a copy of the filing on the NYISO and the state regulatory commissions in New York and New Jersey.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before November 26, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before November 26, 2001. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–28280 Filed 11–9–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP88–67–075 and RP98–198–004]

Texas Eastern Transmission, LP; Notice of Compliance Filing

November 6, 2001.

Take notice that on October 31, 2001, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1 and First Revised Volume No. 2, the tariff sheets listed on Appendix A to the filing, to become effective December 1, 2001.

Texas Eastern asserts that the purpose of this filing is to comply with the Stipulation and Agreement filed by Texas Eastern on December 17, 1991 in Docket Nos. RP88–67, *et al.* (Phase II/PCBs) and approved by the Commission on March 18, 1992 (Settlement), and with Section 26 of Texas Eastern's FERC Gas Tariff, Seventh Revised Volume No. 1.

Texas Eastern states that such tariff sheets reflect an increase in the PCB-Related Cost component of Texas Eastern's currently effective rates. For example, the increase in the 100% load factor average cost of long-haul service under Rate Schedule FT–1 from Access Area Zone ELA to Market Zone 3 is $0.0024 per dekatherm.

Texas Eastern states that copies of the filing were mailed to all affected customers of Texas Eastern and interested state commissions. Copies of this filing have also been mailed to all parties on the service list in Docket Nos. RP88–67, et al. (Phase II/PCBs).

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–28283 Filed 11–9–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–36–000]

Texas Eastern Transmission, LP; Notice of Proposed Changes in FERC Gas Tariff

November 6, 2001.

Take notice that on October 31, 2001, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1 and First Revised Volume No. 2, revised tariff sheets listed on Appendix A to the filing, to become effective December 1, 2001.

Texas Eastern states that the revised tariff sheets and the reconciliation report submitted are being filed (i) pursuant to section 15.6, Applicable Shrinkage Adjustment (ASA), and section 15.8, Periodic Reports, contained in the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Seventh Revised Volume No. 1, (ii) in compliance with the Stipulation and Agreement (Global Settlement) approved by the Commission in its order issued May 2, 1994 [67 FERC ¶ 61,170, reh'g denied, 68 FERC ¶ 61,062 (1994)], and (iii) in compliance with the Joint Stipulation and Agreement Amending Global Settlement (Amended Global Settlement) approved by the Commission in its order issued August 28, 1998 [84 FERC ¶ 61,200 (1998)].

Texas Eastern states that the combined impact on Texas Eastern's rates at December 1, 2001 of this filing with the Annual PCB-Related Costs filing being filed concurrently herewith to be effective December 1, 2001 equates to an overall decrease of 0.68 cents for typical long-haul service under Rate Schedule FT–1 from Access Area Zone East Louisiana to Market Zone 3 (ELA–M3) as follows:

	100% LF Impact ($/dth)
Rate Impact:	
PCB-Related Costs Filing ...	0.0024
ASA Surcharge	(0.0095)
Total	(0.0071)
Fuel Retention Impact:	
Annual Avg. Percentage Increase—0.01%	
Rate Equivalent at P.I.R. A. projected price of $3.22/dth	$0.003
Net Decrease	$(0.0068)

Texas Eastern states that by this filing it is (1) providing its final report on recovery of Order No. 636 transition costs and returning to its customers the excess collection of Non-Spot Costs, by crediting the ASA Deferred Account for $496,271; (2) providing its Annual Interruptible Revenue Reconciliation Report under the Amended Global Settlement which reflects a credit to the ASA Deferred Account of $207,462, which is 90% of the amount of interruptible revenue in excess of the revenue threshold contemplated by the Amended Global Settlement; (3) reducing by approximately 30% the level of its ASA Surcharges included in rates pursuant to an Interim ASA filing accepted by Commission orders issued May 25, 2001 [95 FERC ¶ 61,267 (2001)] and October 15, 2001[97 FERC ¶ 61,059 (2001)] and (4) reflecting minor changes in its ASA percentages, which are designed to retain in-kind the projected quantities of gas required for the operation of Texas Eastern's system in providing service to its customers for the twelve month period beginning December 1, 2001.

Texas Eastern states that copies of its filing have been mailed to all affected customers of Texas Eastern and interested state commissions, as well as all parties to the Settlement in Docket No. RP85–177–119, et al.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–28294 Filed 11–9–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–27–000]

Texas Gas Transmission Corporation; Notice of Tariff Filing

November 6, 2001.

Take notice that on October 31, 2001, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Fifth Revised Sheet No. 186, to become effective December 1, 2001.

Texas Gas states that the revised tariff sheet is being filed to modify Texas Gas' tariff to provide for a general waiver of the ''shipper must have title rule'' in the event that Texas Gas is transporting gas for others on acquired off-system capacity and to include a general statement that Texas Gas will only transport for others using off-system capacity pursuant to its existing tariff and rates. In addition, Texas Gas has revised section 18 of its General Terms and Conditions to reflect current rights held by Texas Gas on upstream pipelines as extensions of its pipeline system by removing previously expired contracts.

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–28285 Filed 11–9–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–26–000]

U–T Offshore System, L.L.C; Notice of Proposed Changes in FERC Gas Tariff

November 6, 2001.

Take notice that on October 31, 2001, U–T Offshore System, L.L.C (U–TOS) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the tariff sheets listed in Appendix A to the filing, to be made effective November 1, 2001.

U–TOS states that the purpose of the filing is to revise U–TOS' existing tariff to reflect changes made necessary by the purchase of all of the outstanding shares of U–TOS by Mid Louisiana Gas Transmission Company, a wholly owned subsidiary of Enbridge Midcoast Energy, Inc. on April 20, 2001. Specifically, the revisions to U–TOS' Fourth Revised Volume No. 1, (1) corrects the title page to reflect current information regarding the person to whom communication concerning the tariff should be addressed, (2) corrects the address, phone numbers and facsimile numbers of the various contacts within U–TOS, and (3) modify the section related to marketing affiliates to reflect the change of ownership.

U–TOS states that copies of its transmittal letter and appendices have been mailed to all affected customers and interested state commissions

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–28284 Filed 11–9–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–31–000]

Williams Gas Pipelines Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

November 6, 2001.

Take notice that on October 31, 2001, Williams Gas Pipelines Central, Inc. (Williams) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets to become effective December 1, 2001:

First Revised Sheet No. 221
Second Revised Sheet No. 222

Williams states that the purpose of this filing is to modify Williams' tariff to provide for a general waiver of the ''Shipper must have title rule'' in the event that Williams is transporting gas for others using off-system capacity pursuant to its existing tariff and rates.

Williams states that copies of the revised tariff sheet is being mailed to Williams' jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC

20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at http://www.ferc.gov using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–28289 Filed 11–9–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–33–000]

Wyoming Interstate Company, Ltd.; Notice of Tariff Filing

November 6, 2001.

Take notice that on October 31, 2001, Wyoming Interstate Company, Ltd. (WIC), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 2, Eighth Revised Sheet No. 4B, to become effective December 1, 2001.

WIC states that the tendered tariff sheet revises the fuel charges applicable to transportation service on WIC's system.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at http://www.ferc.gov using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–28291 Filed 11–9–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–29–000]

Young Gas Storage Company, Ltd.; Notice of Proposed Changes in FERC Gas Tariff

November 6, 2001.

Take notice that on October 31, 2001, Young Gas Storage Company, Ltd (Young) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed on the Appendix attached to the filing, to become effective December 1, 2001.

Young states that these tariff sheets update the injection, withdrawal, and working gas limits applicable to the Young storage field.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–28287 Filed 11–9–01; 8:45 am]

BILLING CODE 6716–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–16–000, et al.]

Dominion Montgomery, Inc., et al.; Electric Rate and Corporate Regulation Filings

November 5, 2001.

Take notice that the following filings have been made with the Commission:

1. Dominion Montgomery, Inc.

[Docket No. EG02–16–000]

Take notice that on October 31, 2001, Dominion Montgomery, Inc. (Montgomery) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Montgomery, a Delaware corporation, is a wholly owned subsidiary of Dominion Energy, Inc., a Virginia corporation, which in turn is a wholly owned subsidiary of Dominion Resources, Inc., also a Virginia corporation. Montgomery will be exclusively engaged in the business of owning, operating and selling electricity exclusively at wholesale from an approximately 600 MW electric generating facility located in Montgomery County near Clarksville, Tennessee. The facility will be interconnected with transmission system of the Tennessee Valley Authority.

Comment date: November 26, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Dominion Hickman, Inc.

[Docket No. EG02–17–000]

Take notice that on October 31, 2001, Dominion Hickman, Inc. (Hickman) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Hickman, a Delaware corporation, is a wholly owned subsidiary of Dominion Energy, Inc., a Virginia corporation, which in turn is a wholly owned subsidiary of Dominion Resources, Inc., also a Virginia corporation. Hickman will be exclusively engaged in the business of owning, operating and selling electricity exclusively at wholesale from an approximately 600 MW electric generating facility located in Hickman County near Centerville, Tennessee. The facility will be interconnected with the transmission system of the Tennessee Valley Authority.

Comment date: November 26, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Sunbury Generation, LLC v. PPL Electric Utilities Corporation

[Docket No. EL02–12–000]

Take notice that on October 31, 2001, Sunbury Generation, LLC (Sunbury) filed the amended testimony of Mr. James Jay Nick, Exhibit No. SUN–5, in the above-referenced proceeding.

Copies of the filing were served upon PPL Electric Utilities Corporation and all other parties in accordance with Rule 206(c) and Rule 2010 of the Commission's Rules of Practice and Procedure.

Comment date: November 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Western Systems Power Pool

[Docket No. ER91–195–048]

Take notice that on October 30, 2001, the Western Systems Power Pool (WSPP) filed with the Federal Energy Regulatory Commission (Commission) certain information as required by Ordering Paragraph (D) of the Commission's June 27, 1991 Order and Ordering Paragraph (C) of the Commission's June 1, 1992 Order On Rehearing Denying Request Not To Submit Information, and Granting In Part and Denying In Part Privileged Treatment. Pursuant to 18 CFR 385.211 (1999).

WSPP has requested privileged treatment for some of the information filed consistent with the June 1, 1992 order. Copies of the WSPP's informational filing are on file with the Commission, and non-privileged portions are available for public inspections.

Comment date: November 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. PPL Montana, LLC

[Docket No. ER01–2501–003]

Take notice that, on October 31, 2001, PPL Montana, LLC (PPLM) tendered for filing with the Federal Energy Regulatory Commission (Commission) a revised rate schedule for the 1964 Pacific Northwest Coordination Agreement (PNCA). PPLM is revising its PNCA Rate Schedule to comply with Order No. 614 formatting requirements and to include updated 2000–2001 PNCA Operating Procedures pursuant to the Commission's October 1, 2001 order in Docket No. ER01–2501–000.

Comment date: November 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Avista Corporation

[Docket No. ER01–2501–004]

Notice is hereby given that on October 31, 2001, a replacement rate schedule for Avista Corporation's (formerly known as The Washington Water Power Company) filing of the Pacific Northwest Coordination Agreement, Rate Schedule No. 97, has been filed with the Federal Energy Regulatory Commission (Commission). The filing is made pursuant to the Commission's order in Docket No. ER01–2501 and Rule 614. Avista Corporation is refiling the Pacific Northwest Coordination Agreement in a form compliant with Rule 614 as Avista Corporation Rate Schedule No. 290 with a proposed effective date of January 1, 2002.

A copy of this filing has been sent to the parties listed on the attached Service List.

Comment date: November 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Avista Corporation

[Docket No. ER01–2501–005]

Notice is hereby given that on October 31, 2001, a replacement rate schedule for PacifiCorp's filing of the Pacific Northwest Coordination Agreement, Rate Schedule No. 160, has been filed with the Federal Energy Regulatory Commission (Commission). The filing is made pursuant to the Commission's order in Docket No. ER01–2501 and Rule 614. PacifiCorp is refiling the Pacific Northwest Coordination Agreement in a form compliant with Rule 614 as PacifiCorp Rate Schedule No. 544 with a proposed effective date of January 1, 2002.

A copy of this filing has been sent to the parties to the Pacific Northwest Coordination Agreement.

Comment date: November 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Wisconsin Public Service Corporation

[Docket No. ER02–140–001]

Take notice that on October 31, 2001, Wisconsin Public Service Corporation (WPSC) tendered for filing with the Federal Energy Regulatory Commission (Commission) a revised partial requirements service agreement with Manitowoc Public Utilities (MPU). Third Revised Service Agreement No. 5 provides MPU's contract demand nominations for January 2002–December 2006, under WPSC's W–2A partial requirements tariff.

The company states that copies of this filing have been served upon MPU and to the State Commissions where WPSC serves at retail.

Comment date: November 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. PPL Montana, LLC

[Docket No. ER02–176–000]

Take notice that on October 26, 2001, PPL Montana, LLC (PPL Montana) filed with the Federal Energy Regulatory Commission (Commission) the Edison Electric Institute/National Energy Marketers Association Master Power Purchase and Sale Agreement (Version 2.1, modified 4/25/00), paginated in accordance with Order No. 614, to be added to PPL Montana's pro forma rate schedule, as well as two executed service agreements thereunder between PPL Montana and The Montana Power Company (Montana Power) also designated in accordance with Order No. 614. The first service agreement is for 300 MW of Firm (LD) power and the second is for 150 MW of Unit Firm power. Both service agreements provide for sales of energy by PPL Montana to Montana Power and comprise a portion of Montana Power's power portfolio for default retail customer service.

PPL Montana requests that the Commission grant a waiver so as to permit the service agreements to become effective on October 15, 2001. PPL Montana also requests Commission action so as to permit privileged and confidential treatment of various provisions of the service agreements, which it alleges contain commercially sensitive information that may harm Montana Power if released. PPL Montana has filed a redacted version of the service agreements suitable for release to the public. PPL Montana states that it has served a copy of this filing on Montana Power.

Comment date: November 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. Smarr EMC

[Docket No. ER02–206–000]

Take notice that on October 31, 2001, Smarr Electric Membership Cooperative (Smarr) tendered for filing with the Federal Energy Regulatory Commission (Commission) pursuant to 18 CFR 35.13 revisions to Smarr's FERC Electric Tariff Rate No. 1 and No. 2. Copies of this filing have been mailed to each of Smarr's Member-Owner/Purchasers, reflected on the attached certificate of service.

Smarr respectfully requests that the amendments to its Rate Schedules become effective January 1, 2002.

Comment date: November 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. Exelon Generation Company, LLC Exelon Energy Company

[Docket No. ER02–207–000]

Take notice that on October 30, 2001, Exelon Generation Company, LLC, and Exelon Energy Company tendered for filing with the Federal Energy Regulatory Commission (Commission) service agreements under their market-based rate wholesale power sales tariffs under which they will make sales of capacity and energy to each other.

Comment date: November 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Pacific Gas and Electric Company

[Docket No. ER02–208–000]

Take notice that on October 31, 2001, Pacific Gas and Electric Company (PG&E) tendered for filing with the Federal Energy Regulatory Commission (Commission) revisions to its Reliability Must-Run Service Agreements (RMR Agreements) with the California Independent System Operator Corporation (ISO) for Helms Power Plant (Helms), PG&E First Revised Rate Schedule FERC No. 207, Humboldt Bay Power Plant (Humboldt Bay), PG&E First Revised Rate Schedule FERC No. 208, Hunters Point Power Plant (Hunters Point), PG&E First Revised Rate Schedule FERC No. 209, and San Joaquin Power Plant (San Joaquin), PG&E First Revised Rate Schedule FERC No. 211. This filing revises portions of the Rate Schedules to adjust the values for Contract Service Limits and Owner's Repair Cost Obligation (as to Humboldt Bay and Hunters Point only), Annual Fixed Revenue Requirement and related rates and charges (as to all Units), Variable O&M Rate (as to Humboldt Bay only), Unit Hourly Cap Heat Input (as to Hunters Point only), and the names and addresses of persons designated to receive Notices under the Agreement (as to all Units). These changes are expressly required and/or authorized under the RMR Agreement.

Copies of PG&E's filing have been served upon the ISO, the California Electricity Oversight Board, and the California Public Utilities Commission.

Comment date: November 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Rayburn Country Electric Cooperative, Inc.

[Docket No. ER02–210–000]

Take notice that Rayburn Country Electric Cooperative Inc., (Rayburn Electric) on October 31, 2001, tendered with the Federal Energy Regulatory Commission (Commission) proposed changes in its Rate Schedule WP–2 on file with the Federal Energy Regulatory Commission. Rayburn Electric has requested approval of a change in its formula rate to modify the Times Interest Earned Ratio (TIER) and Debt Service Coverage (DSC).

Rayburn Electric seeks to increase the TIER to 2.0 from a current level of 1.2 and increase the DSC to 1.5 from a current level of 1.1. The requested change will allow Rayburn Electric to increase equity levels. Rayburn has requested an effective date of December 31, 2001 to implement this change. Copies of the rate filing have been served upon Rayburn Electric's members.

Comment date: November 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Vermont Yankee Nuclear Power Corporation

[Docket No. ER02–211–000]

Take notice that on October 31, 2001, Vermont Yankee Nuclear Power Corporation (Vermont Yankee) submitted for filing with the Federal Energy Regulatory Commission (Commission) agreements modifying Vermont Yankee's wholesale power contracts (2001 Amendatory Agreement). Vermont Yankee states that the 2001 Amendatory Agreements are submitted in connection with the sale of its nuclear generating plant and would reduce its charges to wholesale purchasers.

Vermont Yankee states that copies of this filing have been served upon each purchaser served under this rate schedule and to each jurisdictional State Commission.

Comment date: November 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. PJM Interconnection, L.L.C.

[Docket No. ER02–212–000]

Take notice that on October 31, 2001, PJM Interconnection, L.L.C. (PJM), on behalf of Allegheny Electric Cooperative (Allegheny), submitted for acceptance or approval Allegheny's revenue requirement associated with the reactive power service production of Allegheny's William F. Matson Hydroelectric Generating Station. Allegheny makes this submission to enable PJM to collect this revenue requirement from PJM Open Access Transmission Tariff (PJM Tariff) Schedule 2 customers and allocate to Allegheny an appropriate share of the revenues collected by PJM for reactive power service.

To comply with the Federal Energy Regulatory Commission's September 27, 2001 letter order in Docket No. ER01–2735, PJM also submitted a revised Schedule 2 of the PJM Tariff that adds a chart listing, by PJM zone, each generator's annual and monthly reactive power service revenue requirement.

PJM requests an effective date of January 1, 2002, for the amendments.

Copies of this filing were served upon all PJM members and the state electric regulatory commissions in the PJM control area.

Comment date: November 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. Southwestern Public Service Company

[Docket No. ER02–213–000]

Take notice that on October 31, 2001, Southwestern Public Service Company (Southwestern) tendered for filing with the Federal Energy Regulatory Commission (Commission) a proposed amendment to its delivery point listing with Central Valley Electric Cooperative, Inc. (Central Valley).

The proposed amendment reflects a new delivery point for service to Central Valley.

Comment date: November 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

17. Consolidated Water Power Company

[Docket No. ER02–214–000]

Take notice that on October 31, 2001, Consolidated Water Power Company (CWP) tendered for filing with the Federal Energy Regulatory Commission (Commission) an umbrella service agreement with Wisconsin Public Service Corporation (WPSC) under CWP's market-based rates tariff, FERC Electric Rate Schedule No. 1.

CWP requests that the umbrella service agreement be made effective on June 11, 2001.

CWP states that it has served the Customer with a copy of this filing.

Comment date: November 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

18. California Independent System Operator Corporation

[Docket No. ER02–215–000]

Take notice that on October 29, 2001, the California Independent System Operator Corporation (ISO) submitted for filing with the Federal Energy Regulatory Commission (Commission), for informational purposes, amendments and revisions to a number of Demand Relief Agreements.

The ISO has served copies of this filing upon the Public Utilities Commission of the State of California, the California Energy Commission, the California Electricity Oversight Board, all parties with effective Scheduling Coordinator Service Agreements under the ISO Tariff, and parties with which the ISO has agreed to Summer 2001 Demand Relief Agreements.

Comment date: November 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

19. Rathdrum Power, LLC

[Docket No. ER02–216–000]

Take notice that on October 31, 2001, Rathdrum Power, LLC tendered for filing with the Federal Energy Regulatory Commission (Commission) under its market-based rate tariff the Fourth Amendment to the long-term service agreement between Rathdrum Power, LLC and Avista Energy, Inc., as assigned to Avista Turbine Power, Inc.

Comment date: November 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

20. Northeast Utilities Service Company, The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, Holyoke Power and Electric Company, Public Service of New Hampshire, Select Energy, Inc., Northeast Generation Company

[Docket No. ER02–217–000]

Take notice that on October 31, 2001, Northeast Utilities Service Company (NUSCO), on behalf of The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, Holyoke Power and Electric Company, and Public Service of New Hampshire, and Select Energy, Inc., and Northeast Generation Company (collectively, Applicants) tendered for filing a request to cancel the codes of conduct governing the business relationships among the NU Operating Companies, Select, and NGC and revised market based rate tariffs to remove certain restrictions on inter-affiliate transactions.

Applicants request an effective date of November 1, 2001.

Comment date: November 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–28279 Filed 11–9–01; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7102–6]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Regulation of Fuels and Fuel Additives: Gasoline Volatility; Reporting Requirements

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 the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Regulation of Fuels and Fuel Additives: Gasoline Volatility; Reporting Requirements for Refiners, Blenders, Importers, and Transferors of Gasoline Containing Ethanol, and Reporting Requirements for Parties Seeking a Testing Exemption (40 CFR 80.27), EPA ICR Number 1367.06, OMB Control Number 2060–0178, expiration date: December 31, 2001. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 13, 2001.

ADDRESSES: Send comments, referencing EPA ICR Number 1367.06 and OMB Control Number 2060–0178 to the following addresses: Susan Auby, United States Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW.,Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 260–4901, by E-mail at *Auby.Susan@epamail.epa.gov,* or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR Number 1367.06. For technical questions about the ICR contact James W. Caldwell, (202) 564–9303, *caldwell.jim@epa.gov*.

SUPPLEMENTARY INFORMATION:

Title: Regulation of Fuels and Fuel Additives: Gasoline Volatility; (40 CFR 80.27), EPA ICR Number 1367.06, OMB Control Number 2060–0178, expiring December 31, 2001. This is a request for an extension of a currently approved collection.

Abstract: Gasoline volatility, as measured by Reid Vapor Pressure (RVP) in pounds per square inch (psi), is controlled in the spring and summer in order to minimize evaporative carbon hydrocarbon emissions from motor vehicles. RVP ranges generally from about 7 psi to 9 psi, depending on location. The addition of ethanol to gasoline increases the RVP by about 1 psi. Gasoline that contains at least 9 volume percent ethanol is subject to a standard that is 1 psi greater. As an aid to industry compliance and EPA

enforcement, the product transfer document (PTD), that accompanies a shipment of gasoline containing ethanol, is required by regulation to contain a legible and conspicuous statement that the gasoline contains ethanol and the percentage concentration of ethanol. This is intended to deter the mixing within the distribution system, particularly in retail storage tanks, of gasoline which contains ethanol with gasoline which does not contain ethanol. Such mixing would likely result in a gasoline with an ethanol concentration of less than 9 volume percent but with an RVP above the standard. Parties wishing a testing exemption must submit certain information to EPA. EPA estimates that 3,000,000 PTDs are generated annually for gasoline blended with ethanol. 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 **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on July 3, 2001 (66 FR 35239). No comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 5 seconds per response. 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.

Respondents/Affected Entities: Refiners, Blenders, and Importers of gasoline blended with ethanol.

Estimated Number of Respondents: 1,000.

Frequency of Response: Daily.

Estimated Total Annual Hour Burden: 4,178 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR Number 1367.06 and OMB Control Number 2060–0178 in any correspondence.

Dated: October 29, 2001.

Oscar Morales, Director,

Collection Strategies Division.

[FR Doc. 01–28346 Filed 11–9–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7102–7]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Request for Applications for Critical Use Exemptions From the Phaseout of Methyl Bromide

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 the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Request for Applications for Critical Use Exemptions from the Phaseout of Methyl Bromide; ICR# 2031.01. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 13, 2001.

ADDRESSES: Send comments, referencing EPA ICR No. 2031.01, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby by phone at (202) 260–4901, by e-mail at *Auby.Susan@epa.gov* or download off the internet at *www.epa.gov/icr* and refer to EPA ICR No. 2031.01. For technical questions about the ICR contact Amber Moreen at EPA by phone at (202) 564–9295.

SUPPLEMENTARY INFORMATION:

Title: Request for Applications for Critical Use Exemptions from the Phaseout of Methyl Bromide (EPA ICR No. 2031.01). This is a new collection.

Abstract: With this Information Collection Request (ICR), EPA's Office of Air and Radiation and Office of Prevention, Pesticides and Toxic Substances are preparing to request applications for critical use exemptions from the phaseout of methyl bromide under the Clean Air Act (CAA). This ICR is one piece of the ongoing development of the voluntary application process. Entities applying for these exemptions will be asked to submit to EPA applications with necessary data to evaluate the need for a critical use exemption. Necessary data will include: information on past methyl bromide use; consideration of alternatives, including steps taken to find and implement alternatives, steps planned to find and implement alternatives, data relating to the technical feasibility of currently available alternatives, and data relating to the economic feasibility of currently available alternatives; and, additional information. This information collection is conducted to meet U.S. obligations under Article 2H of the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol) and to implement section 604(d)(6) of the CAA, added by section 764 of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Pub. L. No. 105–277; October 21, 1998).

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 **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 6/27/01 (66FR124); no public comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 108 hours per response. 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.

Respondents/Affected Entities: Respondents may include growers who use methyl bromide, applicators of methyl bromide, fumigators who use methyl bromide, companies associated with the storage of commodities that are fumigated with methyl bromide, and organizations/consortiums/associations of methyl bromide users.

Estimated Number of Respondents: 495 (largely composed of growers groups representing 50–100 individual growers).

Frequency of Response: Annual.

Estimated Total Annual Hour Burden: 229,050 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $604,071.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 2031.01 in any correspondence.

Dated: November 1, 2001.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 01–28347 Filed 11–9–01; 8:45 am]

BILLING CODE 6960–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7102–8]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Standards of Performance for New Stationary Sources; Polymeric Coating of Supporting Substrates Facilities, Subpart VVV

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 the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NSPS subpart VVV, Polymeric Coating of Supporting Substrates Facilities, OMB Control Number 2060–0181, expires December 31, 2001. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 13, 2001.

ADDRESSES: Send comments, referencing EPA ICR No. 1284.06 and OMB Control No. 2060–0181, to the following addresses: Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW.,Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 260–4901, by E-mail at *auby.susan@epamail.epa.gov,* or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1284.06. For technical questions about the ICR contact Steven Hoover at (202) 564–7007.

SUPPLEMENTARY INFORMATION:

Title: NSPS subpart VVV, Polymeric Coating of Supporting Substrates Facilities, (OMB Control No. 2060–0181; EPA ICR No. 1284.06), expiring 12/31/2001. This is a request for extension of a currently approved collection.

Abstract: All data in this ICR that is recorded and reported is required by 40 CFR part 60 subpart VVV. The monitoring and record keeping requirements include: maintain records of startups, shutdowns, malfunctions, periods where the continuous monitoring system is inoperative (60.7(b)), and of all measurements including performance test measurements, operating parameters of monitoring device results for catalytic or thermal incinerator, carbon adsorption system, condensation system, vapor capture system and/or total enclosure (60.744(c–h)); and monitor actual 12-month volatile organic compounds (VOC) use and make semi-annual estimate of projected VOC use, if affected facility uses less than 95 Mg/year of VOC or is subject to provisions specified in 60.742(c)(3) and other information required by this part recorded in a permanent file suitable for inspection. The file shall be retained for at least two years.

Following notification of startup, the reviewing authority might inspect the source to check if the pollution control devices are properly installed and operated. Performance test reports are used by the Agency to discern a source's initial capability to comply with the emission standard, and note the operating conditions specified above under which compliance was achieved. Data obtained during periodic visits by Agency personnel from records maintained by the respondents are tabulated and published for internal Agency use in compliance and enforcement programs. The semiannual reports are used for problem identification, as a check on source operation and maintenance, and for compliance determinations.

The required information consisting of emissions data and other information have been determined not to be private. However, any information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies. 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 **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on September 15, 2000, (65 FR 5955). No comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 83 hours per response. 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.

Respondents/Affected Entities: Owners/operators of Polymeric Coating plants.

Estimated Number of Respondents: 56.

Frequency of Response: Annual and semiannual when a source has excess emissions.

Estimated Total Annual Hour Burden: 14,366 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $563,300.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 1284.06 and OMB Control No. 2060–0181 in any correspondence.

Dated: November 1, 2001.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 01–28348 Filed 11–9–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7102–9]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Source Compliance and State Action Reporting

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 the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Source Compliance and State Action Reporting, EPA ICR Number 0107.07; OMB Control No. 2060–0096; expiration date December 31, 2001. The ICR describes the nature of the information collection and its expected burden and cost.

DATES: Comments must be submitted on or before December 13, 2001.

ADDRESSES: Send comments, referencing EPA ICR No. 0107.07 and OMB Control No. 2060–0096, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 260–4901, by E-mail at *auby.susan@epamail.epa.gov,* or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 0107.07. For technical questions about the ICR contact Mark Antell, (202) 565–5003 or via email at *antell.mark@epa.gov.*

SUPPLEMENTARY INFORMATION: Source Compliance and State Action Reporting; EPA ICR Number 0107.07; OMB Number 2060–0096; expiration date December 31, 2001.

Affected Entities: Entities potentially affected by this action are those State, District, Local, and Commonwealth governments that make air compliance information available to EPA on a quarterly basis via input to the AIRS Facility Subsystem (AFS) of the Aerometric Information Retrieval System (AIRS).

Abstract: Source Compliance and State Action Reporting is an activity whereby State, District, Local, and Commonwealth governments (hereafter referred to as ''States/locals'' or ''State and local agencies'') make air compliance information available to the U.S. Environmental Protection Agency (EPA or the Agency) on a quarterly basis via input to the AIRS Facility Subsystem (AFS) of the Aerometric Information Retrieval System (AIRS). The information provided to EPA includes compliance activities and determinations, and enforcement activities. EPA uses this information to assess progress toward meeting emission requirements developed under the authority of the Clean Air Act (CAA or the Act) to protect and maintain the atmospheric environment and the public health. The EPA and many of the State and local agencies access the data in AFS to assist them in the management of their air pollution control programs. Much of this collection activity is authorized and required in the following subsections of regulations implementing the Clean Air Act under ''Subpart Q—Reports'' in 40 CFR 51: sections 51.323(c)(1), 51.323(c)(2), 51.324 (a) and (b), and 51.327. Some of the activity also is authorized by 40 CFR 70.4(j)(1), which addresses submittal of information to EPA by State and local agencies, and 40 CFR 70.10(c)(1)(iii), which addresses EPA oversight of State and local agencies' compliance and enforcement efforts for major sources under Title V operating permit programs. Much of the information also is necessary for EPA to provide adequate oversight for other Federal programs delegated to States, such as the New Source Performance Standards (NSPS) in 40 CFR Part 60, National Emission Standards for Hazardous Air Pollutants (NESHAP) in 40 CFR Part 61 and Part 63, and New Source Review (NSR) permitting regulations in 40 CFR Part 51 and Part 52. The information also relates to the State Implementation Plan recordkeeping and reporting provisions in 40 CFR 51.116. Finally, the information is necessary for EPA to fulfill its oversight responsibilities to ensure that State Implementation Plans (SIPs) fulfill the testing, enforcement, and inspection requirements of 40 CFR 51.212, on an ongoing basis.

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 **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on February 1, 2001, (66 FR 8588). EPA received ten comments.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 240 hours per response. 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.

Respondents/Affected Entities: State, Local, District and Commonwealth environmental agencies.

Estimated Number of Respondents: 89.

Frequency of Response: Quarterly.

Estimated Total Annual Hour Burden: 85,496 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through

the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 0107.07 and OMB Control No. 2060–0096 in any correspondence.

Dated: November 1, 2001.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 01–28349 Filed 11–9–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

November 2, 2001.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 14, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, SW., Room 1–A804, Washington, DC 20554 or via the Internet to *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0995.

Title: Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures, 47 CFR Section 1.2105(c)(1) of the Commission's Rules, Anti-Collusion.

Form Numbers: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; State, Local or Tribal Governments.

Number of Respondents: 10.

Estimated Time per Response: 5 hours (2 hours w/in-house staff + 1.5 hours w/ in-house counsel + 1.5 hours to prepare and file w/FCC).

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 50 hours.

Total Annual Costs: $6,000.

Needs and Uses: The information requirement will enable the Commission to ensure that no bidder gains an unfair advantage over other bidders in its spectrum auctions and thus enhance the competitiveness and fairness of its auctions. The information collected will be reviewed and, if warranted, referred to the Commission's Enforcement Bureau for possible investigation and administrative action. The Commission may also refer allegations of anticompetitive auction conduct to the Department of Justice for investigation.

OMB Approval Number: 3060–0850.

Title: Quick-Form Application for Authorization in the Ship, Aircraft, Amateur, Restricted and Commercial Operator, and General Mobile Radio Services.

Form No.: FCC 605.

Type of Review: Revision to an Existing Collection.

Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 170,250.

Estimated Time Per Response: .44 hours.

Total Annual Burden: 74,910 hours.

Total Respondent Cost: $2,468,650.

Needs and Uses: FCC 605 application is a consolidated application form for Ship, Aircraft, Amateur, Restricted and Commercial Radio Operators, and General Mobile Radio Services and is used to collect licensing data for the Universal Licensing System.

The form is being revised to create an additional schedule to collect Exemptions for Ship Station Requirements and to clarify existing instructions for the general public.

The data collected on this form includes the applicant's Taxpayer Identification Number, and Date of Birth for Amateur and Commercial Operator licensing, however, this information will be redacted from public view.

There is a change to the estimated average burden and the number of respondents due to additional filings for Exemptions since the last submission.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–28266 Filed 11–9–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

October 31, 2001.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before December 13, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0548.

Title: Section 76.1708, Principal Headend; Sections 76.1709 and 76.1620, Availability of Signals; Section 76.56, Signal Carriage Obligations; and Section 76.1614, Identification of Must-Carry Signals.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 10,400.

Estimated Time per Response: 30 mins. to 1 hr.

Frequency of Response: Recordkeeping; On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 62,400 hrs.

Total Annual Costs: None.

Needs and Uses: FCC rules under 47 CFR sections 76.56, 76.1614, 76.1620, 76.1708, and 76.1709, require, among other things, that to fulfill the provisions of the signal carriage and must-carry statutes, each cable television system operator must maintain a public inspection file containing a list of broadcast television stations carried by its system and the designation and location of the principal headend; provide a list of must-carry signals within 30 days of receipt of a written request; and notify subscribers who were authorized to install additional receiver connections themselves of the broadcast stations that cannot be received without a converter box and how to obtain the additional connections, charges to buy or lease the converter box, and the installation instructions.

FCC and local public officials use these records when they examine the local cable television system's compliance with applicable rules and regulations.

OMB Control Number: 3060–0419.

Title: Section 76.94, Notification; Section 76.95, Exceptions; Section 76.105, Notifications; Section 76.106, Exceptions; Section 76.107, Exclusivity contracts; Section 76.109, Requirements for invocation of protection; and Section 76.1609, Non-duplication and syndicated exclusivity.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 5,555.

Estimated Time per Response: 30 mins. to 2 hrs.

Frequency of Response: One time requirement; Third party disclosure.

Total Annual Burden: 182,552 hrs.

Total Annual Costs: None.

Needs and Uses: FCC Rules under 47 CFR sections 76.94, 76.95, 76.105, 76.106, 76.107, 76.109, and 76.1609, require, among other things, that television stations, broadcast television stations, and program distributors notify cable system operators of non-duplication protection and exclusivity rights being sought within prescribed limitations and terms of contractual agreements. The various notification and disclosure requirements protect broadcasters that purchase the exclusive rights to transmit syndicated programming in their recognized markets.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–28267 Filed 11–9–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Network Reliability and Interoperability Council; Meeting

AGENCY: Federal Communications Commission.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons of the sixth meeting of the Network Reliability and Interoperability Council (Council) under its charter renewed as of January 6, 2000.

DATES: Friday, January 4, 2002 at 10 a.m. to 1 p.m.

ADDRESSES: Federal Communications Commission, 445 12th St. SW., Room TW–C305, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kent R. Nilsson at 202–418–0845 or TTY 202–418–2989.

SUPPLEMENTARY INFORMATION: The Council was established by the Federal Communications Commission to bring together leaders of the telecommunications industry and telecommunications experts from academic, consumer and other organizations to identify and recommend measures that would enhance network reliability.

At the January 4, 2002 meeting, the Council will receive reports on, and discuss, the conclusions of its focus groups: Network Reliability, Wireline Spectrum Management and Integrity, and Interoperability. The Council may also discuss such other matters as come before it at this meeting. Members of the general public may attend the meeting. The Federal Communications Commission will attempt to accommodate as many people as possible. Admittance, however, will be limited to the seating available. The public may submit written comments before the meeting to Kent Nilsson, the Commission's Designated Federal Officer for the Network Reliability and Interoperability Council, by email (KNILSSON@FCC.GOV) or U.S. mail (7–B452, 445 12th St. SW., Washington, DC 20554). Real Audio and streaming video access to the meeting will be available at *http://www.fcc.gov/.*

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–28416 Filed 11–9–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Technological Advisory Council; Meeting

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, this notice advises interested persons of the third meeting of the Technological Advisory Council (''Council'') under its new charter.

DATES: Wednesday, December 5, 2001 at 10 a.m.

ADDRESSES: Federal Communications Commission, 445 12th St. SW., Room TW–C305, Washington DC 20554.

SUPPLEMENTARY INFORMATION: Continuously accelerating technological changes in telecommunications design, manufacturing, and deployment require that the Commission be promptly informed of those changes to fulfill its statutory mandate effectively. The Council was established by the Federal Communications Commission to provide a means by which a diverse array of recognized technical experts from a variety of interests such as industry, academia, government, citizens groups, etc., can provide advice to the FCC on innovation in the

communications industry. The purpose of, and agenda for, the third meeting under the Council's new charter will be to organize the Council's efforts to fulfill its responsibilities under the new charter and consider such questions as the Commission may put before it. Members of the general public may attend the meeting. The Federal Communications Commission will attempt to accommodate as many persons as possible. Admittance, however, will be limited to the seating available. Unless so requested by the Council's Chair, there will be no public oral participation, but the public may submit written comments to Julius Knapp, the Council's Designated Federal Officer, before the meeting. Julius Knapp's e-mail address is *jknapp@fcc.gov.* His U.S. mail address is Julius Knapp, Deputy Chief, Office of Engineering and Technology, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–28415 Filed 11–9–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

[NOTICE 2001–16]

Filing Dates for the Oklahoma Special Election in the 1st Congressional District

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: Oklahoma has scheduled special elections to fill the U.S. House of Representatives seat in the First Congressional District being vacated by Congressman Steve Largent. There are three possible special elections, but only two may be necessary.

- Primary Election: December 11, 2001.
- Possible Runoff Election: January 8, 2002. In the event that one candidate does not achieve a majority vote in his/her party's Special Primary Election, the top two vote-getters will participate in a Special Runoff Election.
- General Election: February 12, 2002. However, if a Special Runoff Election is not necessary, the Special General will instead be held on January 8, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory J. Scott, Information Division, 999 E Street, N.W., Washington, DC 20463; Telephone: (202) 694–1100; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Principal Campaign Committees

Special Primary Only

All principal campaign committees of candidates *only* participating in the Oklahoma Special Primary shall file a 12-day Pre-Primary Report on November 29, 2001. (See chart below for the closing date for the report.)

Special Primary and General Without Runoff

If only two elections are held, all principal campaign committees of candidates participating in the Oklahoma Special Primary and Special General Elections shall file a 12-day Pre-Primary Report on November 29, 2001; a Pre-General Report on December 27, 2001; and a Post-General Report on February 7, 2002. (See chart below for the closing date for each report.)

Special Primary and Runoff Elections

If three elections are held, all principal campaign committees of candidates *only* participating in the Oklahoma Special Primary and Special Runoff Elections shall file a 12-day Pre-Primary Report on November 29, 2001; and a Pre-Runoff Report on December 27, 2001. (See chart below for the closing date for each report.)

Special Primary, Runoff and General Elections

All principal campaign committees of candidates participating in the Oklahoma Special Primary, Special Runoff and Special General Elections shall file a 12-day Pre-Primary Report on November 29, 2001; a Pre-Runoff Report on December 27, 2001; a Pre-General Report on January 31, 2002; and a Post-General Report on March 14, 2002. (See chart below for the closing date for each report.)

Unauthorized Committees (PACs and Party Committees)

Political committees that file on a semiannual basis during 2001 are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the Oklahoma Special Primary, Runoff or General Elections by the close of books for the applicable report(s). Consult the chart below that corresponds to the committee's situation for close of books and filing date information.

Since disclosing financial activity from two different calendar years on one report would conflict with the calendar year aggregation requirements set forth in the Commission's disclosure regulations, unauthorized committees will be required to file certain special election reports on two separate forms. If three elections are held (Primary, Runoff and General), unauthorized committees that are required to file the *Pre-General Report* must file this report on two separate forms: one covering 2001 activity, labeled as the Year-End Report; and the other covering only 2002 activity, labeled as the Pre-General Report. Both forms must be filed by January 31, 2002. On the other hand, if a Runoff Election is not necessary and only two elections are held (Primary and General), unauthorized committees that are required to file the *Post-General Report* must file this report on two separate forms: one covering 2001 activity, labeled as the Year-End Report; and the other covering only 2002 activity, labeled as the Post-General Report. Both forms must be filed by February 7, 2002.

Committees filing monthly that support candidates in the Oklahoma Special Primary, Special Runoff or Special General Elections should continue to file according to the monthly reporting schedule.

CALENDER OF REPORTING DATES FOR OKLAHOMA SPECIAL ELECTIONS

Report	Close of books [1]	Reg./cert. mailing date [2]	Filing date
Committee involved in only the special primary (12/11/01) must file:			
Pre-Primary	11/21/01	11/26/01	11/29/01
Year-End	12/31/01	01/31/02	01/31/02
If only two elections are held, committees involved in both the special primary (12/11/01) and the special general (01/08/02) [3] must file:			
Pre-Primary	11/21/01	11/26/01	11/29/01
Pre-General	12/19/01	12/24/01	12/27/01
Year-End (Waived).			
Post-General	01/28/02	02/07/02	02/07/02
If three elections are held, committees involved in only the special primary (12/11/01) and special runoff (01/08/02) must file:			
Pre-Primary	11/21/01	11/26/01	11/29/01
Pre-Runoff	12/19/01	12/24/01	12/27/01
Year-End	12/31/01	01/31/02	01/31/02
Committees involved in the special primary (12/11/01), special runoff (01/08/02) and the special general (02/12/02) must file:			
Pre-Primary	11/21/01	11/26/01	11/29/01
Pre-Runoff	12/19/01	12/24/01	12/27/01
Year-End (Waived).			
Pre-General	01/23/02	01/28/02	01/31/02
Post-General	03/04/02	03/14/02	03/14/02
Committees involved in only the special runoff (01/08/02) must file:			
Pre-Runoff	12/19/01	12/24/01	12/27/01
Year-End	12/31/01	01/31/02	01/31/02
If three elections are held, committees involved in only the special general (02/12/02) nust file:			
Year-End (Waived).			
Pre-General	01/23/02	01/28/02	01/31/02
Post-General	03/04/02	03/14/02	03/14/02
If two elections are held, committees involved in only the special general (01/08/02)[3] must file:			
Pre-General	12/19/01	12/24/01	12/27/01
Year-End (Waived).			
Post-General	01/28/02	02/07/02	02/07/02

[1] The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.
[2] Reports sent registered or certified mail must be postmarked by the mailing date; otherwise, they must be received by the filing date.
[3] If a Special Runoff Election is necessary, it will be held January 8, 2002, and the Special General Election will be held on February 12, 2002.

Dated: November 7, 2001.

Danny L. McDonald,

Chairman, Federal Election Commission.

[FR Doc. 01–28338 Filed 11–9–01; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1395–DR]

Oklahoma; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA–1395–DR), dated October 25, 2001, and related determinations.

EFFECTIVE DATE: October 25, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or madge.dale@fema.gov.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 25, 2001, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Oklahoma, resulting from severe storms, flooding and tornadoes on October 9–10, 2001, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Oklahoma.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Joe D. Bray of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Oklahoma to have been affected adversely by this declared major disaster: Washita County for Public Assistance.

All counties within the State of Oklahoma are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 01–28394 Filed 11–9–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1395–DR]

Oklahoma; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Oklahoma, (FEMA–1395–DR), dated October 25, 2001, and related determinations.

EFFECTIVE DATE: October 31, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or madge.dale@fema.gov.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Oklahoma is hereby amended to include Individual Assistance to the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 25, 2001:

Washita County for Individual Assistance (previously designated for Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 01–28395 Filed 11–9–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting of the Federal Interagency Committee on Emergency Medical

Services (FICEMS)

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of open meeting.

SUMMARY: FEMA announces the following open meeting.

Name: Federal Interagency Committee on Emergency Medical Services (FICEMS).

Date of Meeting: December 6, 2001.

Place: Building S, National Emergency Training Center (NETC), 16825 South Seton Avenue in Emmitsburg, Maryland 21727. Room assignment will be made available upon in-processing at the Security Office.

Time: 10:30 a.m.

Proposed Agenda: Review and submission for approval of previous FICEMS Committee Meeting Minutes; Ambulance Design Subcommittee report; Technology Subcommittee report; and presentation of member agency reports; reports of other interested parties.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public with limited seating available on a first-come, first-served basis. See the Response and Security Procedures below.

Response Procedures

Committee members and members of the general public who plan to attend the meeting must contact Cindy Wivell, on or before Tuesday, December 4, 2001, at the United States Fire Administration, 16825 South Seton Avenue, Emmitsburg, Maryland 21727, or by telephone at (301) 447–1083, or via e-mail at *Cindy.Wivell@fema.gov.* This is necessary to be able to create and provide a current roster of visitors to NETC per security directives.

Security Procedures

Increased security controls and surveillance are in effect at the National Emergency Training Center. All visitors must have a valid picture identification

card and their vehicles will be subject to search by security personnel. All visitors will be issued a visitor pass which must be worn at all times while on campus. Please allow adequate time before the meeting to complete the security process.

FICEMS Meeting Minutes

Minutes of the meeting will be prepared and will be available upon request 30 days after they have been approved at the next FICEMS Committee Meeting on March 7, 2002. The minutes will also be posted on the United States Fire Administration website at *http://www.usfa.fema.gov/ems/ficems.htm* within 30 days after their approval at the March 7, 2002, FICEMS Committee Meeting.

Dated: November 2, 2001.

Kenneth O. Burris, Jr.,

Acting U.S. Fire Administrator, United States Fire Administration.

[FR Doc. 01–28396 Filed 11–9–01; 8:45 am]

BILLING CODE 6718–08–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 November 27, 2001.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Baltz Family Partnership, L.P., Millstadt, Illinois; to retain voting shares of Millstadt Bancshares, Inc., Millstadt, Illinois, and thereby indirectly retain voting shares of First National Bank of Millstadt, Millstadt, Illinois.

Board of Governors of the Federal Reserve System, November 6, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–28300 Filed 11–9–01; 8:45 am]

BILLING CODE 6210–01–P

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 December 7, 2001.

A. Federal Reserve Bank of Cleveland (Stephen J. Ong, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. NB&T Financial Group, Inc., Employee Stock Ownership Plan, Wilmington, Ohio; to acquire 21.2 percent of the voting shares of NB&T Financial Group, Inc., Wilmington, Ohio, and thereby indirectly acquire voting shares of National Bank & Trust Company, Wilmington, Ohio.

B. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

I. Cavalry Bancorp, Inc., Murfreesboro, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Cavalry Banking, Murfreesboro, Tennessee.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Bedias Financial Corporation, Bedias, Texas, and Bedias Holdings, Inc., Wilmington, Delaware; to become bank holding companies by acquiring 100 percent of the voting shares of First State Bank of Bedias, Bedias, Texas.

Board of Governors of the Federal Reserve System, November 6, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–28301 Filed 11–9–01; 8:45 am]

BILLING CODE 6210–01–M

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: Approximately 10:00 a.m., Thursday, November 15, 2001.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Michelle A. Smith, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: November 8, 2001.

Margaret McCloskey Shanks,

Assistant Secretary of the Board.

[FR Doc. 01–28527 Filed 11–8–01; 2:35 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of Meeting of the Advisory Committee on Minority Health

AGENCY: Office of the Secretary, Office of Public Health and Science, Office of Minority Health DHHS.

ACTION: Notice is given of the third meeting.

The Advisory Committee on Minority Health will meet on Monday, December 10, 2001 from 9:00 a.m. to 5:00 p.m., and Tuesday, December 11, 2001, from 8:30 a.m.–12 Noon. The meeting will be held at the Hilton Hotel Washington, Thoroughbred Room, 1919 Connecticut Avenue, NW., Washington, DC.

The Advisory Committee will discuss racial and ethnic disparities in health, as well as, other related issues.

The meeting is open to the public. There will be an opportunity for public comment which will be limited to five minutes per speaker. Individuals who would like to submit written statements should mail or fax their comments to the Office of Minority Health at least two business days prior to the meeting.

For further information, please contact Ms. Sheila Merriweather, Rockwall II Building, 5515 Security Lane, Suite 1000, Rockville, Maryland 20852. Phone: 301–443–9923 Fax: 301–443–8280.

Dated: October 30, 2001.

Nathan Stinson, Jr.,

Deputy Assistant Secretary for Minority Health.

[FR Doc. 01–28382 Filed 11–9–01; 8:45 am]

BILLING CODE 4150–29–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Advisory Committee on Immunization Practices (ACIP) Teleconference.

Time and Date: 12 p.m.–3 p.m., November 8, 2001.

Place: Teleconference call will originate at the Centers for Disease Control and Prevention in Atlanta, Georgia.

Status: Closed.

Purpose: The Committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents. In addition, under 42 U.S.C. 1396s, the Committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children (VFC) program, along with schedules regarding the appropriate periodicity, dosage, and contraindications applicable to the vaccines.

Matters to be Discussed: The teleconference will convene in closed session from 12:00 p.m. to 3:00 p.m. on November 8, 2001. The purpose of this closed session is to discuss human exposure to B. anthracis spores in humans in the United States. This teleconference will be closed to the public in accordance with provisions set forth in 5 U.S.C. subsections 552b (c)(1), (c)(7) and (c)(9)(B), and the Determination of the Associate Director for Management and Operations, CDC, pursuant to subsection 10(d) of Pub. L. 92–463.

Supplementary information: This conference call is scheduled for 12 p.m. Eastern Standard Time. As provided under 5 U.S.C. 552b(e) and 41 CFR section 102–3.150(b), the public health urgency of this agency business requires that the meeting be held on or prior to the first available date for publication of this notice in the **Federal Register**.

Due to programmatic issues that had to be resolved, the **Federal Register** notice is being published less than fifteen days before the date of the meeting.

Contact Person for More Information: Gloria A. Kovach, Program Analyst, Epidemiology and Surveillance Division, National Immunization Program, CDC, 1600 Clifton Road, NE, m/s E61, Atlanta, Georgia 30333. Telephone 404/639–8096.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: November 7, 2001.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 01–28434 Filed 11–8–01; 11:55 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Idaho National Engineering and Environmental Laboratory Health Effects Subcommittee (INEELHES)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Idaho National Engineering and Environmental Laboratory Health Effects Subcommittee (INEELHES).

Times and Dates: 8:30 a.m.–4:45 p.m., December 11, 2001. 8:30 a.m.–3:45 p.m., December 12, 2001.

Place: WestCoast Pocatello Hotel, 1555 Pocatello Creek Road, Pocatello, Idaho 83201, telephone, (208) 233–2200, fax (208) 234–4524.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background: Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE, and replaced by MOUs signed in 1996 and 2000, the Department of Health and Human Services (HHS) was given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, a memo was signed in October 1990 and renewed in November 1992, 1996, and in 2000, between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or ''Superfund''). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose: This subcommittee is charged with providing consensus advice and recommendations to the Director, CDC, and the Administrator ATSDR, regarding community concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site.

Matters to be Discussed: Agenda items include an update regarding progress of current studies; a review from the Chairs' meeting of the COSMOS evaluation report; strategies to develop INEELHES' internal evaluation; an overview of the Idaho National Engineering and Environmental Laboratory; and a presentation by ATSDR. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Natasha Friday, Public Health Advisor, Radiation Studies Branch, Division of Environmental Hazards and Health Effects,

National Center for Environmental Health, CDC, 1600 Clifton Road, N.E. (E–39), Atlanta, GA 30333, telephone (404) 498–1800, fax (404) 498–1811.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and ATSDR.

Dated: November 6, 2001.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 01–28330 Filed 11–9–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: April 2002 Current Population Survey Supplement on Child Support.

OMB No. 0992–0003.

Description: Collection of these data will assist legislators and policymakers in determining how effective their policymaking efforts have been over time in applying the various child support legislation to the overall child support enforcement picture. This information will help policymakers determine to what extent individuals on welfare would be removed from the welfare rolls as a result of more stringent child support enforcement efforts.

Respondents: Individuals and households.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per responses	Total burden hours
APD	50	1.84	60	5520
Biennial	50	1	1.5	75
Estimated Total Annual Burden Hours:				5,751.5

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW, Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: November 7, 2001.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 01–28383 Filed 11–9–01; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: LIHEAP Quarterly Allocation Estimates Form ACF–535.

OMB No.: 0970–0037.

Description: The LIHEAP Quarterly Allocation Estimates Form–535 is a one-page form that is sent to 50 State grantees and to the District of Columbia. It is also sent to Tribal Government grantees that receive over $1 million annually for the Low Income Home Energy Assistance Program (LIHEAP). Grantees are asked to complete and submit the form in the 4th quarter of each year. The data collected on the form are the grantee's estimates of obligations they expect to make each quarter of the upcoming fiscal year. This is the only method used to request anticipated distributions of the grantee's LIHEAP funds. The information is used to develop apportionment requests and make grant awards based on each grantee's need. Information collected on this form is not available through any other Federal source. Submission of the form is voluntary.

Respondents: 50 States, the District of Columbia and Tribal Governments that receive over $1 million annually.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–353	55	1	.25	14
Estimated Total Annual Burden Hours:				14

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written

comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: November 6, 2001.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 01–28384 Filed 11–9–01; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Information collection from applicants who will respond to Request for Applications for funding of seven OCS competitive grants.

OMB No.: 0970–0062.

Description: The Office of Community Services (OCS) is requesting approval to continue the use of its program announcements to collect information which will enable the agency to determine which projects to fund and the amount of the grant awards. The programs covered include: Community Food and Nutrition; Community Economic Development Discretionary Grants Program; Low Income Home Energy Assistance Program Residential Energy Assistance Challenge Option Program (REACH); LIHEAP Clearinghouse T&TA; Job Opportunities for Low-Income Individuals; CSBG Training and Technical Assistance and Capacity Building; and Family Violence Prevention and Services Program.

Information collected from the requirements contained in these program announcements will be the sole source of information available to OCS in reviewing applications leading to awards of discretionary grants to eligible applicants.

The application forms that will be used contain information for competitive review in accordance with the program announcements' guidelines. The data provided is necessary to compute the amount of the grant in relation to proposed project activities by the ACF Grant Officers.

OMB recommended that ACF submit one information collection package covering all OCS discretionary program announcements, since the same application form is used in each announcement. This information collection was last approved in 1998; it is due to expire October 31, 2001. Since the last approval, we have added the Residential Energy Assistance Challenge Option Program (REACH) as an additional Low Income Home Energy Assistance Program.

Respondents: State and local governments, Indian tribes, not-for-profit organizations.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Community Economic Development Announcement	250	1	28	7,000
Community Food and Nutrition Announcement	250	1	10	2,500
LIHEAP Clearinghouse (RFP) T&TA	5	1	10	50
LIHEAP Reach Announcement	45	1	10	450
JOLI Announcement	170	1	30	5,100
T&TA (CSBG) Announcement	70	1	10	700
Family Violence Announcement	150	1	30	4,500
Estimated Total Annual Burden Hours:				20,300

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW, Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: November 1, 2001.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 01–28385 Filed 11–9–01; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–2079]

Draft Guidance for Reviewers on the Integration of Study Results To Assess Concerns About Human Reproductive and Developmental Toxicities; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for reviewers entitled ''Integration of Study Results to Assess Concerns About Human Reproductive and Developmental Toxicities.'' This draft guidance describes a process for estimating human developmental and reproductive risks as a result of drug exposure when definitive human data are unavailable. The integration process is intended to estimate the likelihood a drug will increase the risk of adverse human developmental or reproductive effects.

DATES: Submit written or electronic comments on the draft guidance by March 13, 2002. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. See

the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Joseph J. DeGeorge, Center for Drug Evaluation and Research (HFD–24), Food and Drug Administration,1451 Rockville Pike, Rockville, MD 20852, 301–594–5476.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for reviewers entitled ''Integration of Study Results to Assess Concerns About Human Reproductive and Developmental Toxicities.'' This draft guidance describes a process for estimating human reproductive and development risks as a result of drug exposure. The integration process is intended to estimate the likelihood a drug will increase the risk of adverse human reproductive or developmental effects. The process is based on the evaluation of a complete set of reproductive and general toxicology studies conducted in animals, pharmacokinetics, and the absorption and distribution of metabolic elimination (ADME) studies conducted in animals and humans. The evaluation also compares animal and human drug-induced pharmacodynamic responses, drug metabolism and disposition, drug-induced pharmacologic and toxic effects, and drug exposures in animal studies versus those at the highest recommended dose in humans.

An earlier version of this integration tool was presented in a public meeting announced on May 4, 1999 (64 FR 23844), and held on June 24, 1999. The draft integration tool, slides from the presentations at the meeting, and comments received subsequent to the meeting were placed on the FDA Web site and in docket number 99N–2079. This draft guidance incorporates modifications as a result of the public meeting and comments submitted to the public docket.

The type and extent of the available toxicology data may vary depending on the biologic actions of the product, test systems available for studying the compound, and other factors. In some instances, the data may not include all desirable reproductive toxicology, general toxicology, pharmacokinetics, and ADME studies. Such limitations of the available data may preclude use of the integration process (e.g., often the case for biologic products). However, even if the integration process cannot be used, the product should be evaluated to the greatest extent possible in accordance with sound scientific principles and the considerations described in this document.

For purposes of this draft guidance, all reproductive risks are divided into one of two broad categories of toxicity—reproductive and developmental toxicity, which are further subdivided into seven classes of toxicity. The three classes of reproductive toxicity include: Effects on fertility, parturition, and lactation. The four classes of developmental toxicity include: Mortality, dysmorphogenesis (structural alterations), alterations to growth, and functional toxicities. For a given drug, each class of toxicity should ordinarily be assessed individually.

The criteria presented in the draft guidance are derived from a limited sample of pharmaceuticals where the clinical outcomes are reasonably well defined. The Center for Drug Evaluation and Research (CDER) believes that using specific criteria and benchmark values to assess the potential to increase risk to humans for adverse reproductive and developmental outcomes will result in a more unbiased and uniform evaluation. CDER also believes this approach will help identify specific areas of additional information about a pharmaceutical that would be useful in more fully defining risk and allow specific analysis of areas of disagreement that influence the risk evaluation. CDER is particularly interested in comment on the appropriateness of the values used to define levels of increased risk for products with positive signals for reproductive or developmental toxicity and on experience in applying the outlined evaluation approach using information that may exist in public and commercial domains.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on ''Integration of Study Results to Assess Concerns About Human Reproductive and Developmental Toxicities.'' It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments on the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: November 1, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–28258 Filed 11–9–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01D–0195]

Draft ''Guidance for FDA Staff: The Leveraging Handbook, An Agency Resource for Effective Collaborations;'' Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft document entitled ''Guidance for FDA Staff: The Leveraging Handbook, An Agency Resource for Effective Collaborations'' dated November 2001. The draft guidance document, when finalized, is intended to provide information to assist FDA staff in creating and implementing effective collaborations consistent with relevant legal, ethical, and policy considerations. FDA and its stakeholders use collaborations to take advantage of and amplify the unique resources possessed by each to address a variety of public health issues. The draft guidance document enumerates factors that FDA employees should consider, and the procedures they should follow, when planning a leveraged collaboration.

DATES: Submit written or electronic comments on the draft guidance to

ensure their adequate consideration in preparation of the final document by February 11, 2002. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of ''Guidance for FDA: The Leveraging Handbook, An Agency Resource for Effective Collaborations'' dated November 2001 to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER-FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit written comments on the document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Stephen M. Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft document entitled ''Guidance for FDA Staff: The Leveraging Handbook, An Agency Resource for Effective Collaborations'' dated November 2001. ''Leveraging'', as used by FDA, describes formal or informal relationships or agreements with others outside FDA that enhance the agency's ability to meet its public health mission. Leveraged collaborations between FDA and non-FDA partners, such as industry, academia, consumer groups, scientific experts, public health providers, States, and other government agencies, are not new to the agency. For many years, FDA has used collaborations to accomplish a wide variety of tasks related to fulfilling its public health mission. FDA is careful to structure its collaborations so that the agency's regulatory independence, impartiality, and integrity are preserved. Successful collaborations used by FDA and its partners range in size and complexity from simple daylong workshops and training sessions to the creation of cooperatively administered centers that provide critical product-related safety information and expertise, i.e., the National Center for Food Safety and Technology, the Joint Initiative for Food Safety and Nutrition, and the Product Quality Research Institute. Other collaborations involve conducting research to improve the safety, efficacy, purity, or potency of regulated products and convening experts to evaluate emerging public health issues and to recommend actions that should be taken to address the issues.

FDA held two public meetings that were announced in the **Federal Register** to discuss ways in which FDA could improve and increase collaborations with outside organizations (65 FR 8365, February 18, 2000). The meetings were held on March 23, 2000, at Stanford University, and on April 12, 2000, at Duke University. More than 300 people attended the meetings and more than 25 leveraging proposals were presented to the agency. FDA is currently reviewing the proposals. To review the transcripts of the meetings, you can visit the FDA Dockets Management Branch Web site at *http://www.fda.gov/ohrms/dockets/dockets/00n0001/00n0001.htm*.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115; 65 FR 56468, September 19, 2000). This draft guidance document represents the agency's current thinking on the formation and implementation of leveraged collaborations between FDA and outside organizations. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations.

II. Comments

This draft document is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Dockets Management Branch (address above) written or electronic comments regarding this draft guidance document. Submit written comments to ensure adequate consideration in preparation of the final document by February 11, 2002. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in the brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the draft guidance document at either *http://www.fda.gov/oc/leveraging/handbook.html* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: August 31, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–28386 Filed 11–9–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Council on Graduate Medical Education; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of December 2001:

Name: Council on Graduate Medical Education (COGME).

Date and Time: December 5, 2001, 8:30 a.m.–4:30 p.m., December 6, 2001, 8:30 a.m.–12 p.m.

Place: Holiday Inn, Capitol, Columbia Ballroom, 550 C Street, SW., Washington, DC 20024.

The meeting is open to the public.

Agenda: The agenda for the first day, December 5, will include: Welcome and opening comments from the Acting Administrator, Health Resources and Services Administration; the Associate Administrator for Health Professions; and the Acting Executive Secretary of COGME. There will be a panel of speakers on the topic of ''Models of Health Care Delivery.'' The afternoon agenda includes a presentation on ''Substitutability in the Physician Workforce.'' The Council's three workgroups will convene. They are: Workgroup on Diversity, Workgroup on Graduate Medical Education Financing, and Workgroup on Workforce.

The agenda for the second day, December 6, will include reports from the three workgroup chairs. Work will continue on COGME's Final Report. There will be a discussion on plans for future work and new business.

Anyone requiring information regarding the meeting should contact Stanford M. Bastacky, D.M.D., M.H.S.A., Acting Executive Secretary, Council on Graduate Medical Education, Division of Medicine and Dentistry, Bureau of Health Professions, Room 9A–27, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone (301) 443–6326,

Agenda items are subject to change as priorities dictate.

Dated: November 6, 2001.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 01–28259 Filed 11–9–01; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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 meeting of the National Cancer Advisory Board.

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.

A portion of the meeting will be closed to the public in accordance with the provisions set forth in section 552b(6), as amended. The discussions could disclose personal information concerning NCI Staff and/or its contractors, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Advisory Board.

Dates: December 4–5, 2001.

Open: December 4, 2001, 8:45 a.m. to 4 p.m.

Agenda: Program reports and presentations; Business of the Board.

Place: National Cancer Institute, 900 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Marvin R. Kalt, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327, (301) 496–5147.

Name of Committee: National Cancer Advisory Board.

Closed: December 4, 2001, 4 p.m. to Recess.

Agenda: Review intramural program site visit outcomes; Discussion of confidential personnel issues.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Marvin, R. Kalt, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327, (301) 496–5147.

Name of Committee: National Cancer Advisory Board.

Open: December 5, 2001, 8:30 a.m. to Adjournment.

Agenda: Program reports and presentations; Business of the Board.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Marvin R. Kalt, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327, (301) 496–5147,

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's homepage: deainfo.nci.nih.gov/odvisory/ncab.htm, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399 Cancer Control, National Institutes of Health, HHS)

Dated: November 2, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–28317 Filed 11–9–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant aplications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Chemoprevention of Tobacco-Related Cancers in Former Smokers.

Date: December 6, 2001.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, 6130 Executive Boulevard., Conference Room J, Rockville, MD 20852.

Contact Person: Timothy C. Meeker, MD, Scientific Review Administrator, Special Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8088, Rockville, MD 20852, 301/594–1279.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 2, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–28318 Filed 11–9–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, NCI Scholars Program RFA–CA–01–026.

Date: December 6, 2001.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, Division of Extramural Activities, Grants Review Branch, 6116 Executive Boulevard, 8th Floor, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Mary Bell, PhD., Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, PHS, DHHS, 6116 Executive Boulevard, Room 8113, Bethesda, MD 20892–8328, 301–496–7978.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 2, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–28319 Filed 11–9–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee E—Cancer Epidemiology, Prevention & Control.

Date: December 5–6, 2001.

Time: 7 p.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Ave., Palladian West, Chevy Chase, MD 20815.

Contact Person: Mary C. Fletcher, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Rm 8115, Bethesda, MD 20852, 301/496–7413.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 2, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–28320 Filed 11–13–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Chemoprevention of Tobacco-Related Cancers in Former Smokers.

Date: December 7, 2001.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, 6130 Executive Boulevard, Conference Room J, Rockville, MD 20852.

Contact Person: Timothy C. Meeker, MD, Scientific Review Administrator, Special Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8088, Rockville, MD 20852, 301/594–1279.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 2, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–28321 Filed 11–9–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center Institute Special Emphasis Panel Training Grants.

Date: November 19, 2001.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: 6116 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Olivia Preble Bartlett, PhD, Chief, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, 8th Floor, Room 8121, 6116 Executive Boulevard, Rockville, MD 20892–7405, 301/594–2501.

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.

Any interested person may file written comments from the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 1, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–28325 Filed 11–9–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Minority Institution/Cancer Centers Partnerships.

Date: December 3–4, 2001.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Baltimore Inner-Harbor, 110 S. Eutaw Street, Baltimore, MD 21201.

Contact Person: Ray Bramhall, PhD, Scientific Review Administrator, Special Review, Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Suite 8060, Rockville, MD 20892, 301/594–1403.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 1, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–28326 Filed 11–9–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; Special Emphasis Panel.

Date: November 8, 2001.

Time: 10:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: 6000 Executive Blvd., Suite 409, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sean N. O'rourke, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2861.

This notice is being published less than 15 days prior to the meeting due to the limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Alcohol Abuse and Alcoholics Special Emphasis Panel.

Date: December 12, 2001.

Time: 11:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: 6000 Executive Blvd., Rm 409, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: L. Tony Beck, PhD, Scientific Review Administrator, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., MSC 7003, Bethesda, MD 20892–7003, 301–443–0913, *lbeck@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: November 1, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–28310 Filed 11–9–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Initial Review Group; Biomedical Research and Research Training Review Subcommittee A.

Date: November 8, 2001.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Ave, Chevy Chase, MD 20815.

Contact Person: Rebecca H Johnson, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS19J, Bethesda, MD 20892, (301) 594–2771, *hackettr@nigms.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: November 1, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–28312 Filed 11–9–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: December 14, 2001.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review an evaluate contract proposals.

Place: 6100 Executive Blvd., 5th Floor, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Hameed Khan, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: November 1, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–28313 Filed 11–9–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: December 4, 2001.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: 6100 Executive Blvd., DSR Conf. Rm., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Hameed Khan, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892, (301) 496–1485).

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: November 1, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–28314 Filed 11–9–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: November 28, 2001.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, Chevy Chase, MD 20815.

Contact Person: Marita Hopmann, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Building, Room 5E01, Bethesda, MD 20892, (301) 435–6911, *hopmannm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Programs Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: November 1, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–28322 Filed 11–9–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Board on Medical Rehabilitation Research.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Advisory Board on Medical Rehabilitation Research.

Date: December 3–4, 2001.

Time: December 3, 2001, 8:45 a.m. to 5 p.m.

Agenda: The agenda will include reports by the Director, NICHD and Director, NCMRR, update on NCMRR Training activities, discussion of the future of medical, rehabilitation, and other business of the Board.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Time: December 4, 2001, 8:45 a.m. to adjournment.

Agenda: Same as Above.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Ralph M. Nitkin, PhD, Director, BSCD, National Center for Medical Rehabilitation Research, National Institute of Child Health and Human Development, NIGH, 6100 Building, Room 2A03, Bethesda, ED 20892, (301) 402–4206.

Information is also available on the Institute's/Center's home page *www.nichd.nih.gov/about/ncmrr.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: November 1, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–28323 Filed 11–9–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Minority Programs Review Committee, MBRS Review Subcommittee B.

Date: November 7–8, 2001.

Time: 8:30 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Michael A. Sesma, PhD, Office of Scientific Review, NIGMS, Natcher Building, Room 1AS19, 45 Center Drive, Bethesda, MD 20892, (301) 594–2048.

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: November 1, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–28324 Filed 11–9–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, November 15, 2001, 8:30 a.m. to November 16, 2001, 4 p.m., Embassy Square, 2000 N Street, NW., Washington, DC 20036 which was published in the **Federal Register** on October 26, 2001, 66 FR 54269–54271.

The meeting will be held at the Westin Grand Hotel, 2350 M Street, NW., Washington, DC 20037. The time and dates remain the same. The meeting is closed to the public.

Dated: November 2, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–28315 Filed 11–9–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review, Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, November 15, 2001, 8 a.m. to November 16, 2001, 5 p.m., Embassy Square, 2000 N Street, NW., Washington, DC, 20036 which was published in the **Federal Register** on October 26, 2001, 66 FR 54269–54271.

The meeting will be held at the Westin Grand Hotel, 2350 M Street, NW., Washington, DC 20037, from 8:30 a.m. to 5 p.m. The dates remain the same. The meeting is closed to the public.

Dated: November 2, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–28316 Filed 11–9–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose

confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 5–6, 2001.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Paul D. Wagner, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, (301) 435–6809, wagnerp@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 5, 2001.
Time: 3 p.m. to 4:30 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Lee S. Mann, PhD, JD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, (301) 435–0677.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 6, 2001.
Time: 1 p.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.
Contact Person: Tracy E. Orr, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Room 5118, Bethesda, MD 20892, (301) 435–1259, orrt@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 8–9, 2001.
Time: 9 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.
Contact Person: Thomas A. Tatham, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7848, Bethesda, MD 20892, (301) 435–0692, tathamt@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 9, 2001.
Time: 8:30 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Washington Marriott Hotel, 1221 22nd Street NW., Washington, DC 20037.
Contact Person: Jean D. Sipe, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892–7814, 301/435–1643, sipej@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 13, 2001.
Time: 11 a.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call)
Contact Person: Dennis Leszczynski, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892, (301) 435–1044.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 14, 2001.
Time: 12 p.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Anita Miller Sostek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, (301) 435–1260.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 15, 2001.
Time: 9 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.
Contact Person: Anita Miller Sostek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, (301) 435–1260.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 19, 2001.
Time: 11:30 a.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Mary Sue Krause, MED, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC, Bethesda, MD 20892, (301) 435–0902, mkrause@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 19, 2001.
Time: 1:30 p.m. to 2:30 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Luci Roberts, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC, Bethesda, MD 20892, (301) 435–0692.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 27–29, 2001.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Hanover Inn, On the Green, PO Box 151, Hanover, NH 03755.
Contact Person: Tracy E. Orr, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Room 5118, Bethesda, MD 20892, (301) 435–1259, orrt@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 27, 2001.
Time: 8:30 a.m. to 5 p.m.
Agenda: to review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: William C. Benzing, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5190, MSC 7846, Bethesda, MD 20892, (301) 435–1254, benzingw@mail.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 27, 2001.
Time: 2:30 p.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102 MSC 7814, Bethesda, MD 20892, (301) 435–1786.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 27, 2001.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Daniel R. Kenshalo, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1255.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 30, 2001.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: William Benzing, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5192, MSC 78346, Bethesda, MD 20892, (301) 435–1278.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93,333, 93.337, 93.393–93.396, 93.837, 93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health HHS)

Dated: November 1, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–28327 Filed 11–9–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, November 7, 2001, 6 p.m. to November 8, 2001, 4 p.m., Embassy Square, 2000 N Street, NW., Washington, DC 20036 which was published in the **Federal Register** on October 23, 2001, 66 FR 53623–53626.

The meeting will be held at the Washington Marriott Hotel, 1221 22nd Street, NW., Washington, DC 20037. The time and dates remain the same. The meeting is closed to the public.

Dated: November 1, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–28328 Filed 11–9–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Secretary's Advisory Committee on Xenotransplantation.

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 section 552b(c)(4), Title 5 U.S.C., as amended because disclosure of such information is likely to disclose privileged or confidential trade secrets and commercial information.

Name of Committee: Secretary's Advisory Committee on Xenotransplantation.

Date: November 29–30, 2001.

Open: November 29, 2001; 8:30 a.m. to 5:30 p.m.

Agenda: Presentations and discussion of the development of a national xenotransplantation database and biological archive and updates on recent meetings and scientific advances in xenotransplantation. Time will be allotted to concurrent breakout sessions and plenary progress reports of the SACX Working Groups on informed consent issues and on the state of the science of xenotransplantation. There will also be opportunity for public commentary.

Place: Sheraton Columbia Hotel, 10207 Wincopin Circle, Columbia, MD 21044.

Open: November 30, 2001, 8:30 a.m. to 10:30 a.m.

Agenda: Overviews of clinical xenotransplantation trials and retroviral screening practices and findings, and background on xenotransplantation products that involve ex vivo contact with well characterized cell lines.

Place: Sheraton Columbia Hotel, 10207 Wincopin Circle, Columbia, MD 21044.

Closed: November 30, 2001, 10:30 a.m. to 2 p.m.

Agenda: Committee will be briefed by the Food and Drug Administration on specific confidential information concerning clinical trials in the area of xenotransplantation.

Place: Sheraton Columbia Hotel, 10207 Wincopin Circle, Columbia, MD 21044.

Contact Person: Mary Groesch, Ph.D., Executive Director, Secretary's Advisory Committee on Xenotransplantation, Office of Science Policy, Rockledge I, Room 750, Bethesda, MD 20892, 301–496–9838.

Information is also available on the Office's home page: www4.od.nih.gov/oba/xenomtg.htm, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program, National Institutes of Health, HHS)

Dated: November 1, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–28311 Filed 11–9–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program (NTP); National Institute of Environmental Health Sciences (NIEHS); Notice of the Rescheduled Date, New Location, and Revised Agenda for the Workshop, ''Assessment of the Allergenic Potential of Genetically Modified Foods''

Background

The NIEHS and the NTP are organizing a workshop to bring together experts in food allergy, genetically modified crops, and the regulatory aspects of these products, along with bench scientists and clinicians. The workshop's focus is to examine the current state of knowledge in this area, identify the critical issues regarding genetically modified foods, and develop testing strategies to examine the allergenicity of these compounds.

This meeting was previously announced in the **Federal Register** [August 16, 2001, Volume 66, Number 159, Pages 43201–43022]. The workshop was postponed and is now rescheduled for December 10–12, 2001 at the Sheraton, 1 Europa Drive, Chapel Hill, NC (919–968–4900). This meeting is open to the public.

Revised Tentative Meeting Agenda

Assessment of the Allergenic Potential of Genetically Modified Foods

December 10–12, 2001

Sheraton, 1 Europa Drive, Chapel Hill, NC

Monday, December 10, 2001

7:30–8:30 a.m. Registration
Welcome
Introduction
• What are the Issues?—Dr. Dean Metcalfe
• Conclusions from the November 2000 National Center for Food Safety & Technology Conference—Dr. Steven Gendel

Session I: Clinical Aspects and Clinical Investigation of Food Allergy

• Clinical Spectrum of Food Allergy—Dr. Hugh Sampson
• Clinical Assessment of Food Allergy to Novel Proteins—Dr. Sam Lehrer
• Contribution of Inhalation Allergenicity—Occupational / Rural Exposures—Dr. Leonard Bernstein
• Serum Screening and Challenges for Allergenicity Safety Assessment—Dr. Robert Hamilton
12–1:00 p.m. Lunch
• Post-Marketing Surveillance—Dr. Carol Rubin

Session II: Toxicological Evaluation of Novel Proteins

• Assessment of Protein Structure, Sequence Homology and Stability—Drs. Tong-Jen Fu and Gary Bannon

Session III: Regulatory Considerations

Panel Discussion
• A Viewpoint from the U.S. Food and Drug Administration—Dr. Kathleen Jones
• A Viewpoint from the U.S. Environmental Protection Agency—Dr. John Kough
• A Viewpoint from Industry—Drs. Katherine Sarlo, Val Giddings, and James Astwood

Session IV: Risk Communication

• Biotechnology and How the Public Perceives It—Drs. Thomas Hoban and Rebecca Goldburg
5:00 p.m. Open Discussion

Tuesday, December 11, 2001

7:30–8:30 a.m. Registration

Session V: Toxicologic Methods of Safety Assessment

• Oral and Intraperitoneal Exposure of Brown Norway Rats—Dr. Andre Penninks
• Oral and Systemic Exposure of BALB/c Mice—Dr. Ian Kimber
• Assessment of Allergenicity Using Swine Models—Dr. Ricki Helm
• Assessment of Allergenicity in Dogs I—Dr. Robert Buchanan
• Assessment of Allergenicity in Dogs II—Dr. Bruce Hammerberg
12–1:00 p.m. Lunch
Charge to Breakout Groups

Session VI—Breakout Group Meetings

1. Use of Human Clinical Data for Risk Assessment
2. Animal Models to Assess Food allergy
3. Biomarkers of Exposure and Effect
4. Sensitive Populations
5. Models of Dose Response
6. Post-market Surveillance

Invited meeting participants will divide into these six breakout groups. The public can attend breakout groups as observers, as space permits, and time will be available for observer questions and discussion. Information about breakout groups registration is available in the meeting registration packet (see below).
5:00 p.m. Adjourn

Wednesday, December 12, 2001

7:30–8:30 a.m. Registration

Session VII—Breakout Group Presentations

• Individual Group Presentations

Meeting Summary and Discussion
Consensus Building and Agreement on the Way Forward
12:30 p.m. Adjourn

Meeting Registration Information

This meeting is open to the public and the public is invited to attend as observers. The number of observers will be limited only by the space available. Time will be provided for open discussion each day. Due to space limitations, advance registration is requested by November 30, 2001.

Registration materials as well as further details about the workshop are available on the NTP meeting Web site (*http://ntp-server.niehs.nih.gov/htdocs/Liason/GMFoodPg.html*). For questions about registration information, contact the NTP Office of Liaison and Scientific Review, 111 T.W. Alexander Drive, NIEHS, MD A3–02, Research Triangle Park, NC 27709: *liaison@starbase.niehs.nih.gov*; 919–541–0530 (telephone); 919–541–0295 (fax).

Dated: October 31, 2001.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

[FR Doc. 01–28309 Filed 11–9–01; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Environmental Assessment for Federal Agency Participation in the June Sucker Recovery Implementation Program

AGENCIES: Fish and Wildlife Service, Bureau of Reclamation, Utah Reclamation Mitigation and Conservation Commission, Interior.

ACTION: Notice of availability of a draft environmental assessment for Federal agency participation in the June Sucker recovery implementation program.

SUMMARY: This notice advises the public that the Draft Environmental Assessment (DEA) for Federal agency participation in the June Sucker Recovery Implementation Program (Program) is available for public review and comment. The purpose of the proposed Federal action described in the DEA is to formally declare the intention of the Fish and Wildlife Service (Service), Bureau of Reclamation, Utah Reclamation Mitigation and Conservation Commission, and Interior to participate in the multi-agency program designed to implement recovery actions for the endangered June sucker. In addition to implementing recovery actions, the Program will facilitate resolution of conflicts associated with June sucker recovery in the Utah Lake and Provo River basins in Utah. Other participants include the State of Utah Department of Natural Resources, the Central Utah Water Conservancy District, Provo River Water Users Association, Provo Reservoir Water Users Company, and representation from an outdoor interest group. We are seeking comments from the public, other concerned governmental agencies, the scientific community, the environmental community, industry, and any other interested parties on this DEA.

DATES: We must receive comments on the DEA on or before December 13, 2001 to be considered.

ADDRESSES: Written comments should be addressed to the Field Supervisor, Utah Ecological Services Field Office, Lincoln Plaza, 145 East 1300 South, Suite 404, Salt Lake City, Utah 84115. Copies of the draft document are available via request to the Field Office. All comments and material received will be available upon request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Henry Maddux, Utah Field Supervisor,

(see **ADDRESSES** above), or at 801–524–5001 extension 124.

SUPPLEMENTARY INFORMATION: Copies of the DEA will be mailed to affected government offices and interested parties who specifically request it. Those interested persons not on the DEA mailing list may request a copy from the project leader at the address below. Public comment on the DEA is solicited. All interested agencies and individuals are urged to provide comments and suggestions regarding the DEA for our review prior to completion of a final finding. All comments received within 30 days after publication in the **Federal Register** will be considered in our final determination whether to prepare an environmental impact statement or a finding of no significant impact on Federal agency participation in the June Sucker Recovery Implementation Program. All comments received will become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act and the Council on Environmental Quality's National Environmental Policy Act Regulations (40 CFR 1506.6). When requested, comment letters with the names and addresses of the individuals who wrote the comments will generally be provided in response to such requests to the extent permissible by law. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. If you wish to withhold your name and/or address, you must state this prominently at the beginning of your comments.

Background

The June Sucker was federally listed as an endangered species with critical habitat on April 30, 1986 (51 FR 10857). The lower 7.8 kilometers (4.9 miles) of the Provo River was identified as critical habitat because this was the only known spawning location for the species. Factors contributing to Federal listing included the localized distribution, failure to recruit individuals to the adult life stage, and multiple threats to the continued survival of the June Sucker. The Service designated the June Sucker as a species with a high risk of extinction, a low recovery potential, and the presence of conflict. Water development and operations, sportfish management, and habitat development are the primary conflicts with the June Sucker recovery. The species had a documented wild population of fewer than 1,000 individuals at the time of listing (51 FR 10857). More recently, in 1997, the spawning population was estimated to be between 311 and 515 individuals.

Despite Federal listing of the June Sucker, implementation of recovery actions in the Utah Lake drainage basin has been minimal due to limited funding for recovery. Furthermore, conflicts have arisen between water development interests and those managing for protection of the June Sucker. To resolve this situation, the interested entities agreed to develop the June Sucker Recovery Implementation Program that would provide a mechanism to prioritize, fund, and implement recovery actions while allowing water development necessary to meet human needs in the Utah Lake drainage basin including Utah Lake and the Provo River. It is anticipated that the Program will not only provide recovery actions that are necessary to offset impacts from proposed development actions to the native protected species, but further lead to full recovery of the June Sucker.

The Program will encompass the June Sucker Recovery Plan so that actions identified in these documents can be funded, implemented, and evaluated for effectiveness. In addition, the Program will provide measures to offset proposed Federal project impacts during section 7 consultations in order to prevent future conflict over water development and minimize impacts of Federal projects on protected aquatic species. Goals and objectives of the Program are based on recovery of the endangered fish in an environment of continuing water development. Although some impacts to the aquatic environment are expected through future water development projects, recovery actions have been and will continue to be implemented in advance of project impacts such that the status of the June Sucker and/or its habitat is expected to improve and remain greater than that necessary to offset anticipated impacts.

It is important to note that participation in this Program does not represent or guarantee legal authority for any water development project. Such projects must be evaluated individually as they are proposed and continue to be subject to all applicable Federal and State laws including National Environmental Policy Act and Endangered Species Act. This DEA is not intended to provide analysis for specific project impacts, but rather analyze only effects of Federal participation in the Program.

Author

The primary author of this notice is Yvette K. Converse, U.S. Fish and Wildlife Service, 145 East 1300 South, Suite 404, Salt Lake City, Utah 84115, or at 801–524–5001 extension 135.

Authority

The authorities for this action are the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and the Endangered Species Act of 1973 (16 U.S.C. 1532 *et seq.*)

Dated: November 2, 2001.

Ralph O. Morgenweck,

Regional Director, Denver, Colorado.

[FR Doc. 01–28336 Filed 11–9–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

Record of Decision; Final Chiricahua General Management Plan Final Environmental Impact Statement Chiricahua National Monument; Arizona

The Department of the Interior, National Park Service has prepared this Record of Decision on the Chiricahua National Monument General Management Plan and Final Environmental Impact Statement for Chiricahua National Monument. This Record of Decision includes a description of the background of the project, a statement of the decision made, synopses of other alternatives considered, the basis for the decision, findings on impairment of park resources and values, a description of the environmentally preferable alternative, a listing of measures to minimize environmental harm, and an overview of public and agency involvement in the decision-making process.

Background of the Project

The General Management Plan (GMP) for Chiricahua National Monument will be the first comprehensive development planning for. The purpose of the GMP is to decide what resource conditions and visitor experiences should ultimately be achieved and maintained throughout the park. The process started in early May 1998 and involved joint scoping for GMPs for both Chiricahua NM and Fort Bowie NHS. A newsletter invited the public to attend meetings to discuss both plans. Notices of the public meetings were also sent to nearby newspapers. Four meetings were held the week of May 18th in the towns of Portal, Willcox, and Bowie, and at a

school just outside of Chiricahua NM. A total of 19 people attended the meetings. The GMP process was described at each meeting, as were the two parks. There was general appreciation expressed for the parks, and recommendations were made not to change them. All suggestions were discussed and notes were taken. Another 24 mailed responses were received from newspaper readers. Letters were also sent to six Apache tribes and one nation in Arizona, New Mexico, and Oklahoma, and to two interested individual American Indians. No responses were received.

Notice of Intent to publish an Environmental Impact Statement was published in the **Federal Register** in June of 1999. A 30-day public comment period followed ending on July 15, 1999. A website (*http://www.nps.gov/planning/chir*) was established to facilitate making information about the planning process available to the public. A total of 5 responses were received requesting information on the planning process. Groups included one organization interested in land issues, one interested in handicapped accessibility, and two unaffiliated individuals.

The purpose of the Chiricahua General Management Plan is to present a comprehensive management plan and guide the management of the Chiricahua National Monument for the next 12 to 15 years. Three alternatives were considered'a no-action and two action alternatives. The No Action Alternative represents the status quo for Chiricahua National Monument. The two action alternatives, Alternatives A (the NPS Proposal) and Alternative B, presented in the Final Chiricahua General Management Plan/FEIS are based on a thorough consideration of the best-available information on park resources and the visitor experience. Each of the two action alternatives in the Final Chiricahua General Management Plan/FEIS presents a distinct vision for preserving the resources that contribute to Chiricahua National Monument's cultural and natural values while making the resources available to people for their enjoyment, education, and recreation.

Decision (Selected Action)

The National Park Service will implement Alternative A as described in the Chiricahua National Monument General Management Plan and Final Environmental Impact Statement issued in March 2001. The selected alternative provides an overall combination of actions to restore natural processes, preserve cultural resource values, reduce harmful environmental impacts and continue to provide opportunities for high quality visitor experiences based on resource values. With the exceptions described below, the current level of development and interpretation and the pattern of visitor use would be maintained. In summary, the following would be implement. This is also documented in more detail in the plan.

Park Road—The historic significance and character of the road are its greatest values and would be protected under the proposal. With possible minor exceptions for safety, the existing width and alignment of the road would be permanently retained. Any road work (drainage, replacement of base, etc.) would be done in such a way as to preserve the road's special character. Along the road margins, vegetation and trees would be cleared and/or removed in order to restore views of park and distant features from the road. In order to protect the roadside environment, pullouts, trailheads, and parking areas along the road would not be enlarged.

Bonita Picnic Area—In addition to a resting and sitting area, this place, which is the first encountered by the entering visitor, serves as the beginning of a foot trail that goes almost to the visitor center. The section from the picnic area to the Stafford Cabin would be made accessible to visitors with mobility impairments.

Faraway Ranch—After the cultural landscape report of the ranch grounds has been completed, NPS would select appropriate landscape restoration treatment for the main part of the ranch, including the appropriate vegetation and selected fences, corrals, and other structures. The Faraway historic vernacular landscape and CCC historic designed landscape areas would continue to be managed as historic landscape resources, and modifications for visitor safety and accessibility would be made so as to not reduce the integrity of these areas. The integrity of all landscape areas and features (historic vegetation, structures such as the Faraway pool, etc.) would be maintained, as would the integrity of the CCC area's design principles and use of materials. Overhead power and telephone lines would be removed and installed underground from the park entrance through the historic district and on to the visitor center, housing, and campground.

All ranch buildings open to the public and the trail along Bonita Creek from the picnic area to Stafford Cabin would be made accessible for visitors with mobility impairments.

Most administrative functions that now occupy historic Faraway Ranch structures, including collections, would move to the proposed headquarters and administrative facility, and most of the vacated space would be available for visitor use and interpretation. The upper floor of the house would remain available to the interpreters as a work and storage space, and the garage would continue to be used as a maintenance facility. When administrative functions are removed from the guest house, the entire structure would be used as an employee residence in order to provide an on-site employee presence.

Under the proposal, the ranch house would be provided with climate control to protect the historic furnishings and with a fire suppression system to protect the house and its contents.

The current 10,000-gallon water tank is insufficient for fire control on the ranch. The ranch would be connected to the main visitor center/housing area water system. A standpipe would be installed near the parking lot for wildfire suppression.

When the water system is extended to the ranch parking area, consideration would be given to providing hollow conduits for the future installation of electric service, if needed.

The current two-way trail from the ranch parking area to the ranch house and Stafford Cabin would be enlarged to a loop trail, starting and ending at the parking area and representing the historic circulation more accurately.

Headquarters and Visitor Orientation Facility—Under the proposal, a new combined headquarters/visitor orientation facility would be built outside the park. One park goal is for no further development to take place within the park. For the visitors to be properly oriented to the park's attractions, they should reach the headquarters/visitor orientation facility before entering the park, but not so far away from the boundary that the connection to the park is lost. The headquarters/visitor orientation facility should also be located to intercept travelers coming from the other side of the Chiricahua Mountains on Pinery Canyon Road. Therefore, the recommended location is on route 181 as close to the park entrance as possible.

The new facility would house a complete visitor orientation function as well as the park administrative offices (including those now in the Faraway Ranch), sales, artifact collection space, library, archives, and herbarium. There would be parking, including adequate space for parking for an eventual shuttle terminus, should one be necessary, and an RV dump station. The structure would have approximately 9,000 square feet of space for visitor use, 4,000 square

feet of office and administrative space, and 2,000 square feet for maintenance shops, equipment, and storage, for an approximate total of 15,000 square feet of indoor space. There would be parking for approximately 200 visitors' vehicles and 4,000 square feet of outdoor maintenance storage. The facility could include joint support function with the USFS. Also, the NPS would invite USFS to use the facility to introduce visitors to the Coronado National Forest and its recreational opportunities.

As an interim step, a short-term solution to the shortage of administrative space might be to lease or rent space in Willcox. Although not an ideal solution (it was rejected as a permanent solution), this would serve temporarily to allow removing the offices from their scattered locations in the park, consolidating most of them in one location, and making the Faraway Ranch space available for visitor use and interpretation.

Visitor Transportation System—The following discussion about a transportation system involves assumptions not yet finalized. A transportation study under contract with Parsons Brinckerhoff will provide information for implementation. Final actions are dependent on the outcome of the study.

Two solutions to alleviate the parking problems would be implemented. In the short term, during the spring peak visitation season, a limited hiker shuttle would be implemented to take hikers to either Massai Point or Echo Canyon. At approximately 400 average daily visitors, the reconfigured Echo Canyon parking lot would reach capacity during the peak visitation periods. The limited hiker shuttle would be designed to keep long-term parking confined to the base of the monument, allowing more visitors to use the limited parking spaces at Massai Point and Echo Canyon. Hikers typically park at Massai Point or Echo Canyon for between three and five hours, and if the hiker were to take the shuttle instead, approximately four to eight additional sightseers would be able to park legally. Service would be similar to the existing hikers' shuttle, except for an established schedule. Service would run every two hours or other times as needed, allowing enough time for a ranger or a driver to operate the shuttle and pursue other activities. The shuttle system would need to have a capacity of approximately 50 people per day. This would eliminate 22 cars being parked long term at Massai Point and Echo Canyon. The cost of the transportation service could be paid for by a small surcharge to all visitors; volunteer enticements to hikers could be provided by waiving the entrance fee for those hikers who leave their cars at the base of the monument. Bicycle racks would be fitted onto the shuttle vehicles so that bicyclists could also be transported. To solve congestion problems for the long term, the hiker shuttle system would be doubled in size and capacity. The system would be based outside park boundaries, ideally near the new headquarters/visitor orientation facility. The enhanced hiker shuttle system would transport between 50 and 100 people per day, reducing parking demand at Massai Point and Echo Canyon by up to 44 long-term parked cars. This action would free up spaces and allow the Massai Point parking lot to operate just below maximum capacity during peak visitation hours. Service would become hourly, meaning that one full-time person would be responsible for driving a shuttle during its hours of operation. The enhanced hiker shuttle system would need significant additional capacity, new types of transit vehicles, and a more stable base of operations outside the park. This system could be operated by a monument concessioner.

Housing/Maintenance Area—All maintenance functions and fuel supplies would be removed to the new headquarters/visitor orientation facility complex, and the vacated space would be used for fire equipment and emergency medical supplies and as a rescue cache and warehouse.

Because of the monument's distance from the nearest town (37 miles to Willcox), it is necessary to have certain park employees live in the park to provide resource protection, emergency repairs, and law enforcement. All but two of the housing units are in the residential area just above the visitor center. These include permanent and seasonal housing. Another unit occupies one-half of the ''guest house'' on the Faraway Ranch (the other half is used for office space). The ''superintendent's house,'' which was acquired as part of an inholding property, is near Bonita Creek a short distance downstream from the visitor center.

All of the units are in good condition, and would be retained in their present uses. Because of the potential of flooding, when the ''superintendent's house'' has served its useful life, or is seriously damaged, it would be removed and the site returned to a natural condition.

There is at present no need for additional housing. As new housing authorities become available to the NPS, the need for in-park housing and the potential for providing housing outside would be reconsidered.

Boneyard—The boneyard and firearms training range impinges on the wilderness area. These inappropriate uses would be ended, and the areas would be restored to a natural appearance.

Campground—The flash flood risk of Bonita Creek affects campground users. The park would continue to operate the Bonita Creek campground in a safe and prudent manner by selective closures and flood threat awareness training for staff and visitors to Chiricahua. The selective closures of the campground would derive from use of the campground operation plan and be based upon seasonal and predicted weather conditions at the monument. Closures would occur on a day-by-day basis according to immediate observations by monument staff and weather forecasts of particular intensity and would be modified by any pre-saturation of the watershed and the season of the year. The campground operation plan would be developed by NPS as committed to in the final floodplain management statement of findings accompanying this GMP (see appendix 3 of the FEIS).

Because of the unsatisfied demand for camping (the campground is often full), NPS would cooperate with USFS, landowners, and businesses to provide additional camping opportunities outside the park. No NPS camping reservation system is anticipated because the park would work with neighbors to provide additional camping.

The campground septic system is often used to its capacity and would be replaced under the proposal.

There would be no recreation vehicle hookups or dump station added to the campground. The park would consider installing a dump station at the proposed headquarters/visitor orientation facility. For the interim a sign would be erected just inside the park entrance telling departing campers to empty their holding tanks only at approved and legal dump stations, and directing them to the nearest ones.

Trails—Staff of the monument and national forest would jointly examine opportunities for connecting trails in order to provide hikers a better and more extensive choice of routes. This would also further disperse hikers in the backcountry. The dirt road to the King of Lead Mine would be converted to a trail if and when the property is added to the monument.

King of Lead Mine—The King of Lead Mine would be acquired, and the park boundary extended to include it. In the meantime, a sign would be installed at the mine property boundary warning

hikers of the open mine, abandoned equipment, and so on. When the mine is acquired, it will be evaluated for historic significance. To protect visitors, the haul road would be closed to vehicular use, returned to a natural condition (except for a foot trail), and it would be administratively added to the surrounding wilderness area.

Sugarloaf—The parking area would be configured to add day-use amenities such as more picnic tables, group ramadas, and benches. These facilities would be provided in an attempt to shift some visitor use from the Echo Canyon and Massai Point parking areas. Limited vista clearing would also occur. The Sugarloaf road, overlook, trail, and fire tower would remain unchanged.

Echo Canyon Parking and Trailhead—Under the proposal, the parking lot would be reconfigured to alleviate peak parking problems. Limited vista clearing would also occur.

Massai Point—Under existing plans, the capacity of the summit parking area would be increased, but not its area, and vehicular flow would be improved. Trailheads would be made safer, and a new rest room would be installed. Vegetation around the parking area would be thinned and pruned to restore the views. Directional and informative signs would be installed. All improvements would be done in such a way as to be compatible with the significant CCC landscape elements (to be determined by the cultural landscape inventory).

The small exhibit building, which occupies one of the best viewpoints in the monument, would continue to be used as an exhibit and interpretation facility. The exhibits would be modernized and would conform to an interpretive plan that is to be written for the summit area. A small outdoor sitting area and interpretive space would be built close to the building, and the summit would be made handicapped accessible from the parking area.

Wilderness—Except for the previously mentioned King of Lead haul road, the rehabilitation of the existing boneyard and firearms training range, and very minor trail realignments, no changes would be made to the wilderness area. A theme of the park interpretation program would be to inform people about what wilderness is, what its values are, and what is considered appropriate use for wilderness.

Potential Boundary Changes—The proposed headquarters/visitor orientation facility would be located at a place along route 181 yet to be selected. If a location contiguous with the park is selected, the park boundary could be extended to enclose it. If it is not contiguous, or very nearly so, the land could be leased or purchased by GSA but not included within the park boundary.

Fire Program—The fire program is growing, with more acreage being treated by prescribed burning in 1998 than ever in the past. The park has established a fire management officer position that will be filled in 1999, and it has begun a joint planning process with USFS for mutual burning and suppression activities on each other's lands. Implementing the proposed GMP would improve staff's ability to operate the program mainly by reducing development, structures, operations, and traffic inside the boundaries. A new headquarters/visitor orientation facility located outside the park would put much of the staff, their vehicles, park files and exhibits, maintenance equipment, and so on in a safer place, for wildland fire considerations. The new facility would be built in an area with grassy fuels, which is in sharp contrast to the dense shrub and tree cover now surrounding the visitor center, administrative site, and housing.

The dead-end road is a concern because the park has very few fire safety zones. Clearing roadsides and improving the park road would reduce travel time for fire fighters and would aid in using fire-fighting equipment, as well as moving visitors and employees away from fire danger. Parking lots can be used as fire safety zones if absolutely necessary, so work to clear brush and improve traffic flow is critical. The campground, with its location and access on a narrow one-way, dead end road, is another fire danger concern. Because the campground would not be enlarged, staff could work with the current setup and continue to improve the situation by creating fire safety zones, reducing fuels, and clearing roadsides.

Upgrading the water system would improve fire suppression capabilities for structures, especially historic buildings. Improving accessibility would also help in evacuating visitors from buildings, if necessary.

An ongoing vegetation investigation is showing historically less dense vegetation with more varied composition and structure. Fire would be used to restore historic vegetation conditions. Cultural landscape studies could include prescribed fire as a tool. Because most cultural landscapes in the park would include historic structures, fuel treatment would reduce hazards and enhance suppression efforts.

The joint planning with USFS would support using fire in the wilderness. Additionally, focusing park interpretation on wilderness, including natural processes such as fire and flooding, would lead to better public understanding and acceptance.

Commercial Services—Commercial horseback, hiking, and tour bus services originating outside the park would continue. The park would encourage others, including private business and USFS, to provide recreation vehicle and tent campground and camping supply stores outside the park.

Other activities could be added if they enhance the visitor experience, are appropriate for the park, and are consistent with resource protection prescriptions. Some of these activities might include bicycle tours and shuttle services to alleviate crowding and prevent traffic jams.

Activities would be evaluated primarily on the need for protection of resources, goals established for the visitor experience, and the need to reduce crowding and visitor conflicts. When problems are identified, the park would conduct feasibility studies to determine if proposed activities are necessary and practical and then determine the best way to provide the services.

Water System—The three separate water systems that serve the visitor center, employee housing, and campground do not meet public health standards. They would be replaced or modified as needed.

Operational Costs—Operational costs total $233,500 and are broken down in Table 1 in the FEIS.

Development Costs—Development costs total $5,881,000 and are broken down in Table 2 in the FEIS.

Other Alternatives

Alternative B

Alternative B provides a traditional park experience with increased personal services and a small number of facility enhancements. With the exceptions described below, the current level of development and interpretation and the pattern of visitor use is appropriate for Chiricahua and would be maintained. The application of management prescriptions would be exactly the same as under the proposal.

Park Road—Under this alternative, the historic significance and character of the road would be protected, but alignment could be selectively altered. Most of the road's special character would be maintained, but more alterations of the vegetation would be likely. Some minor enlargements and realignments could occur.

Bonita Picnic Area—This area would be treated the same as it would be under the Proposal.

Faraway Ranch—Treatments would be the same as under the proposal except that the focus of efforts would be centered on the historic structures. There would be little to no modification of the landscape.

Overhead power and telephone lines would be removed and installed underground in the immediate vicinity of the structures.

The trail along Bonita Creek, from the picnic area to Stafford Cabin, would be accessible for visitors with mobility impairments.

There would be limited access to selected buildings by the public. Some administrative functions would continue in the area. Climate control would be used to protect the historic furnishings. A fire suppression system would be used to protect the house and contents.

The water system would connect to the main visitor center/housing area. A standpipe would be installed near the parking lot for wildfire suppression, and the water system would extend to the ranch parking area. The two-way trail would be enlarged into a loop trail.

Headquarters and Visitor Orientation Facility—Under this alternative, administrative facilities would only be built outside the park and no new visitor orientation facility would be constructed. There would be no further development in the park and no additional services for RVs.

Short-term lease or rent space for administrative services would be explored in Willcox, and a joint support function would be considered with the U.S. Forest Service.

Visitor Transportation System—Options under this alternative are the same as for the proposal.

Housing/Maintenance Area—Under this alternative there would be no changes in current operation except that

(1) all housing units would be retained in present use;

(2) the superintendent's house eventually would be removed and the site returned to a natural condition; and,

(3) the need for in-park housing and potential for providing housing outside the park would both be considered.

Boneyard—The boneyard and firearms training range impinges on the wilderness area. These inappropriate uses would be ended, and the areas would be restored to a natural appearance.

Campground—Treatment for this area would be the same as described under the proposal.

Trails—Treatment of trails would be the same as described for the proposal.

King of Lead Mine—Treatment of the mine would be the same as it would be under the proposal.

Sugarloaf—Under this alternative there would be no change.

Echo Canyon Parking and Trailhead—Under this alternative there would be no change.

Massai Point—Treatment of the area would be the same as described under the proposal.

Wilderness—Treatment of wilderness would be the same as described for the proposal.

Potential Boundary Changes—Under this alternative there would be no changes to park boundaries.

Fire Program—The fire program would be the same as described under the proposal, except that no improvements through reductions of development would take place. Facilities outside the park would be confined to administrative functions with little or no support to the fire program.

Commercial Services—Commercial services would be the same as for the proposal.

Water System—Water systems would be upgraded to meet public health standards.

Operational Costs—Operational costs total $233,500 and are broken down in Table 1 of the FEIS.

Development Costs—Development costs total $5,881,000 and are broken down in Table 2 of the FEIS.

No-Action Alternative

All environmental documents are required to analyze at least two alternatives'a proposal and a no-action alternative. Under the no-action alternative, existing conditions as described below would continue at Chiricahua NM.

Park Road—With possible minor exceptions for safety, the existing width and alignment of the road would be permanently retained. Pullouts, trailheads, and parking areas along the road would not be enlarged.

Bonita Picnic Area—Existing development would be retained.

Faraway Ranch—The only landscape treatment would be continued maintenance and fire protection. The fences, corrals, and outbuildings would not be restored to their historic appearance, and buildings would not be made accessible. In the absence of a new headquarters/visitor orientation facility, administrative functions would remain in the ranch buildings. Lacking the proposed connection of the ranch to the main park water system, the ranch house and its contents would remain at risk of fire. The collections in the house would remain unprotected by a climate control system. Visitors would continue to approach and leave the main buildings by the existing two-way trail.

Visitor Center—In the absence of a new headquarters/visitor orientation facility, the existing conditions of crowded working conditions, inadequate parking, and inadequate interpretive space would continue.

Housing/Maintenance Area—Maintenance activities would remain in the present location, so that space would not be available for other uses. The housing area would be the same as described under the proposal.

Boneyard—This inconsistent use of the wilderness area would remain.

Campground—The existing campground would be retained, and the septic system would not be replaced.

Trails—Existing trails would be retained in the no-action alternative.

King of Lead Mine—No further steps would be taken with the state and the mine owner to mitigate the mine pollution and to acquire the property. The haul road would not be added to the surrounding wilderness. A warning sign would be erected.

Sugarloaf—The Sugarloaf road, overlook area, trail, and fire tower would remain unchanged.

Echo Canyon Parking and Trailhead—The overlook, parking, and trailhead area would remain unchanged.

Massai Point—Under existing plans, the capacity (but not the area) of the summit parking area would be increased and vehicular flow would be improved. Trailheads would be made safer, and a new rest room would be installed. Vegetation around the parking area would be thinned and pruned to restore the views. Directional and informative signs would be installed.

The small exhibit building, which occupies one of the best viewpoints in the monument, would continue to be used as an exhibit and interpretation facility. The exhibits would be modernized to conform to an interpretive plan to be written for the summit area. A small outdoor sitting area and interpretive space would be built close to the building, and the summit would be made handicapped accessible from the parking area.

Wilderness Area—There would be no changes in the wilderness area.

Potential Boundary Changes—There would be no changes in the park's boundary.

Fire Program—Some of the fire program would be the same in this alternative as with the proposal. The fire management officer position would be filled, and the park would continue joint planning with USFS. Acreage

burned would increase to reduce fuels and to restore fire as an ecosystem process.

The difference is that fire hazards and safety risks would be higher for people and structures despite fire planning for suppression. Facilities, housing, campgrounds, traffic flows, and so on would remain in the current state, which hinders fire management operations. Roads and parking lots would not be cleared or improved, which increases the risk of entrapment and delays response time for fire fighters and equipment. Inadequate water systems do not provide for suppression capabilities for historic structures or other facilities. Cultural landscape information would not be available for restoring historic scenes. Lack of interpretation focus on wilderness would affect public understanding and appreciation of natural forces, such as fire and flooding, as well as of land-use ethics.

Commercial Services—Commercial horseback, hiking, and tour bus services originating outside the park would continue.

Water System—The three separate water systems that serve the visitor center, employee housing, and campground do not meet public health standards. They would be replaced or modified as needed.

Operational Costs—Costs are already reflected in the park's annual operating budget.

Development Costs—There are no development costs associated with this alternative.

Basis for Decision

After careful consideration of public comments received throughout the planning process, including comments on the Chiricahua General Management Plan/Draft Environmental Impact Statement, Alternative A has been selected for this Record of Decision. This alternative best accomplishes the legislated purposes of Chiricahua National Monument and the statutory mission of the National Park Service to provide long-term protection of Chiricahua National Monument's resources and values while allowing for visitor use and visitor enjoyment. The selected action also best accomplishes the stated purposes of the Chiricahua General Management Plan (as described on page 1–20 Purpose and Need, of the Final Chiricahua General Management Plan/Supplemental Environmental Impact Statement). Consequently, the selected action conserves values embodied in the Organic Act to:

- Accomplish the mission of the National Park Service,
- Achieve the purposes and criteria of the Chiricahua General Management Plan, and
- Prevents impairment of park resources in a manner that meets legal and policy requirements.

Protect and Enhance Natural and Cultural Resources

Through its combination of restoration of areas to natural conditions, resource protection, and the location or relocation of facilities, Alternative A exceeds the other alternatives in its protection and enhancement of natural resources and removal of facilities from highly valued resource areas. Alternative B provides some of the same protection, but does not include support for some important safety and visitor park programs.

Alternative A protects highly valued natural and cultural resources through the restoration Arizona vegetation communities and a historical road. Habitat connectivity encourages biodiversity and promotes a more stable biological system.

Alternative A reduces the total amount of development in the park, by moving all new infrastructure outside the park. Facilities no longer needed or that adversely impact resources will be removed from highly valued areas and new facilities will be located largely outside these areas. They will be placed in such a way as to avoid or minimize disruption of natural processes.

Alternative A provides the best alternative for mitigating the campground flash flood risk of Bonita Creek to campground users. The park would continue to operate the Bonita Creek campground in a safe and prudent manner by selective closures and flood threat awareness training for staff and visitors to Chiricahua. The selective closures of the campground would derive from use of the campground operation plan and be based upon seasonal and predicted weather conditions at the monument. Closures would occur on a day-by-day basis according to immediate observations by monument staff and weather forecasts of particular intensity and would be modified by any presaturation of the watershed and the season of the year. The campground operation plan would be developed by NPS as committed to in the final floodplain management statement of findings accompanying this GMP (see appendix 3).

Alternative A will better preserve the historic integrity of the area than the other action alternatives by retaining character-defining features at Faraway Ranch. In summary, Alternative A includes actions that are major and beneficial to the natural resources, and generally more beneficial to cultural resources than other alternatives.

Enhance Visitor Experience

The criteria to enhance the visitors' experience by fostering a diversity of opportunities and by encouraging a high degree of resource stewardship through interpretation, orientation, and education, will be best achieved by implementing Alternative A.

Day-visitor parking in Alternative A provides for day-visitor parking at Massai Point and increased accessibility access along the Park Road and at Faraway Ranch. terms of visitor access.

Each of the action alternatives provides increased opportunities for experiencing Chiricahua on foot by providing additional trails.

Provide Effective Operations

The management of park-wide operations would move to a new headquarters/visitor orientation facility/administrative area just outside park. Other functions not essential for Chiricahua operations will also be relocated under each of the action alternatives.

Provide Appropriate Land Uses

The criterion articulated in the Purpose and Need of the Final Chiricahua General Management Plan/FEIS to site new facilities so that, in aggregate, they help achieve a benefit for park resources, will be met under Alternative A. Of the facilities to be removed in Chiricahua, most are to be removed from highly valued resource areas. If the function is to be retained in Chiricahua, in most cases it will be relocated outside of highly valued resource areas.

Findings on Impairment of Park Resources and Values

The National Park Service has determined that implementation of Alternative A of the Chiricahua General Management Plan will not constitute an impairment to Chiricahua National Monument's resources and values. This conclusion is based on a thorough analysis of the environmental impacts described in the Final Chiricahua General Management Plan/FEIS, the public comments received, relevant scientific studies, and the professional judgment of the decision-maker guided by the direction Management Policies 2001. While the plan has some negative impacts, in all cases these adverse impacts are the result of actions taken to preserve and restore other park resources and values. Overall, the plan results in benefits to park resources and

values, opportunities for their enjoyment, and it does not result in their impairment.

In determining whether impairment may occur, park managers consider the duration, severity, and magnitude of the impact; the resources and values affected; and direct, indirect, and cumulative effects of the action. According to National Park Service Policy, ''An impact would be more likely to constitute an impairment to the extent that it affects a resource or value whose conservation is: (a) Necessary to fulfill specific purposes identified in the establishing legislation or proclamation of the park; (b) Key to the natural or cultural integrity of the park or to opportunities for enjoyment of the park; or (c) Identified as a goal in the park's general management plan or other relevant National Park Service planning documents.''

This policy does not prohibit impacts to park resources and values. The National Park Service has the discretion to allow impacts to park resources and values when necessary and appropriate to fulfill the purposes of a park, so long as the impacts do not constitute impairment. Moreover, an impact is less likely to constitute impairment if it is an unavoidable result of an action necessary to preserve or restore the integrity of park resources or values.

Human activity and past development have resulted in the ongoing disruption of natural systems and processes in Chiricahua for generations. The No Action Alternative would result in future unplanned and uncoordinated actions that are merely reactive to immediate concerns. Furthermore, these actions would likely be responsive to immediate, short-term, adverse impacts that demand attention, but may result in long-term impairment to park values and resources.

The actions comprising Alternative A will achieve the goals of the Chiricahua General Management Plan (which include protecting and enhancing the natural and cultural resources of Chiricahua and providing opportunities for high-quality, resource-based visitor experiences) in a comprehensive, integrated manner that takes into account the interplay between resource protection and visitor use. Actions implemented under Alternative B that will cause overall negligible adverse impacts, minor adverse impacts, short term impacts, and beneficial impacts to park resources and values, as described in the Final Chiricahua General Management Plan/FEIS will not constitute impairment. This is because these impacts have limited severity and/or duration and will not result in appreciable irreversible commitments of resources. Beneficial effects identified in the Final FEIS include effects related to restoring and protecting park resources and values.

In conclusion, the National Park Service has determined that the implementation of Alternative A will not result in impairment of resources and values in Chiricahua National Monument.

Environmentally Preferable Alternative

Environmentally preferable is defined as ''the alternative that will promote the national environmental policy as expressed in the National Environmental Policy Act's section 101. NEPA section 101 states that * * * it is the continuing responsibility of the Federal Government to * * * (1) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations; (2) assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings; (3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences; (4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice; (5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and (6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.'' The environmentally preferable alternative for the Chiricahua General Management Plan is based on these national environmental policy goals.

Alternative A

This alternative will realize each of the provisions of the national environmental policy goals stated in NEPA section 101. Alternative A will protect and enhance values Chiricahua NM. These actions will further goals 1, 3, and 4 of NEPA section 101.

Alternative B

This alternative would be nearly as effective as Alternative A in realizing the provisions of the national environmental policy goals in section 101 of NEPA. Overall, the benefit and effect of the alternative's environmental restoration and visitor services and facility development activities would be similar to those described under Alternative A.

No Action

This alternative represents the current management direction with no dramatic or comprehensive changes taking place in the management of Chiricahua NM. Although the No Action alternative would include the least change to cultural resources, it would not result in the same level of environmental protection and restoration for natural resources, including floodplains as would occur under the various action alternatives. In having lesser protection and restoration of natural resources, including highly valued resources, the No Action alternative would not fully achieve provisions 1, 3, 4, and 5 of section 101 of NEPA. Although existing patterns of visitor use would continue, traffic congestion and existing impacts upon visitor experience in Chiricahua NM would not be remedied. Compared to the action alternatives, the No Action alternative would be least effective in attaining goal 3 of NEPA, as described in section 101, in that it would have the narrowest range of beneficial uses that would occur without degradation of natural and cultural resources in Chiricahua NM. Because of existing impacts that are not remedied and that relate to provisions 1, 2, 3, 4, and 5 of section 101 (as discussed above), these provisions would not be realized by the No Action Alternative.

Summary

The National Park Service has determined that the environmentally preferable alternative is Alternative A. While some specific actions under other alternatives may achieve similar or in some cases greater levels of protection for certain cultural resources, natural resources, and/or visitor experience than under Alternative A, in aggregate, this alternative best achieves the six conditions prescribed under section 101 of NEPA. While many of the actions in other alternatives may be similar to Alternative A in their effect and consequence, Alternative A (1) provides a high level of protection of natural and cultural resources while concurrently attaining the widest range of neutral and beneficial uses of the environment without degradation; (2) maintains an environment that supports diversity and variety of individual choice; and (3) integrates resource protection with opportunities for an appropriate range of visitor uses.

Measures To Minimize Environmental Harm

The National Park Service has investigated all practical means to avoid or minimize environmental impacts that

could result from implementation of the selected action. The measures have been incorporated into Alternative A, and are presented in detail in the Final Chiricahua General Management Plan/ Supplemental Environmental Impact Statement.

A consistent set of mitigation measures would be applied to actions that result from this plan. Monitoring and enforcement programs will oversee the implementation of mitigation measures. These programs will assure compliance monitoring; biological and cultural resource protection; traffic management, noise, and dust abatement; noxious weed control; pollution prevention measures; visitor safety and education; revegetation; architectural character; and other mitigation measures.

Mitigation measures will also be applied to future actions that are guided by this plan. In addition, the National Park Service will prepare appropriate compliance reviews (i.e., National Environmental Policy Act, National Historic Preservation Act, and other relevant legislation) for these future actions.

Public and Interagency Involvement

On June 14, 1999, the National Park Service published in the **Federal Register** (Vol 64 Number 58 pg 16487–88) a notice of intent to prepare an environmental impact statement for the Chiricahua General Management Plan. The Final Chiricahua General Management Plan/FEIS has been developed pursuant to sections 102(2)'' of the National Environmental Policy Act (Public Law 91–190) and the Council on Environmental Quality regulations (40 CFR 1508.22). Through scoping, a formal public comment process, public meetings and outreach, and meetings with government entities on the Draft Chiricahua General Management Plan/DEIS, the National Park Service conducted this planning process in consultation with affected federal agencies, state and local governments, tribal groups, and interested organizations and individuals.

Scoping

Scoping typically occurs at the beginning of a planning process. However, in the case of the Draft Chiricahua General Management Plan/ FEIS, scoping began in 1992. Scoping sessions by the park staff, a public open house, a press release, and a letter to 392 people on the mailing list for both Chiricahua NM and Fort Bowie National Historic Site (NHS) raised a series of issues. After a national reorganization in the National Park Service, the general management planning process was restarted in 1996 with a different planning team. The first step in the second process was a review of the work previously done and the incorporation of the 1992 public comments.

In early May 1998, a newsletter was mailed to all interested parties and those on the park mailing list informing them of GMP projects for both Chiricahua NM and Fort Bowie NHS. The newsletter invited the public to attend meetings to discuss both plans. Notices of the public meetings were also sent to nearby newspapers. Four meetings were held the week of May 18th in the towns of Portal, Willcox, and Bowie, and at a school just outside of Chiricahua NM. A total of 19 people attended the meetings. The GMP process for each park was described at each meeting, as were the two parks. There was general appreciation expressed for the parks, and recommendations were made not to change them.

All suggestions were discussed and notes were taken. Another 24 mailed responses were received from newspaper readers. Letters were also sent to six Apache tribes and one nation in Arizona, New Mexico, and Oklahoma, and to two interested individual American Indians. No responses were received.

A Notice of Intent to publish an Environmental Impact Statement was published in the **Federal Register** in June of 1999. A 30-day public comment period followed ending on July 15, 1999. A Web site (*http://www.nps.gov/planning/chir*) was established to facilitate making information about the planning process available to the public. A total of 5 responses were received requesting information on the planning process. Groups included one organization interested in land issues, one interested in handicapped accessibility, and two unaffiliated individuals.

The DEIS NOA announced the availability of the Draft Chiricahua General Management Plan/DEIS and solicited comments from the public through January 2000. The final incorporation of public comment is part of the Final Chiricahua General Management Plan/FEIS and documented in Appendix 4 , March 2001, made available for public review per the Notice of Availability published in the **Federal Register**, March 26, 2001 (Vol 66 Number 58 pg 16487–88).

Conclusion

Alternative A provides the most comprehensive and effective method among the alternatives considered for meeting the National Park Service's purposes, goals, and criteria for managing Chiricahua National Monument and for meeting national environmental policy goals. The selection of Alternative A, as reflected by the analysis contained in the environmental impact statement, would not result in the impairment of park resources and would allow the National Park Service to conserve park resources and provide for their enjoyment by visitors.

Dated: June 18, 2001.

Alan W. Cox,

Superintendent, Chiricahua National Monument, National Park Service.

Dated: June 19, 2001.

Michael D. Synder,

Acting Director, Intermountain Region, National Park Service.

[FR Doc. 01–28302 Filed 11–9–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Lower St. Croix National Scenic Riverway

AGENCY: National Park Service, Interior.

ACTION: Record of decision, cooperative management plan and environmental impact statement, Lower St. Croix National Scenic Riverway, Minnesota and Wisconsin.

SUMMARY: The U.S. Department of the Interior's National Park Service, the state of Minnesota's Department of Natural Resources, and the state of Wisconsin's Department of Natural Resources have signed a record of decision (ROD) for the final cooperative management plan and final environmental impact statement for the Lower St. Croix National Scenic Riverway (Riverway), Minnesota and Wisconsin. The purpose of the cooperative management plan is to set forth the basic management philosophy for the riverway and to provide the strategies for addressing issues and achieving identified management objectives.

The Lower St. Croix National Scenic Riverway is a narrow corridor that runs for 52 miles along the boundary of Minnesota and Wisconsin, from St. Croix Falls/Taylors Falls to the confluence with the Mississippi River. The National Park Service (NPS) manages a portion of the upper 27 miles of lands and waters of this corridor. The states of Minnesota and Wisconsin administer the lower 25 miles. The

states and the federal government jointly conduct planning for the riverway.

DATES: The Regional Director, NPS, Midwest Region approved the ROD, on May 7, 2001. The Commissioner, Minnesota Department of Natural Resources approved the ROD on May 2, 2001. The Secretary of the Wisconsin Department of Natural Resources approved the ROD on October 11, 2001.

FOR FURTHER INFORMATION CONTACT: Superintendent, St. Croix National Scenic Riverway, P.O. Box 708, St. Croix Falls, Wisconsin 54024, telephone 715–483–3284.

SUPPLEMENTARY INFORMATION:

Introduction

The NPS, Minnesota Department of Natural Resources (DNR), and Wisconsin Department of Natural Resources prepared the final environmental impact statement (FEIS) for the cooperative management plan for the Lower St. Croix National Scenic Riverway (October 2000). Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, Public Law 91–190 (as amended), and the regulations promulgated by the Council on Environmental Quality at 40 CFR 1505.2, the Department of the Interior, NPS, has prepared the following ROD on the EIS.

In Wisconsin, the Department of Natural Resources is required to comply with the Wisconsin Environmental Policy Act (WEPA) as described in s.1.11, Wis. Stats., and Ch. NR 150, Wis. Adm. Code, to assure consideration of the short and long-term environmental and economic consequences of policies, plans, programs or other actions upon the quality of the human environment. As a cooperating agency in plan development and in design of the public review process, the Department has assured the CMP/EIS satisfies the substantive and procedural requirements of WEPA.

This ROD is a concise statement of what decisions were made, what alternatives were considered, the environmentally preferred alternative, the basis for the decision, and the mitigating measures developed to avoid or minimize environmental impacts.

Decision (Selected Action)

The managing agencies will implement the preferred riverway management alternative and the preferred management structure option, as described in the FEIS (with some minor clarifications, as listed in appendix A (Errata Sheet) of this ROD).

The managing agencies will emphasize protection and enhancement of the riverway's diverse character. Long stretches of the lower riverway's natural and rural landscape will be maintained, while allowing limited, planned development in communities that is consistent with the historic character of the communities. Limited new development could occur within existing municipalities along the river, although maintenance of the overall character of the municipalities will be emphasized. Outside of municipalities, landowners will be encouraged to maintain the natural character of the landscape, particularly the blufflines, as seen from the water. Protection of natural resources, including the valley's important biological diversity, will be enhanced. Riverway users will continue to find opportunities to engage in a wide range of recreational experiences. The emphasis will be on maintaining and enhancing the diverse landscape character and the diverse water-based recreational opportunities.

The Lower St. Croix Management Commission will continue as the primary policy body for joint management of the riverway. The Minnesota DNR, Wisconsin DNR, and NPS will continue as the three voting members. The management commission will include an additional nonvoting member from the newly created Lower St. Croix Partnership Team that will serve an advisory role. The Minnesota-Wisconsin Boundary Area Commission will continue in its administrative support and nonvoting advisory roles. The three managing agencies will provide staff for the management commission for riverway management, and for plan implementation. The two state departments of natural resources will adopt rules to form a basis for riverway ordinances that local governments will be required to adopt and enforce. The states will have objection (Wisconsin) or certification (Minnesota) authority over local ordinances, amendments to the ordinances, and variances. The management commission's technical committee will review local zoning actions. The technical committee and managing agencies can comment on the proposed actions. Managing agencies will have no veto authority over a local government's decision on a conditional use permit, or subdivision; if there were disagreement, appeals could be made to the courts. Existing water use enforcement roles will continue and the three agencies will provide staff for on-water law enforcement, rescue, and related activities. The three agencies will provide staff for management of lands each owns.

Other Riverway Management Alternatives and Management Structure Options Considered

Five other riverway management alternatives were evaluated in the draft and final environmental impact statements.

Alternative A would seek to maintain long stretches of the lower riverway's natural and rural landscape, while allowing limited, planned development within the boundary that was consistent with the historic character of the riverway's communities. However, a slightly greater proportion of the lower riverway would encompass town landscapes, allowing greater opportunities for development within or adjacent to riverway towns. Additional residential development would also occur in rural areas. Riverway users would continue to find an array of recreational opportunities, including increased opportunities for more social activity on parts of the river, but no efforts would be made to regulate user activities if they were not causing significant damage to the resource or posing safety hazards to others.

Alternative B would stress maintaining the current landscape character within the riverway boundary and maintaining the diversity of water recreational experiences as much as possible. However, the overall level of recreational use would be allowed to increase but some use would be reallocated and separated. New development would be more limited than alternative A and slightly more limited than the preferred alternative.

Alternative C would achieve the same conditions as alternative B—views of the land within the boundary and the diversity of river recreational experiences would be maintained. The major difference from other alternatives would be in the strategy used to maintain the diversity of recreational experiences would be to freeze the growth of recreational use.

Alternative D would promote and restore the natural qualities of the lower riverway—the predominance of natural features over modern developments would increase. Natural landscapes would be restored where feasible and managing agencies would strive to make the landscape appear more natural than it does now. Emphasis would be placed on promoting quieter, slower, and less intrusive experiences that would not disturb others. Overall recreational use would be reduced.

Alternative E, the no-action alternative, provides a baseline for

comparing the other alternatives. The managing agencies would continue to manage the lower riverway as they have in the past. The agencies would continue to follow the 1976 Master Plan (with some changes based on current management practices) and the Lower St. Croix Management Commission's policy resolution. Management would focus on maintaining existing land use and recreational use patterns and would react to recreational use as they have in the past. Rural residential development would be allowed to a greater degree than all of the alternatives except alternative A. The Riverway Management Policy Resolution would be used to address new issues that arose.

Four management structure options were evaluated in the draft and final environmental impact statements.

Option 1 would also retain the management commission but would include a local government representative. The planning task force would be restructured and made permanent. It would assist in rules interpretation, mediation, and coordination for land management and/or water use management. Options 2 and 3 would further expand the management commission and create a water patrol. Option 2 would create a joint powers board for land use management, whereas option 3 would create a riverway board to manage land use. Option 4 would continue the existing management structure for policy direction and land and water use.

Environmentally Preferred Alternative

A ROD must identify the environmentally preferable alternative, which is that alternative which causes the least damage to the biological environment, and that best protects, preserves, and enhances historic, cultural, and natural resources. Alternative D is the environmentally preferred alternative, although not by a great measure over the selected action. Alternative D includes a greater emphasis on restoration of natural qualities, fewer areas for new residential or commercial development, and a reduction in overall water use and speed levels when compared to the selected action and the other alternatives. Alternative D would result in primarily negligible to moderate positive effects to resources, compared to primarily negligible to minor positive effects to resources under the selected action. However, the selected action provides greater, more holistic emphasis on the maintenance and enhancement of the outstandingly remarkable values for which the riverway was designated as a unit of the national wild and scenic river system (namely, scenic, recreational, and geologic values). The selected action better ensures the riverway's unique diversity of landscape character and water surface recreational opportunities, which result in somewhat fewer benefits to resources than under alternative D.

The management structure options address the organizational structure and administration of the riverway only. Impacts of these options are associated with nonenvironmental type effects such as costs, staffing requirements, and agency roles and responsibilities. Consequently, there is no environmentally preferred option.

Basis for Decision

The Lower St. Croix National Scenic Riverway is included in the national wild and scenic rivers system because of its scenic, recreational, and geologic values. These combined values are the hallmark of this diverse resource. Both the riverway's landscape character and its water-based recreation reflect diverse uses. Parts of the valley remain relatively wild and undisturbed, while other areas reflect the valley's proximity to a large urban area. On-water recreation reflects the diversity of the surroundings: experiences range from the quiet solitude of a nonmotorized area to a very social and highly motorized environment. The new management strategy for the Lower St. Croix National Scenic Riverway provides greater emphasis than ever to ensure continuation and enhancement of that diversity. This emphasis on protection of the riverway's diversity, along with improvements in the protection of riverway's natural, cultural, and scenic resources, reduction in conflicts between landowners and recreational users, and implementation costs provided the basis for selecting the preferred alternative for implementation.

It must also be noted that the Lower St. Croix Planning Task Force, composed of interested members of the public, citizens representing boaters, businesses, landowners, environmental groups, local governments, and various other interests, and staff of the riverway managing agencies, played a key role in developing the preferred alternative and completing the riverway plan. The overall direction and most of the elements of the preferred alternative for managing the lower riverway were agreed upon by the citizen-driven task force in a consensus-based process.

The managing agencies consulted with the U.S. Fish and Wildlife Service (FWS) on two occasions regarding the likely effects of the cooperative management plan on the endangered winged mapleleaf and Higgins' eye pearly mussels. Based on those consultations, the FWS determined that the selected action would not jeopardize the continued existence of the two species. A copy of the FWS' April 2, 2001 biological opinion is attached to this ROD as appendix B.

Findings on Impairment of Riverway Resources and Values

The NPS may not allow the impairment of riverway resources and values unless directly and specifically provided for by legislation or proclamation establishing the riverway. Impairment that is prohibited by the NPS Organic Act and the General Authorities Act is an impact that, in the professional judgment of the responsible NPS manager, would harm the integrity of riverway resources or values, including the opportunities that otherwise would be present for the enjoyment of those resources or values. In determining whether impairment would occur, park managers examine the duration, severity, and magnitude of the impact; the resources and values affected; and direct, indirect, and cumulative effects of the action. According to NPS policy, an impact would be more likely to constitute an impairment to the extent that it affects a resource or value whose conservation is: (a) Necessary to fulfill specific purposes identified in the establishing legislation or proclamation of the riverway; (b) key to the natural or cultural integrity of the riverway or to opportunities for enjoyment of the riverway; or (c) identified as a goal in the riverway's general management plan or other relevant NPS planning documents.

This policy does not prohibit all impacts to riverway resources and values. The NPS has the discretion to allow impacts to riverway resources and values when necessary and appropriate to fulfill the purposes of a riverway, so long as the impacts do not constitute impairment. Moreover, an impact is less likely to constitute impairment if it is an unavoidable result, which cannot be further mitigated, of an action necessary to preserve or restore the integrity of riverway resources or values.

After analyzing the environmental impacts described in the final cooperative management plan/environmental impact statement and public comments received, the NPS has determined that implementation of the preferred alternative will not constitute an impairment to the Lower St. Croix National Scenic Riverway's resources

and values. The actions comprising the preferred alternative are intended to maintain and enhance the outstandingly remarkable values for which the riverway was designated as a unit of the national wild and scenic river system. While the preferred alternative would have some adverse effects on park resources and recreational use, none of the impacts would adversely affect resources or values to a degree that would prevent the NPS from fulfilling the purposes of the riverway, threaten the natural or cultural integrity of the riverway, or eliminate the opportunity for people to enjoy the riverway. Overall, the preferred alternative would protect and enhance the riverway's natural, cultural, and scenic resources and the diverse recreational uses found there.

Measures To Minimize Harm

The preferred alternative provides a policy-level management framework for the riverway. Within this broad context, the preferred alternative includes all practical measures to minimize environmental harm. However, additional appropriate mitigation will be identified as part of follow-up implementation plans and for individual construction projects (such as bridge and utility line replacements) to further minimize resource impacts. Additional environmental documentation, with mitigation measures, will be required before project implementation. Management actions designed to avoid or minimize impacts to resources, such as keeping people away from bald eagle nests, will continue to be employed as necessary. New regulations may be instituted to address resource protection needs that might arise from recreational use within the riverway. The managing agencies will also implement their respective components of the FWS's recovery plans for the endangered winged mapleleaf mussel and the Higgins' eye pearly mussel, which include measures to minimize impacts and recover these species.

Public Involvement

Public involvement was vitally important throughout the planning process. The public had two primary avenues by which it participated in the development of the plan—participation in the Lower St. Croix Planning Task Force and responses to newsletters, workbooks, and the draft and final versions of the plan/EIS. The task force met 53 times between February 1996 and August 1998. Membership in the task force was open throughout the planning process to all interested citizens. Persons could attend any meetings they wanted to; new participants were welcome throughout the process. Notification of task force meetings and workshops was provided through mailing lists and news releases; all meetings were open to the public.

During the planning process two newsletters and three workbooks were prepared and mailed to the public. Newsletter No. 1 (May 1996) alerted citizens that the planning process was beginning. It included draft purpose, significance, and exception resource/value statements, and asked for public comment on these statements, on desired futures for the riverway, and on issues the plan should address.

Newsletter No. 2 (November 1996) summarized responses to Newsletter No. 1 and identified changes made in the purpose, significance, and exceptional resource/value statements based on the public's comment. The newsletter also identified the issues and concerns to be addressed in the plan, described landscape units of the lower St. Croix, and described the activities of the task force. This newsletter was informational and no public input was collected.

In April 1997 Workbook No. 1 was published. The workbook described potential land and water management areas, and five preliminary management alternatives (plus a ''no action'' alternative), as well as a ''vision'' for the lower riverway. The public was asked to comment on the management alternatives and on the vision statement.

Workbook No. 2 (April 1998) was intended to compile the existing products of the task force and serve as a reference tool for persons who intended to participate in a preferred alternative workshop. This workbook was informational and no public input was collected.

Workbook No. 3 (also April 1998) focused on the guidelines for revising state land use and surface water regulations. The public was asked to indicate its support for different options being considered by the task force.

The draft cooperative management plan/environmental impact statement for the Lower St. Croix National Scenic Riverway was released to the public on September 17, 1999. The 60-day public review period ended on November 30, 1999. About 650 copies of the document were distributed to federal and state officials and agencies, local governments, organizations, individuals, and public libraries. The document also was available via the internet. Informational open houses were held on October 26 and 27, 1999. The purpose of the open houses was to discuss and answer questions about the document and solicit written comments concerning the plan. The managing agencies received almost 900 written responses during the public review period (including 600 ''form'' postcards). The plan was subsequently revised and the final cooperative management plan/environmental impact statement was distributed in October 2000. About 475 copies of the final document were distributed in both paper and CD-ROM formats. The final plan/EIS also was available via the internet.

Because of irregularities in the distribution of the final document and because of reinitiation of consultation with the FWS pursuant to section 7 of the Endangered Species Act, the managing agencies elected to extend the required 30-day ''no action'' period until January 31, 2001. This resulted in a no action period of more than 90 days. Notice of this decision was published in the **Federal Register** and in local papers; a letter explaining the extension also was sent to the project mailing list. Between release of the final plan and January 31, 2001, the managing agencies received 23 written responses from the public. Most of the responses repeated comments that already had been provided on the draft plan/EIS and responded to by the managing agencies. Concerns related to the following general topic areas were expressed: land use regulation guidelines, water surface use guidelines, regulatory uniformity between the states of Minnesota and Wisconsin, and geographic boundaries of land management areas. Many of the comments were about issues that are beyond the scope of the plan or that will be addressed in state rulemaking processes that will commence upon approval of this ROD.

Conclusion

The above factors and considerations justify selection of the alternative identified as the preferred alternative in the final environmental impact statement. The managing agency officials responsible for the approval of the selected action are the NPS' Midwest Regional Director, the Minnesota Department of Natural Resources Commissioner, and the Wisconsin Department of Natural Resources Secretary. By his signature, Secretary Bazzell is certifying WEPA compliance.

Note: Appendices A and B (referred to above) have been omitted from this notice. Persons who are interested in obtaining copies of the appendices should contact the Superintendent, Lower St. Croix National

Scenic Riverway, at the address or telephone number noted above.

Dated: October 18, 2001.

David N. Given,

Acting Regional Director, Midwest Region.

[FR Doc. 01–28303 Filed 11–9–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Supplement to the Environmental Impact Statement for the General Management Plan, Organ Pipe Cactus National Monument

AGENCY: National Park Service, Department of the Interior.

ACTION: Availability of Draft Supplemental Environmental Impact Statement (DSEIS) for re-analysis of Cumulative Impacts on the Sonoran Pronghorn, Organ Pipe Cactus National Monument, Arizona.

SUMMARY: Pursuant to section 102(2)(c) the National Environmental Policy Act of 1969, the National Park Service announces the availability of a DSEIS for Cumulative Impacts on the Sonoran Pronghorn, Organ Pipe Cactus National Monument, Arizona.

DATES: The DSEIS will remain available for public review for 45 days from the publication of this notice. If any public meetings are held concerning the DSEIS, they will be announced at a later date.

COMMENTS: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to Superintendent, Organ Pipe Cactus National Monument, 10 Organ Pipe Drive, Ajo, AZ 85321. Please also include: ''Ref: Supplemental EIS, Sonoran Pronghorn''.

You may also comment via the Internet to *Laurie Domler@nps.gov.* Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Ref: Supplemental EIS, Sonoran Pronghorn''. Please include your name and return address in your Internet message. Finally, you may hand-deliver comments to Organ Pipe Cactus National Park, Headquarters, 10 Organ Pipe Drive, Ajo AZ 85321. Our practice is to make comments, including names and home addresses of respondents available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses available for public inspection in their entirety.

ADDRESSES: Copies of the DSEIS for re-analysis of Cumulative Impacts on the Sonoran Pronghorn are available from the Superintendent, Organ Pipe Cactus National Monument, 10 Organ Pipe Drive, Ajo, AZ 85321. Public reading copies of the DSEIS will be available for review at the following locations:

Office of the Superintendent, Organ Pipe Cactus National Monument, 10 Organ Pipe Drive, Ajo, AZ 85321, Telephone: (520) 387–7661

Planning and Environmental Quality, Intermountain Support Office—Denver, National Park Service, 12795 W. Alameda Pkwy., Denver, CO 80225–0287, Telephone: (303) 969–2036

Office of Public Affairs, National Park Service, Department of Interior, 18th and C Streets NW., Washington, DC 20240, Telephone: (202) 208–6843

SUPPLEMENTARY INFORMATION: The Organ Pipe Cactus National Monument Final General Management Plan/Development Concept Plans/Environmental Impact Statement was approved in 1997. On February 12, 2001, The United States District Court for the District of Columbia (Civil Action No. 99–927) found that the EIS did not fully comply with the National Environmental Policy Act (NEPA) of 1969 because the cumulative impacts (re: Sonoran pronghorn) of all agency activities were not fully analyzed.

The major issue to be addressed in the EIS Supplement is the Sonoran Pronghorn. The pronghorn, one of five subspecies of pronghorn, has evolved in a unique desert environmental and has distinct adaptations to this environment that distinguished it from other subspecies. In 1967, the U.S. Fish and Wildlife Service (USFWS) designated the Sonoran Pronghorn as endangered. The most recent estimates indicate that approximately 100 pronghorn exist in the United States today. The only habitat in which Sonoran pronghorn currently remain in the United States is federally-owned land in Southwest Arizona. The court order declared that the USFWS issued Biological Opinions that failed to address the impacts of the National Park Service and other surrounding federal agencies current and planning activities on the pronghorn in an ''environmental baseline''. The court order also declared that the National Park Service issued an environmental impact statement that failed to address the cumulative impacts of their activities on the pronghorn, when added to other past, present, and reasonable foreseeable future actions, regardless of what agency undertake those actions.

Pursuant to the court order, the National Park Service, through a supplement to the GMP/EIS, will address all cumulative impacts of actions on the Sonoran Pronghorn that were not fully considered at the time of its GMP, regardless of what agency undertakes those actions. The National Park Service is not proposing to add, change, or delete any alternatives or impacts of alternatives that were presented in either the Draft General Management Plan/Development Concept Plan/Environmental Impact Statement or the Supplement to the Draft General Management Plan/Development Concept Plans/Environmental Impact Statement. Alternatives addressed will be (1) Existing Conditions/No Action Alternative (2) New Proposed Action Alternative.

FOR FURTHER INFORMATION CONTACT: Superintendent, Organ Pipe Cactus National Park at the above address and telephone number.

Dated: June 28, 2001.

William Ladd,

Director, Intermountain Region, National Park Service.

[FR Doc. 01–28139 Filed 11–9–01; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of the Final General Management Plan/Visitor Use and Facilities Plan and the Final Environmental Impact Statement for Voyageurs National Park, MN

AGENCY: National Park Service, Interior.

SUMMARY: Pursuant to section 102 (2) of the National Environmental Policy Act of 1969, the National Park Service announces the availability of the final general management plan/visitor use and facilities plan and the final environmental impact statement (FGMP/FEIS) for Voyageurs National Park.

DATES: The required no-action period on this FGMP–FEIS will expire 30 days

after the Environmental Protection Agency has published a notice of availability of the FEIS in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Kathleen Przybylski, Voyageurs National Park, 3131 Highway 53, International Falls, MN 56649, telephone: 218–283–9821. Copies of the plan may also be requested at this address and telephone number, or by e-mail from *Kathleen_Przybylski@nps.gov*.

SUPPLEMENTARY INFORMATION: The purpose of the general management plan/visitor use and facilities plan is to set forth the basic management philosophy for the park and to provide the strategies for addressing issues and achieving identified management objectives. The FGMP/FEIS describes and analyzes the environmental impacts of a proposed action and two action alternatives for the future management direction of the park. A no action alternative is also evaluated.

The draft general management plan/visitor use and facilities plan and draft environmental impact statement (DGMP/DEIS) for Voyageurs National Park was released to the public on June 16, 2000. The public comment period ended October 2, 2000. Modifications to the DGMP/DEIS have been made based on public comment received and on further impact analysis.

The responsible official is Mr. William Schenk, Midwest Regional Director, National Park Service.

Dated: September 21, 2001.

William W. Schenk,

Regional Director, Midwest Region.

[FR Doc. 01–28304 Filed 11–9–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 20, 2001. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW., NC400, Washington, DC 20240. Written comments should be submitted by November 28, 2001.

Carol D. Shull,

Keeper of the National Register of Historic Places.

ALABAMA

Autauga County

Mount Sinai School, (The Rosenwald School Building Fund and Associated Buildings MPS), 1820 Cty. Rd. 57, Prattville, 01001296

Bullock County

Sardis Baptist Church, AL 223S at jct. Cty. Rd. 22, Union Springs, 01001299

Calhoun County

Ten Oaks, 805 Pelham Rd. S, Jacksonville, 01001298

Chambers County

New Hope Rosenwald School, (The Rosenwald School Building Fund and Associated Buildings MPS), 2.25 mi SE of US 431 on Cty Rd. 267, Fredonia, 01001297

Cullman County

Crane Hill Masonic Lodge, 14538 Cty. Rd. 222, Crane Hill, 01001294

Dallas County

Hain, H. Bruce, House, 5826 AL 41, Sardis, 01001295

Jefferson County

Stonecroft, 1453 Shades Crest Rd., Birmingham, 01001290

Lauderdale County

Downtown Florence Historic District (Boundary Increase), Roughly bounded by Pine St., Alabama St., Wood Ave., and Tuscaloosa St., Florence, 01001292

Marion County

Midtown Historic District, Roughly bounded by Taylor Ave., US 90, Houston St., Kenneth St., US 98, and Florida St., Mobile, 01001293

St. Clair County

Old Pell City Historic District, Roughly bounded by 16th St. N, 1st Ave. N, 22nd St. N, and 4th Ave. N, Pell City, 01001291

ARIZONA

Navajo County

Pinedale Elementary School, 300 S. Main St., Pinedale, 01001301

Pima County

Ajo Townsite Historic District, blks 1–31, Ajo Townsite, Ajo, 01001300

FLORIDA

Hillsborough County

Glover School, 5104 Horton Rd., Bealsville, Plant City, 01001307

IDAHO

Butte County

Arco Baptist Community Church, 402 W. Grand Ave., Arco, 01001303

Latah County

Hotel Rietmann, 525 and 529 S. Main St., Troy, 01001302

Kenworthy Theatre, (Motion Picture Theater Buildings in Idaho MPS), 508 S. Main St., Moscow, 01001305

Nu Art Theatre, (Motion Picture Theater Buildings in Idaho MPS), 516 S. Main St., Moscow, 01001304

Twin Falls County

Twin Falls Original Townsite Residential Historic District, Roughly bounded by Blue Lakes Ave., Addison Ave., 2nd Ave. E, and 2nd Ave. W, Twin Falls, 01001306

ILLINOIS

Clark County

Harlan Hall, 603 Locust St., Marshall, 01001309

Cumberland County

Ward, Thornton, Estage, 1387 US 40, Toledo, 01001308

Livingston County

Ambler's Texaco Gas Station, (Route 66 through Illinois MPS) Il 17 and Old US 66, Dwight, 01001311

Montgomery County

Route 66, Litchfield to Mount Olive, (Route 66 through Illinois MPS) US 66, N of IL 16 in Litchfield to Mount Olive, Litchfield, 01001312

LOUISIANA

Lafayette Parish

Our Lady of the Assumption School, 410 Michaud St., Carencro, 01001267

St. John The Baptist Parish

Caire, E.J., & Co. Stores, 2403–2407 LA 18, Edgard, 01001268

MAINE

Aroostook County

Reed School, US 1, 0.1 mi. S of jct. with Lycette Rd., North Amity, 01001270

Hancock County

Stone Barn Farm, Jct. of Crooked Rd. and Norway Dr., Salsbury Cove, 01001271

Penobscot County

Patch, Edith Marion, House, 500 College Ave., Old Town, 01001269

Washington County

Moore, Henry D., Parish House and Library, 3 Rogers Point Rd., Steuben, 01001272

MICHIGAN

Ontonagon County

Ontonagon Harbor Piers Historic District, Ontonagon R. at Lake Superior, Ontonagon, 01001313

NEBRASKA

Clay County

Fairfield Carnegie Library, (Carnegie Libraries in Nebraska MPS) 412 N. D St., Fairfield, 01001274

Colfax County

Schuyler Carnegie Library, (Carnegie Libraries in Nebraska MPS) 1003 B St., Schuyler, 01001275

Keith County

Archeological site 25KH67, Address Restricted, Paxton, 01001279
Archeological site 25KH68, Address Restricted, Brule, 01001278

Pierce County

Meridan Highway, 4.5 mi. Cty. Rd. following 552 Ave., 853 Rd. and 551 Ave., Pierce, 01001273

Platte County

Columbus Izaak Walton League Lodge, NE 81, Columbus, 01001277

Sherman County

Archeological site 25SM20, Address Restricted, Loup City, 01001276

NEW YORK

Allegany County

Belmont Hotel, 40–48 Schuyler St., Belmont, 01001319

Oswego County

Ames, Orson, House, (Freedom Trail, Abolitionism, and African American Life in Central New York MPS) 3339 Main St., Mexico, 01001318
Buckhout—Jones Building, (Freedom Trail, Abolitionism, and African American Life in Central New York MPS) 5–13 W. Bridge St., Oswego, 01001322
Clark, Starr, Tin Shop, (Freedom Trail, Abolitionism, and African American Life in Central New York MPS) 3250 Main St., Mexico, 01001323
Edwards, John B. and Lydia, House, (Freedom Trail, Abolitionism, and African American Life in Central New York MPS) 144 E. Third St., Oswego, 01001316
McKenzie, John and Harriet, House, (Freedom Trail, Abolitionism, and African American Life in Central New York MPS) 96 W. Eighth St., Oswego, 01001314
Wing, Asa and Caroline, House, (Freedom Trail, Abolitionism, and African American Life in Central New York MPS) 3392 NY 69, Mexico, 01001317

Richmond County

STANDARD OIL COMPANY NO. 16 (harbor tug), 3001 Richmond Terrace, Staten Island, 01001321

Saratoga County

URGER (canal tugboat), near eastern terminus of the Erie Division of the New York State Barge Canal., Waterford, 01001320

NORTH CAROLINA

Duplin County

Herring, Bryan Whitfield, Farm, NC 1311, 1 mi. E of jct. with NC 1302, Calypso, 01001315

OHIO

Summit County

Limbach Block Historic District, (Canal, Railroad, and Industrial Resources of the Village of Clinton/Warwick, Ohio MPS) 7843,7845,7847,7849,7851, and 7853 Main St., Clinton, 01001280

RHODE ISLAND

Newport County

Osborn—Bennett Historic District, 1137, 1148, 1168 and 1188 Main Rd., Tiverton, 01001324

TENNESSEE

Cocke County

Cureton, Walter C., House, 202 Lincoln Ave., Newport, 01001325

TEXAS

Bexar County

Brooke Army Medial Center, Building 1000, Stanley Rd., Fort Sam Houston, San Antonio, 01001281

UTAH

Salt Lake County

Lewis, Dr. David and Juanita, House, 1403 E. Westminster Ave., Salt Lake City, 01001283
Meek, Benjamin and Olivia, House, 12782 South Fort St., Draper, 01001282

VERMONT

Chittenden County

Mount Philo State Park, (Historic Park Landscapes in National and State Parks MPS) 5425 Mount Philo Rd., Charlotte, 01001286

Essex County

Maidstone State Park, (Historic Park Landscapes in National and State Parks MPS) 4858 and 4876 Maidstone Rd., Maidstone, 01001285

Windsor County

Emerson, Ezekiel, Farm, (Agricultural Resources of Vermont MPS) VT 73, Rochester, 01001284

WASHINGTON

King County

Reard—Freed Farmstead, 1807 212th Ave. SE, Sammamish, 01001289

Spokane County

Fox Theater, 1005 W. Sprague Ave., Spokane, 01001287
Lewis and Clark High School, 521 W. Fourth Ave., Spokane, 01001288

WEST VIRGINIA

Greenbrier County

Oakhurst Links, 1 Montague Dr., White Sulphur Springs, 01001327

Hampshire County

Washington Bottom Farm, WV 28, Springfield, 01001328

Hardy County

Funkhouser, Henry, Farm and Log House, Funkhouser Rd., Cty Rd. 259/9, Baker, 01001326

Kanawha County

Sterrett Brothers' Dry Goods Store, 112 Capitol St., Charleston, 01001329

Marion County

Fleming—Watson Historic District, Approx. bounded by Fairmont Ave., Second, Fay Sts., Apple Ct, Green, Emerson Sts., Coleman Ave., Seventh St., Outlook, Fairmont, 01001330
Wilson School, 917 E. Main St., Mannington, 01001331

Monongalia County

Chancery Hill Historic District (Boundary Increase), 256 Prairie Ave., Morgantown, 01001332

Tucker County

St. George Academy, Cty. Rd. 1, St. George, 01001333

It has been determined necessary to WAIVE the comment period to assist in the preservation of the following historic resource.

A request for a MOVE has been made for the following resource:

INDIANA

St. Joseph County

South Bend Remedy Company Building 501 W. Colfax, South Bend, 01000993

[FR Doc. 01–28305 Filed 11–9–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Control of the U.S. Department of Defense, U.S. Army, Fort Shafter, U.S. Army Garrison, HI

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the control of the U.S. Department of Defense, U.S. Army, Fort Shafter, U.S. Army Garrison, HI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the

museum, institution, or Federal agency that has control of these Native Hawaiian human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by U.S. Army Corps of Engineers, St. Louis District, MO, Mandatory Center of Expertise for the Curation and Management of Archaeological Collections professional staff in consultation with representatives of Hui Malama I Na Kupuna 'O Hawai'i Nei, the Oahu Burial Council, and the Office of Hawaiian Affairs.

In 1983, human remains representing five individuals were recovered from an unknown location in the vicinity of Fort Shafter, Honolulu, HI, by unknown individuals. There is no information regarding the specific provenance or the circumstances of removal of these human remains. No known individuals were identified. No associated funerary objects are present.

Osteological characteristics identify these human remains as Native American. Based on the geographical location and dates of other sites in the vicinity of Fort Shafter, these remains are identified as Native Hawaiian.

Based on the above-mentioned information, officials of the U.S. Army have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of five individuals of Native Hawaiian ancestry. Officials of the United States Army also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native Hawaiian human remains and Hui Malama I Na Kupuna 'O Hawai'i Nei, the Oahu Burial Council, and the Office of Hawaiian Affairs.

This notice has been sent to officials of Hui Malama I Na Kupuna 'O Hawai'i Nei, the Oahu Burial Council, and the Office of Hawaiian Affairs. Representatives of any other Native Hawaiian organization that believes itself to be culturally affiliated with these human remains should contact Dr. Laurie Lucking, Cultural Resources Manager, Environmental Division, USAG-HI, Building 105, WAAF, Schofield Barracks, HI 96857, telephone (808) 656-2878, extension 1052, before December 13, 2001. Repatriation of the human remains to Hui Malama I Na Kupuna 'O Hawai'i Nei, the Oahu Burial Council, and the Office of Hawaiian Affairs may begin after that date if no additional claimants come forward.

Dated: September 4, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01-28307 Filed 11–19–01; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Control of the U.S. Department of Defense, U.S. Army, Pohakuloa Training Area, U.S. Army Garrison, HI

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the control of the U.S. Department of Defense, U.S. Army, Pohakuloa Training Area, U.S. Army Garrison, HI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native Hawaiian human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by U. S. Army installation staff, and U.S. Army Corps of Engineers, St. Louis District, MO, Mandatory Center of Expertise for the Curation and Management of Archaeological Collections professional staff in consultation with representatives of Koa Mana, Hui Malama I Na Kupuna O Hawai'i Nei, the Hawai'i Island Burial Council, and the Office of Hawaiian Affairs.

In 1985, human remains representing one individual were removed during archeological testing at the Bobcat Trail Habitation Cave site (HI Site No. 50-10-30-5004), Hawai'i Island, by Paul H. Rosendahl, Inc., staff under contract to the U.S. Army Corps of Engineers, Honolulu District. No known individual was identified. No associated funerary objects are present.

The remains were found in an ash deposit in the cave. Volcanic glass hydration dating of obsidian associated with the feature indicates a date range of A.D. 1468-1552 for the formation of the deposit.

In 1987, human remains representing one individual were removed during archeological excavations at HI Site No. 50-10-30-10650, Hawai'i Island, by International Archaeological Research Institute, Inc., staff under contract to the U.S. Army Corps of Engineers, Honolulu District. No known individual was identified. No associated funerary objects are present.

The remains were removed from a hearth deposit. Radiocarbon dating provides a date range of A.D. 1153-1311 for the formation of the hearth.

Osteological characteristics identify these human remains as Native American. Based on the geographical location and dates of the sites, these remains are identified as Native Hawaiian.

Based on the above-mentioned information, officials of the U.S. Army have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native Hawaiian ancestry. Officials of the U.S. Army also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native Hawaiian human remains and the Koa Mana, Hui Malama I Na Kupuna O Hawai'i Nei, the Hawai'i Island Burial Council, and the Office of Hawaiian Affairs.

This notice has been sent to officials of the Koa Mana, Hui Malama I Na Kupuna 'O Hawaii Nei, the Hawai'i Island Burial Council, and the Office of Hawaiian Affairs. Representatives of any other Native Hawaiian organization that believes itself to be culturally affiliated with these human remains should contact Dr. Laurie Lucking, Cultural Resources Manager, Environmental Division, USAGHI, Building 105, WAAF, Schofield Barracks, HI 96857, telephone (808) 656-2878, extension 1052, before December 13, 2001. Repatriation of the human remains to the Koa Mana, Hui Malama I Na Kupuna O Hawai'i Nei, the Hawai'i Island Burial Council, and the Office of Hawaiian Affairs may begin after that date if no additional claimants come forward.

Dated: September 4, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01-28306 Filed 11–09–01; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Colorado Historical Society, Denver, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Colorado Historical Society, Denver, CO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Colorado Historical Society professional staff in consultation with representatives of the Arapahoe Tribe of the Wind River Reservation, Wyoming; Cheyenne-Arapaho Tribes of Oklahoma; Comanche Indian Tribe, Oklahoma; Fort Sill Apache Tribe of Oklahoma; Kiowa Indian Tribe of Oklahoma; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Pawnee Nation of Oklahoma; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; and Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah. The following tribes were invited, but have been unable to participate in consultations: the Apache Tribe of Oklahoma; Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico; Shoshone Tribe of the Wind River Reservation, Wyoming; and Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma.

In August, 1997, human remains representing one individual were recovered from an unspecified site within El Paso County Parks and Recreation land, El Paso County, CO, during a legally authorized survey conducted by Jane Anderson of Pioneer Archaeological Consultants. The human remains were turned over to the El Paso County coroner. No known individual was identified. No associated funerary objects are present.

Although this site has been identified as precontact due to the nearby presence of stone and bone tools, it is most likely that these human remains were recently redeposited due to flooding, and that the human remains, a cranium, are isolated and without a burial site or context. Based on condition of the human remains, this individual has been identified as Native American from the contact period to 1884. Colorado's history of tribal relocation suggests that these human remains date from before 1884. There is no evidence to contradict these findings. Based on the totality of the circumstances surrounding the acquisition of these human remains, traditional territories, oral traditions, archeological context, material culture, and cranial measurements, officials of the Colorado Historical Society have determined that there is cultural affiliation with the present-day tribes who jointly claim a presence in the region prior to and during the contact period. These present-day tribes include Cheyenne-Arapaho Tribes of Oklahoma; Comanche Indian Tribe, Oklahoma; Fort Sill Apache Tribe of Oklahoma; Kiowa Indian Tribe of Oklahoma; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Pawnee Nation of Oklahoma; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; and Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah. Authorized representatives of these affiliated tribes have submitted a joint claim of cultural affiliation to the Colorado Historical Society.

Based on the above-mentioned information, officials of the Colorado Historical Society have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Colorado Historical Society also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Cheyenne-Arapaho Tribes of Oklahoma; Comanche Indian Tribe, Oklahoma; Fort Sill Apache Tribe of Oklahoma; Kiowa Indian Tribe of Oklahoma; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Pawnee Nation of Oklahoma; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; and Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah.

This notice has been sent to officials of the Cheyenne-Arapaho Tribes of Oklahoma; Comanche Indian Tribe, Oklahoma; Fort Sill Apache Tribe of Oklahoma; Kiowa Indian Tribe of Oklahoma; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Pawnee Nation of Oklahoma; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; Apache Tribe of Oklahoma; Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico; Shoshone Tribe of the Wind River Reservation, Wyoming; Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho; Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma; and Zuni Tribe of the Zuni Reservation, New Mexico. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Anne W. Bond, Director of Collections and Exhibitions, Colorado Historical Society, 1300 Broadway, Denver, CO 80203-2137, telephone (303) 866-4691, before December 13, 2001. Repatriation of the human remains to the Cheyenne-Arapaho Tribes of Oklahoma; Comanche Indian Tribe, Oklahoma; Fort Sill Apache Tribe of Oklahoma; Kiowa Indian Tribe of Oklahoma; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Pawnee Nation of Oklahoma; Rosebud Sioux

Tribe of the Rosebud Indian Reservation, South Dakota; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; and Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah may begin after that date if no additional claimants come forward.

Dated: October 17, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc.01-28308 Filed 11–9–01; 8:45 am]

BILLING CODE 4310–70–S

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–453]

Certain Programmable Logic Devices and Products Containing Same; Notice of Commission Decision Not To Review an Initial Determination Terminating the Investigation on the Basis of a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ's'') initial determination (''ID'') terminating the above-captioned investigation in its entirety based on a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3115. Copies of the public versions of the ID and all other nonconfidential documents in the record of this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its Internet server *(http://www.usitc.gov).* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 14, 2001, based on a complaint filed by Altera Corporation (''Altera'') against Xilinx, Inc. (''Xilinx''). The complaint alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, sale for importation, and/or sale within the United States after importation of certain integrated programmable logic devices or products containing same by reason of infringement of claims 1, 8–13, 31, 33 or 34 of U.S. Letters Patent 5,970,255, or claims 11 or 12 of U.S. Letters Patent 5,260,610. 66 FR 14937 (2001).

On July 31, 2001, Altera and Xilinx filed their joint motion to terminate the investigation on the basis of a settlement agreement. On August 2, 2001, the Commission investigative attorney filed a response supporting the joint motion. On October 17, 2001, the presiding ALJ issued an ID (Order No. 8) granting the joint motion. No party petitioned for review of the ID.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) and section 210.42 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.42).

Issued: November 7, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–28339 Filed 11–9–01; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Justice Management Division; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: new collection; applicant qualification form.

The Department of Justice (DOJ), Justice Management Division (JMD) 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. This proposed information collection was previously published in the **Federal Register** on September 6, 2001, Volume 66, Number 173, pages 46652–46653 allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until December 13, 2001. This process is conducted in accordance with 5 CFR 1320.10. Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

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 methodology and assumptions used;

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

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

Overview of this information collection:

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* Applicant qualification form.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. Personnel Staff, Justice Management Division, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Applicants for employment with certain DOJ components who do not have access to the Internet. *Other:* None *Abstract:* This form would allow applicants for employment with the Department of Justice who do not have access to the Internet to provide the required

personal and experience information and job specific criteria in a format that can be scanned into the electronic recruitment module that automatically rates and ranks applicants.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,000 responses are estimated annually with an average of thirty minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 500 hours annually.

If additionally information is required contact: Robert B. Briggs, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, 1331 Pennsylvania Avenue, NW., Washington, DC 20530.

Dated: November 7, 2001.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 01–28403 Filed 11–9–01; 8:45 am]

BILLING CODE 4410–AR–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy and 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States v. Goodyear Tire & Rubber Co., Corning, Inc. and First Piedmont Corp.,* Civil Action No. 4:01CV00062, was lodged on October 30, 2001 with the United States District Court for the Western District of Virginia. The consent decree resolves the United States' claims against defendants with respect to past costs incurred in response to contamination at the First Piedmont Rock Quarry (Route 719) Site in Pittsylvania County, Virginia, pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9607.

Under the consent decree, defendants will pay the United States $973,095 in reimbursement of past response costs incurred in connection with the Site. Said amount will be paid within thirty (30) days after entry of the consent decree by the Court. As part of the proposed settlement, defendants will receive a covenant not to sue for and contribution protection for past response costs.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Acting Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Goodyear Tire & Rubber Co., Corning, Inc. and First Piedmont Corp.,* DOJ reference number 90–11–3–07144.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 105 Franklin Road, S.W., Suite One, Roanoke, Virginia; and the Region III Office of the Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania. A copy of the proposed decree may be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $4.75 ($.25 per page for production costs), payable to the Consent Decree Library.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–28365 Filed 11–9–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on October 26, 2001, the United States of America, by and through Department of Justice on behalf of the United States Environmental Protection Agency (''EPA''), lodged with the United States District Court for the District of Idaho a Consent Decree resolving the United States' claims against defendant the J.R. Simplot Company in this action.

The Consent Decree requires Simplot to implement EPA's selected remedy for the Simplot Operable Unit of the Site, and to reimburse costs incurred by EPA in response to releases of hazardous substances at the Site. The Consent Decree also requires Simplot to reimburse the United States for all future costs incurred by the United States in overseeing Simplot's implementation of EPA's selected remedy for the Simplot Operable Unit of the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *FMC,* DOJ Ref. #90–7–1–889/1.

The proposed Consent Decree may be examined at the Region 10 Office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle, WA 98104 (206) 553–1504, and may be obtained from the Office of the United States Attorney for the District of Idaho, P.O. Box 32, Boise, Idaho 83707 (208) 334–1211. A copy of the proposed Consent Decree may also be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005. In requesting copies please refer to *United States* v. *FMC,* No. C99–296–E–BLW (D. Idaho), specify the Consent Decree you wish to receive, and enclose a check payable to the Consent Decree Library in the amount of twenty dollars (25 cents per page reproduction costs).

Robert E. Maher, Jr.,

Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–28367 Filed 11–9–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, As Amended

Consistent with Departmental policy, 28 CFR 50.7, 38 FR 19029, and 42 U.S.C. 9622(d), notice is hereby given that on October 31, 2001, a proposed Consent Decree in *United States* v. *Ponderosa Fibres of America, Inc., et al.*, Civil Action No. 99–CV–1305, was lodged with the United States District Court for the Northern District of New York. The proposed Consent Decree will resolve potential claims by the United States, on behalf of the United States Environmental Protection Agency (''EPA''), against Third-Party Defendant The Bank of New York (''BNY''), under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9601–9675(c), relating to the St. Lawrence Pulp and Paper Superfund Site, located in the City of Ogdensburg, St. Lawrence County, New York (''Site''). The Amended Complaint in this action alleges, inter alia, that First-Party Defendant Ponderosa Fibres of

America, Inc. (''PFA'') is jointly and severally liable, under Section 107 of CERCLA, 42 U.S.C. 9607, for the United States' environmental response costs related to the Site. A Third-Party Complaint by PFA alleges that BNY is liable for Site-related response costs under Section 113(f) of CERCLA, 42 U.S.C. 9613(f).

Pursuant to the Consent Decree, the settling defendant agrees to pay the United States $71,250, plus interest accruing from November 15, 2001 through the date of payment, in reimbursement of response costs incurred by the United States in connection with the Site.

For a period of thirty (30) days after the date of publication of this Notice, the United States Department of Justice will receive comments relating to the proposed Consent Decree. Any comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611, and should include references to the case name, *United States* v. *Ponderosa Fibres of America, Inc., et al.*, Civil Action No. 99–CV–1305, and to the Department of Justice case number, ''DJ #90–11–2–1223.''

The proposed Consent Decree may be examined at the offices of the United States Attorney, Northern District of New York, James T. Foley Courthouse, 445 Broadway, Albany, New York 12207, and at the offices of the United States Environmental Protection Agency, Region II, 290 Broadway, New York, New York 10007–1866. With any request for a copy of the Consent Decree, please enclose a check in the amount of $4.75 ($0.25 per page) payable to the ''Consent Decree Library.''

Ronald Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environmental & Natural Resources Division, U.S. Department of Justice.

[FR Doc. 01–28359 Filed 11–9–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of a Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Notice if hereby given that a proposed consent order in *United States* v. *Southwire Company,* Civil No. 4:01CV–182–M, was lodged on October 24, 2001, with the United States District Court for the Western District of Kentucky, Owensboro Division (''Southwire Decree''). The proposed Consent Degree would resolve certain claims under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9606 and 9607, as amended, to recover response costs incurred by the Environmental Protection Agency in connection with the release of hazardous substances at the National Southwire Aluminum Superfund Site (''the Site'') in Hawesville, Hancock County, Kentucky. The United States alleges that Southwire Company (''Settling Defendent''), is liable as a person who owned and operated the Site at the time of the release or threatened release of a hazardous substances. Under the proposed Consent Degree, Settling Defendent will perform the remedy for the Site set forth in the Environmental Protection Agency's July 6, 2000 Record of Decision, pay one hundred percent of past response costs in the amount of $326,520.83, and pay one hundred percent of future site costs that the Environmental Protection Agency may incur.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Degree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20530, and should refer to *United States* v. *Southwire Company,* W.D. KY, Civil No. 4:01 CV–182–M, DOJ Ref #90–11–3–1148/1.

The Consent Degree may be examined at the Region 4 Office of the Environmental Protection Agency, 61 Forsyth Street, Atlanta, GA 30303 and at the United States Attorney's Office for the Western District of Kentucky, 510 West Broadway, 10th Floor, Louisville, KY 40202, c/o Candace Hill, Civil Chief, United States Attorney's Office. A copy of the proposed Consent Degree (without attachments) may be obtained by mail from the Consent Decree Library, Post Office Box 7611, Washington, DC 20044. In requesting copies please refer to the referenced case and enclose a check in the amount of $10.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Ellen Mahan,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–28366 Filed 11–9–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on October 25, 2001, a proposed Consent Decree (''Decree'') in *United States* v. *W.R. Grace & Co., et al.*, Civil No. 00–167–M–DWM was lodged with the United States District Court for the District of Montana. The United States filed this action pursuant to section 104(e) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9604(e), for entry and access to portions of the Libby Asbestos Site in and near Libby, Montana and for civil penalties for failure to provide access.

The terms of the proposed Decree would allow the United States a general unsecured claim jointly against Defendants W.R. Grace & Company and Kootenai Development Corporation in the amount of $71,000 in the Bankruptcy Case captioned *In re: W.R. Grace & Co., et al.*, Case No. 01–01139 (JJF) (D. Del.). In addition, W.R. Grace & Co.-Conn would undertake a Supplemental Environmental Project at a cost of $2,750,000 to form and fund a Montana non-profit corporation to establish and administer a program to pay for medical care for certain asbestos-related illnesses. This general unsecured claim together with W.R. Grace & Co.-Conn.'s performance of the Supplemental Environmental Project will resolve the claims of the United States against W.R. Grace & Company and Kootenai Development Corporation in Civil No. 00–167–M–DWM.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to, *United States* v. *W.R. Grace & Co., et al.*, Civil No. 00–167–M–DWM, and D.J. Ref. # 90–11–2–07106/1.

The Decree may be examined at the office of the U.S. Department of Justice, Environmental Enforcement Section, 999 18th Street, Suite 945, North Tower, Denver, Colorado; at U.S. EPA Region 8, Office of Regional Counsel, 999 18th Street, Suite 300, South Tower, Denver, Colorado. A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy,

please enclose a check in the amount of $5.50 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–28368 Filed 11–9–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 248–2001]

Privacy Act of 1974; Notice of the Removal of a System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Bureau of Prisons (BOP), Department of Justice is removing a published Privacy Act system of records entitled ''Industrial Inmate Employment Record System, JUSTICE/BOP–003.'' Inmate payroll records have been transferred to the system of records entitled ''Inamte Central Records, JUSTICE/BOP–005.'' The remainder of the records have been destroyed in accordance with approved records retention and disposal schedules. The National Archives and Records Administration removed the requirement that any records be offered for permanent retention. Therefore, the ''Inmate Central Records,'' last published in the **Federal Register** on September 28, 1978, 43 FR 44733, is removed from the Department's compilation of Privacy Act systems.

Dated: Sept. 26, 2001.

Janis A. Sposato,

Acting Assistant Attorney General for Administration.

[FR Doc. 01–28361 Filed 11–9–01; 8:45 am]

BILLING CODE 4410–05–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 249–2001]

Privacy Act of 1974; Notice of the Removal of a System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Bureau of Prisons (BOP), Department of Justice is removing a published Privacy Act system of records entitled ''NIC Field Readers List, Justice/BOP–102.'' Some records have been transferred to the system of records entitled ''NIC Mailing List and Information Center Contacts, Justice/BOP–104.'' The remaining records have been destroyed in accordance with approved records retention and disposal schedules. The National Archives and Records Administration removed the requirement that any records be offered for permanent retention. Therefore, the ''NIC Field Readers List,'' last published in the **Federal Register** on April 18, 1983, at 65 FR 16652, is removed from the Department's compilation of Privacy Act systems.

Dated: October 26, 2001.

Janis A. Sposato,

Acting Assistant Attorney General for Administration.

[FR Doc. 01–28362 Filed 11–9–01; 8:45 am]

BILLING CODE 4410–05–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 250–2001]

Privacy Act of 1974; Notice of the Removal of a System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Bureau of Prisons (BOP), Department of Justice is removing a published Privacy Act system of records entitled ''Appendix of Field Locations, JUSTICE/BOP–999.'' BOP field locations are updated annually and published in 28 CFR part 503. Therefore, it is no longer necessary to maintain this system of records. Records have been destroyed in accordance with approved records retention and disposal schedules. The National Archives and Records Administration removed the requirement that any records be offered for permanent retention. Therefore, the ''Appendix of Field Locations,'' last published in the **Federal Register** on February 4, 1983, at 48 FR 5333, is removed from the Department's compilation of Privacy Act systems.

Dated: October 26, 2001.

Janis A. Sposato,

Acting Assistant Attorney General for Administration.

[FR Doc. 01–28363 Filed 11–9–01; 8:45 am]

BILLING CODE 4410–05–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA #223P]

Controlled Substances: Proposed Aggregate Production Quotas for 2002

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed year 2002 aggregate production quotas.

SUMMARY: This notice proposes initial year 2002 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act (CSA).

DATES: Comments or objections must be received on or before December 4, 2001.

ADDRESSES: Send comments or objections to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attn.: DEA Federal Register Representative (CCR).

FOR FURTHER INFORMATION CONTACT: Frank L. Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183

SUPPLEMENTARY INFORMATION: Section 306 of the CSA (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for each basic class of controlled substance listed in Schedules I and II. This responsibility has been delegated to the Administrator of the DEA by section 0.100 of Title 28 of the Code of Federal Regulations.

The proposed year 2002 aggregate production quotas represent those quantities of controlled substances that may be produced in the United States in 2002 to provide adequate supplies of each substance for: the estimated medical, scientific, research, and industrial needs of the United States; lawful export requirements; and the establishment and maintenance of reserve stocks. These quotas do not include imports of controlled substances for use in industrial processes.

In determining the proposed year 2002 aggregate production quotas, the Administrator considered the following factors: total actual 2000 and estimated 2001 and 2002 net disposals of each substance by all manufacturers; estimates of 2001 year-end inventories of each substance and of any substance manufactured from it and trends in accumulation of such inventories; product development requirements of both bulk and finished dosage form manufacturers; projected demand as indicated by procurement quota applications filed pursuant to section 1303.12 of Title 21 of the Code of Federal Regulations; and other pertinent information.

Pursuant to section 1303 of Title 21 of the Code of Federal Regulations, the Administrator of the DEA will, in early 2002, adjust aggregate production quotas and individual manufacturing quotas allocated for the year based upon 2001 year-end inventory and actual 2001 disposition data supplied by quota recipients for each basic class of Schedule I or II controlled substance.

Therefore, under the authority vested in the Attorney General by section 306 of the CSA of 1970 (21 U.S.C. 826), and delegated to the Administrator of the DEA by Section 0.100 of Title 28 of the Code of Federal Regulations, the Administrator hereby proposes that the year 2002 aggregate production quotas for the following controlled substances, expressed in grams of anhydrous acid or base, be established as follows:

Basic class	Proposed year 2002 quotas
Schedule I	
2,5-Dimethoxyamphetamine	12,501,000
2,5-Dimethoxy-4-ethylamphetamine (DOET)	2
3-Methylfentanyl	4
3-Methylthiofentanyl	2
3,4-Methylenedioxy-amphetamine (MDA)	15
3,4-Methylenedioxy-N-ethylamphetamine (MDEA)	15
3,4-Methylenedioxy-methamphetamine (MDMA)	15
3,4,5-Trimethoxyamphetamine	2
4-Bromo-2,5-Dimethoxyamphetamine (DOB)	2
4-Bromo-2,5-Dimethoxyphenethylamine (2-CB)	2
4-Methoxyamphetamine	7
4-Methylaminorex	2
4-Methyl-2,5-Dimethoxyamphetamine (DOM)	2
5-Methoxy-3,4-Methylenedioxyamphetamine	2
Acetyl-alpha-methylfentanyl	2
Acetyldihydrocodeine	2
Acetylmethadol	2
Allylprodine	2
Alphacetylmethadol	7
Alpha-ethyltryptamine	2
Alphameprodine	2
Alphamethadol	2
Alpha-methylfentanyl	2
Alpha-methylthiofentanyl	2
Aminorex	7
Benzylmorphine	2
Betacetylmethadol	2
Beta-hydroxy-3-methylfentanyl	2
Beta-hydroxyfentanyl	2
Betameprodine	2
Betamethadol	2
Betaprodine	2
Bufotenine	2
Cathinone	9
Codeine-N-oxide	2
Diethyltryptamine	2
Difenoxin	9,000
Dihydromorphine	1,101,000
Dimethyltryptamine	3
Gamma-hydroxybutyric acid	7
Heroin	2
Hydroxypethidine	2
Lysergic acid diethylamide (LSD)	46
Marihuana	715,000
Mescaline	7
Methaqualone	9
Methcathinone	9
Morphine-N-oxide	2
N,N-Dimethylamphetamine	7
N-Ethyl-1-Phenylcyclohexylamine (PCE)	5
N-Ethylamphetamine	7
N-Hydroxy-3,4-Methylenedioxyamphetamine	2
Noracymethadol	2
Norlevorphanol	2
Normethadone	7
Normorphine	7
Para-fluorofentanyl	2
Pholcodine	2
Propiram	415,000
Psilocybin	2
Psilocyn	2
Tetrahydrocannabinols	131,000
Thiofentanyl	2
Trimeperidine	2
Schedule II	
1-Phenylcyclohexylamine	12
1-Piperidinocyclohexanecarbonitrile (PCC)	10
Alfentanil	672
Alphaprodine	2
Amobarbital	451,000
Amphetamine	13,964,000
Carfentanil	120
Cocaine	251,000
Codeine (for sale)	38,901,000
Codeine (for conversion)	59,051,000
Dextropropoxyphene	126,001,000
Dihydrocodeine	376,000
Diphenoxylate	401,000
Ecgonine	51,000
Ethylmorphine	12
Fentanyl	440,000
Glutethimide	2
Hydrocodone (for sale)	23,825,000
Hydrocodone (for conversion)	13,500,000
Hydromorphone	1,409,000
Isomethadone	12
Levo-alphacetylmethadol (LAAM)	12
Levomethorphan	2
Levorphanol	37,000
Meperidine	9,479,000
Metazocine	1
Methadone (for sale)	12,705,000
Methadone Intermediate	18,004,000
Methamphetamine	2,315,000
325,000 grams of levo-desoxyephedrine for use in a non-controlled, non-prescription product; 1,950,000 grams for methamphetamine for conversion to a Schedule III product; and 40,000 grams for methamphetamine (for sale)	
Methylphenidate	17,618,000
Morphine (for sale)	15,615,000
Morphine (for conversion)	110,774,000
Nabilone	2
Noroxymorphone (for sale)	25,000
Noroxymorphone (for conversion)	6,000,000
Opium	500,000
Oxycodone (for sale)	40,109,000
Oxycodone (for conversion)	311,000
Oxymorphone	204,000
Pentobarbital	27,728,000
Phencyclidine	21
Phenmetrazine	2
Phenylacetone	801,000
Secobarbital	2
Sufentanil	1,700
Thebaine	59,090,000

The Administrator further proposes that aggregate production quotas for all other Schedules I and II controlled substances included in sections 1308.11 and 1308.12 of Title 21 of the Code of Federal Regulations be established at zero.

All interested persons are invited to submit their comments and objections in writing regarding this proposal. A person may object to or comment on the proposal relating to any of the above-mentioned substances without filing comments or objections regarding the others. If a person believes that one or more of these issues warrant a hearing, the individual should so state and summarize the reasons for this belief.

In the event that comments or objections to this proposal raise one or more issues which the Administrator finds warrant a hearing, the Administrator shall order a public hearing by notice in the **Federal Register**, summarizing the issues to be heard and setting the time for the hearing.

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866.

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

The Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq*. The establishment of aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. The quotas are necessary to provide for the estimated medical, scientific, research and industrial needs of the United States, for export

requirements and the establishment and maintenance of reserve stocks. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Administrator has determined that this action does not require a regulatory flexibility analysis.

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

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

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

The Drug Enforcement Administration makes every effort to write clearly. If you have suggestions as to how to improve the clarity of this regulation, call or write Frank L. Sapienza, Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

Dated: November 6, 2001.

Asa Hutchinson,

Administrator.

[FR Doc. 01–28264 Filed 11–9–01; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Wireless Application Protocol Forum, Ltd.

Notice is hereby given that, on July 12, 2001, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Wireless Application Protocol Forum, Ltd. (''WAP'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 4thpass Inc., Seattle, WA; Discretrix Technologies Ltd., Netanya, ISRAEL; Infineon Technologies AG, Munich, GERMANY; LightSurf Technologies, Inc., Santa Cruz, CA; Mahindra British Telecom Limited, Maharashtra, INDIA; MobileOne Pte. Ltd., Singapore, SINGAPORE; Omnisky Corporation, San Francisco CA; OneName Corporation, Seattle, WA; Sandia Research Corporation, Las Cruces, NM; and W-Phone, Inc., San Jose, CA have been added as parties to this venture. Also, Airwallet, Redwood City, CA; Alerts, Inc., Raleigh, NC; BarPoint.com, Deerfield Beach, FL; BrainDock.com, New York, NY; Concrete Media, New York, NY; DeLorme Mapping, Yarmouth, MN; eCash Technologies, Inc., Bothell, WA; ESRI, Inc., Redlands, CA; GeePS, Inc., Cranbury, NJ; GWcom, Inc., Santa Clara, CA; Ignition Corp., Bellevue, WA; LiveMind, San Francisco, CA; Luminant Worldwide Corporation, Dallas, TX; MDSI Mobile Data Solution, Inc., Richmond, British Columbia, CANADA; MobileWebSurf.com, Milpitas, CA; Open Market Inc., Burlington, MA; Pervasive Software Inc., Austin TX; Plexus Technologies, San Jose, CA; Portal Software, Incorporated, Cupertino, CA; Securant Technologies Inc., San Francisco, CA; Sinia Corporation, Mountain View, CA; STM Wireless, Inc., Irvine, CA; SUMmedia.com Inc., Vancouver, British Columbia, CANADA; Vectrix, Dallas, TX; VeriFone, Santa Clara, CA; Veriprise Wireless Corporation, Alpharetta, GA; BulletN.net, Inc., Alpharetta, GA; Covigo, Belmont, CA; Mercator Software, Wilton, CT; Noblestar, Reston, VA; Novell Inc., San Jose, CA; OgilvyInteractive Worldwide, New York, NY; OZ.COM, Burlington, MA; Qwest Wireless, Denver, CO; Saraide, Nepean, Ontario, CANADA; ShopNow.com, North Seattle, WA; ThinAir Apps, New York, NY; Usha Communications Technology, Portland, OR; Winstar Communications, New York, NY; Cybird, Co., Ltd., Tokyo, JAPAN; iNFOiSLIVE Corporation Limited, Hong Kong, HONG KONG—CHINA; China Mobile Communication Corporation, Beijing, PEOPLE'S REPUBLIC OF CHINA; Hong Kong CSL Limited, Hong Kong, HONG KONG—CHINA; Japan Telecom Co, LTD, Tokyo, JAPAN; Sasken Communication Technologies Limited, Bangalore, INDIA; Zi Corporation, Hong Kong, HONG KONG—CHINA; Agence Virtuelle SA, Geneve, SWITZERLAND; Apar Infotech Limited, Maidenhead, UNITED KINGDOM; ASP Global Limited, Salford, UNITED KINGDOM; Cross Systems, Paris, FRANCE; Endero Plc, Helsinki, FINLAND; F-Secure Corporation, Espoo, FINLAND; iTouch Technologies, London, UNITED KINGDOM; Mobile News Channel (MNC), Lausanne, SWITZERLAND; Mosaic Software, Rondebosch, SOUTH AFRICA; MTDS Oy, Espoo, FINLAND; NavaraSoft Ltd., Shannon, County Clare, IRELAND; netdecisions, London, UNITED KINGDOM; Novo Meridian Oy, Espoo, FINLAND; NVision, West Bracknell, UNITED KINGDOM; Openet Telecom Limited, Dublin, IRELAND; Sessami, London, UNITED KINGDOM; smapCo, Hamburg, GERMANY; Vasco Data Security, Wemmel, BELGIUM; Visma ASA, Oslo, NORWAY; CAA-Computer Aided Animation GmbH, Filderstadt, GERMANY; Concert Communications, Ipswich, UNITED KINGDOM; Digital Mobility Ltd., London, UNITED KINGDOM; Orange Communications SA, Lausanne, SWITZERLAND; Telit Mobile Terminals Spa, Sgonico, ITALY; Wapit Ltd., Helsinki, FINLAND; and Partner Communications Co. Ltd., Rosh Ha'ayin, ISRAEL have been dropped as parties to this venture.

The following companies have merged: Allaire Corporation, Newton, MA was acquired by Macromedia, San Francisco, CA; Mannesmann AG, Duesseldorf, GERMANY was acquired by Vodafone, Newbury, Berkshire, UNITED KINGDOM; PCS Innovations Inc., Brossard, Quebec, CANADA was acquired by Schulmberger, Montrouge, FRANCE; and Savos, Inc., New York, NY was acquired by GiantBear.com, White Plains, NY.

The following members have changed their names: infinite Technologies is now Captaris, Owings Mills, MD; iXL Inc. is now iXL Enterprises, Inc., Atlanta, GA; SeraNova, Inc. is now Silverline Technologies, Piscataway, NJ; XYPoint Corporation is now TeleCommunication Systems, Inc., Seattle, WA; PageNet is now Arch Wireless, Plano, TX; Entrust Technologies Inc. is now Entrust, Plano, TX; Everypath.Com, Inc. is now Everypath, San Jose, CA; Spyglass, Inc. is now OpenTV, Inc., Mountain View, CA; Roger Cantel is now Rogers Wireless Inc., Toronto, Ontario, CANADA; Cable & Wireless HKT is now Hong Kong CSL Limited, Hong Kong,

HONG KONG—CHINA; J–PHONE Tokyo Co., Ltd. is now J–PHONE EAST Co., Ltd., Tokyo, JAPAN; DDI Corporation is now KDDI, Tokyo, JAPAN; Nedecom-Network Development Consulting Plc. is now Endero Plc, Helsinki, FINLAND; Trema Treasury Management AB is now Trema Laboratories SARL, Valbonne, FRANCE; CMG Telecommunications & Utilities BV is now CMB Wireless Data Solutions B.V., Nieuwegein, THE NETHERLANDS; Eircell is now Eircell 2000 Plc, Dublin, IRELAND; Maxon Cellular Systems (DENMARK) A/S is now Maxon Telecom A/S, Aalborg Ost, DENMARK; and InfoCell is now Info2cell.com, Dubai Internet City, JORDAN.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and WAP intends to file additional written notifications disclosing all changes in membership.

On March 18, 1998, WAP filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on December 31, 1998 (63 FR 72333). The last notification was filed with the Department on April 3, 2001. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on May 23, 2001 (66 FR 28549).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 01–28360 Filed 11–9–01; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—J Consortium, Inc.

Notice is hereby given that, on October 9, 2001, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), J Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Prasad Sanagavarapu, Websprocket, Cleveland, OH; Teija Ahlfors (individual member), Los Gatos, CA; Mary Castillo (individual member), Santa Clara, CA; D. Hamu (individual member), Chennau, Tamil Nadu, INDIA; S. Muthulaxmi (individual member), Bangalore, Karnataka, INDIA; John Riley (individual member), Alexandria, VA; P.R. Swarup (individual member), Bangalore, Karnataka, INDIA; and Xie Yong (individual member), Singapore, SINGAPORE have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and J Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On August 9, 1999, J Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 21, 2000 (65 FR 15175).

The last notification was filed with the Department on July 12, 2001. A notice was published in the **Federal Register** pursuant to section 6(b) of the act on August 10, 2001 (66 FR 42238).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 01–28364 Filed 11–9–01; 8:45 am]

BILLING CODE 4410–11–M

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors

TIME AND DATE: The Board of Directors of the Legal Services Corporation will meet on November 17, 2001. The meeting will begin at 10:00 a.m. and continue until conclusion of the Board's agenda.

LOCATION: Marriott at Metro Center, 775 12th Street, NW., Washington, DC.

STATUS OF MEETING: Open, except that a portion of the meeting may be closed pursuant to a vote of the Board of Directors to hold an executive session. At the closed session, the Corporation's General Counsel will report to the Board on litigation to which the Corporation is or may become a party, and the Board may act on the matters reported. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c) (10)] and the corresponding provisions of the Legal Services Corporation's implementing regulation (45 CFR 1622.5(h)). A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of agenda.
2. Approval of the minutes of the Board's meeting of September 8, 2001.
3. Approval of the minutes of the Executive Session of the Board's meeting of September 8, 2001.
4. Chairman's Report.
5. Members' Report.
6. Inspector General's Report.
7. President's Report.
8. Consider and act on the report of the Board's Operations and Regulations Committee.
9. Consider and act on the report of the Board's Performance Review Committee.
10. Consider and act on the Board of Directors' Semiannual Report to Congress for the period of April 1, 2001 through September 30, 2001.
11. Budget briefing by the Acting Vice President for Administration.
12. Consider and act on the report of the Task Force on Configuration of Service Areas.
13. Report by LSC's Vice President for Programs on the development of Performance Measures, State Planning and other important programs issues.
14. Consider and act on changes to the Board's 2002 meeting schedule.

Closed Session

15. Briefing [1] by the Inspector General on the activities of the Office of Inspector General.
16. Consider and act on the Office of Legal Affairs' report on potential and pending litigation involving LSC.

Open Session

17. Consider and act on other business.
18. Public Comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary, at (202) 336–8800.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth S. Cushing, at (202) 336–8800.

[1] Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term ''meeting'' and, therefore, the requirements of the Sunshine Act do not apply to any such portion of the closed session. 5 U.S.C. 552(b)(a)(2) and (b). See also 45 CFR 1622.2 & 1622.3

Dated: November 8, 2001.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 01–28544 Filed 11–08–01; 3:37 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Operations & Regulations Committee

TIME AND DATE: The Operations and Regulations Committee of the Legal Services Corporation Board of Directors will meet on November 16, 2001. The meeting will begin at 2:00 p.m. and continue until the Committee concludes its agenda.

LOCATION: Marriott at Metro Center, 775 12th Street, NW., Washington, DC.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.

2. Approval of the minutes of the Committee's meeting of September 7, 2001.

3. Consider and act on the Draft Notice of Proposed Rulemaking (''DNPRM'') on 45 CFR Part 1639 (Welfare Reform). A copy of the DNPRM is available on the LSC Web site: *www.lsc.gov*.

4. Staff report on public comments received on the Final Report of the Regulations Review Task Force.

5. Staff report on the status of Current Negotiated Rulemakings: 45 CFR Part 1626 (Restrictions on Legal Assistance to Aliens); and 45 CFR Part 1611 (Eligibility).

6. Consider and act on other business.

7. Public comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary, at (202) 336–8800.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth S. Cushing, at (202) 336–8800.

Dated: November 8, 2001.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 01–28545 Filed 11–08–01; 3:37 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Ad Hoc Committee on the Performance Review of the Acting Inspector General

TIME AND DATE: The Ad Hoc Committee on Performance Review of the Acting Inspector General of the Legal Services Corporation's Board of Directors will meet on November 17, 2001. The meeting will begin at 9:00 a.m. and continue until conclusion of the committee's agenda.

LOCATION: Marriott at Metro Center, 775 12th Street, NW., Washington, DC.

STATUS OF MEETING: Except for approval of the committee's agenda and any miscellaneous business that may come before the committee, the meeting will be closed to the public. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c)(2) & (6)] and the corresponding provisions of the Legal Services Corporation's implementing regulation [45 CFR § 1622.5(a) & (e)]. A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of agenda.

Closed Session

2. Conduct a performance appraisal of the Acting Inspector General of the Corporation.

Open Session

3. Consider and act on other business.

4. Public comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary, at (202) 336–8800.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth S. Cushing at (202) 336–8800.

Dated: November 8, 2001.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 01–28546 Filed 11–13–01; 3:37 pm]

BILLING CODE 7050–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request clearance of this collection. In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than 3 years.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; 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.

DATES: Written comments should be received by January 14, 2002 to be assured of consideration. Comments received after the date would be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to *splimpto@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton on (703) 292–7556 or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title of Collection: The Evaluation of NSF's Computer Science, Engineering & Mathematics Scholarship (CSEMS) Program.

OMB Control No.: 3145–New.

Expiration Date of Approval: Not applicable.

1. *Abstract:* This document has been prepared to support the clearance of data collection instruments to be used in the evaluation of the Computer Science, Engineering & Mathematics Scholarship (CSEMS) Program. CSEMS supports scholarships for talented, but financially disadvantaged students enabling them to achieve an associate, baccalaureate, or graduate level degree in computer science, computer technology, engineering, engineering technology, or mathematics. The study design focuses on describing campus based models for how the CSEMS program can be optimized, using a sample of institutions that received CSEMS scholarship money for the 2 year period, 2000–2002. The evaluation will examine specific aspects of the program such as recruitment and selection of the scholarship students, student retention and graduation, support services and enrichment programs, academic improvements as a direct result of CSEMS; development of internships, industry partnerships and placement programs into the high technology field. The evaluation will identify campus-based barriers that prevent implementing the goals of the CSEMS program. The data will be gathered through a questionnaire and on-site personal interviews with the Principal Investigator; in person interviews with relevant faculty and staff; and focus groups with the scholarship recipients.

2. *Expected Respondents:* The expected respondents are the Principal Investigators, CSEMS scholarship recipients, as well as faculty and staff associated directly with the CSEMS program at sampled academic institutions with CSEMS funding for the 2000–2002 academic years.

3. *Burden on the Public:* The total elements for this collection are 1620 burden hours for a maximum of 870 participants annually, assuming an 80–100% response rate. The average annual reporting burden is under 2 hours per respondent. The burden on the public is negligible; the study is limited to project participants that have received funding from the CSEMS program.

Dated: November 6, 2001.

Suzanne H. Plimpton,

NSF Reports Clearance Officer.

[FR Doc. 01–28261 Filed 11–9–01; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

DOE/NSF Nuclear Science Advisory Committee; Notice 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: DOE/NSF Nuclear Science Advisory Committee (1176).

Date and Time: Thursday, Nov. 29, 2001; 8 a.m.–6 p.m. and Friday, Nov. 2001; 8 a.m.–6 p.m.

Place: Holiday Inn Capitol, 550 C Street SW., Washington, DC 20024.

Type of Meeting: Open.

Contact Person: Dr. Bradley D. Keister, Program Director for Nuclear Physics, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7380.

Purpose of Meeting: To provide advice and recommendations concerning the scientific programs of the NSF and DOE in the area of basic nuclear physics research.

Agenda:

November 29, 2001
- Introduction (J. Symons)
- Report from DOE
- Report from NSF
- Congressional Perspective (D. Goldston)
- OSTP Perspective (J. Marburger)
- Presentation of Low Energy Sub-Committee Report (B. Filippone)
- Discussion of Low Energy Review Report
- Public Comment
- NNSA Perspective on RIA (M Kreisler)
- Discussion

November 30, 2001
- Discussion of NSAC response to Low Energy Sub-Committee
- Continued Discussion of Long Range Plan Transmittal

Dated: November 7, 2001.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 01–28357 Filed 11–9–01; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–255]

Nuclear Management Company, LLC; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–20 issued to Nuclear Management Company, LLC (the licensee), for operation of the Palisades Plant located in Van Buren County, Michigan.

The proposed amendment would add a condition to the Operating License to extend certain Technical Specification surveillance requirement (SR) intervals, one time. The SR intervals would be extended up to 65 days, but no later than April 30, 2003, to permit them to be performed during the next refueling outage, which has been rescheduled because the plant is currently in a forced extended outage. The affected SRs are those which cannot reasonably be performed during the current forced outage. These are SR 3.3.3.3 (Item 3.a of Table 3.3.3–1) regarding the channel calibration of the safety injection and refueling water tank low level; SR 3.3.4.3 (Item 1 of Table 3.3.4–1) regarding the channel functional test of the safety injection signal function; SR 3.3.4.3 (Item 3 of Table 3.3.4–1) regarding the channel functional test of the recirculation actuation signal function; SR 3.3.5.1 regarding the channel functional test of the diesel generator undervoltage start logic; SR 3.5.2.8 (high pressure safety injection to hot leg motor-operated (MO) valves MO–3082 and MO–3083) regarding the throttle valve position stop in the correct position; SR 3.7.8.2 (non-critical service water header isolation valve CV–1359 only) regarding the automatic valve actuating to the correct position upon an actual or simulated actuation signal; SR 3.8.1.7 regarding the emergency alternating current (AC) power performing, as required, upon an actual or simulated loss of offsite power signal; SR 3.8.1.9 regarding the emergency AC power performing, as required, upon an actual or simulated restoration of offsite power; SR 3.8.1.10 regarding load sequencing for each automatic load sequencer; and SR 3.8.1.11 regarding the emergency AC power performing, as required, upon an actual or simulated loss of offsite power signal in conjunction with an actual or simulated safety injection signal.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed

amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Nuclear Management Company, LLC has evaluated whether or not a significant hazards consideration is involved with the proposed amendment using the three standards set forth in 10 CFR 50.92, ''Issuance of Amendment.'' The following evaluation supports the finding that operation of the facility in accordance with the proposed change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed License Condition does not affect or create any accident initiators or precursors. As such, the proposed license condition does not increase the probability of an accident. The proposed license condition does not involve operation of the required structures, systems or components (SSCs) in a manner or configuration different from those previously recognized or evaluated.

The proposed surveillance requirement (SR) extension requests do not reduce the required operable SSCs of any of the affected Limiting Condition for Operation sections, does not increase the allowed outage time of any required operable SSCs, and does not reduce the requirement to know that the deferred SRs could be met at all times. Deferral of testing does not, by itself, increase the potential that the testing would not be met.

Therefore, operation of the facility in accordance with the proposed License Condition would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

The proposed License Condition does not involve a physical alteration of any SSC or a change in the way any SSC is operated. The proposed license condition does not involve operation of any required SSCs in a manner or configuration different from those previously recognized or evaluated. No new failure mechanisms will be introduced by the SR deferrals being requested.

Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed License Condition does not, by itself, introduce a failure mechanism. Past performance of the SRs in question has demonstrated reliability in passing the deferred SRs. The required operable SSCs have not been reduced. The proposed license condition does not involve any physical changes to the plant or manner in which the plant is operated.

Therefore, the proposed License Condition would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By December 13, 2001, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically on the Internet at the NRC Web site *http://www.nrc.gov/NRC/CFR/index.html.* If there are problems in accessing the document, contact the Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be

litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Arunas T. Udrys, Esquire, Consumers Energy Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

Further details with respect to this action, see the application for amendment dated October 26, 2001, which is available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC Public Document Room Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 6th day of November 2001.

For the Nuclear Regulatory Commission.

Darl S. Hood,

Project Manager, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–28397 Filed 11–9–01; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Form CB; OMB Control No. 3235–0518; SEC File No. 270–457.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form CB is a tender offer statement filed in connection with a tender offer for a foreign private issuer. This form is used to report an issuer tender offer conducted in compliance with Exchange Act Rule 13e–4(h)(8) and a third-party tender offer conducted in compliance with Exchange Act Rule 14d–1(c). It also is used by a subject company pursuant to Exchange Act Rule 14e–2(d). Approximately 200 issuers file Form CB annually and it takes approximately .5 hours per response for a total of 100 annual burden hours.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection information; (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 respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW Washington, DC 20549.

Dated: October 31, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–28351 Filed 11–9–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25255; 812–12494]

Lindner Investments and Lindner Asset Management, Inc.; Notice of Application

November 6, 2001.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act.

SUMMARY OF APPLICATION: The requested order would permit applicants to enter into and materially amend subadvisory agreements without shareholder approval.

APPLICANTS: Lindner Investments (''Trust'') and Lindner Asset Management, Inc. (''Adviser'').

FILING DATES: The application was filed on April 11, 2001 and amended on November 6, 2001.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 29, 2001, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609; Applicants, 520 Lake Cook Road, Suite 381, Deerfield, IL 60015.

FOR FURTHER INFORMATION CONTACT: Stacy L. Fuller, Senior Counsel, at (202) 942–0553, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564, Division of Investment Management, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102, telephone (202) 942–8090.

Applicant's Representations

1. The Trust, a Massachusetts business trust, is registered under the Act as an open-end management investment company of the ''series'' type. The Trust currently has six separate series (''Funds''), each with its own distinct investment objectives, policies and restrictions.[1] The Adviser is registered as an investment adviser registered under the Investment Advisers Act of 1940.

2. The Adviser serves as investment adviser to the Funds pursuant to an investment advisory agreement between the Trust and the Adviser that has been approved by the Trust's board of trustees (''Board''), including a majority of the trustees who are not ''interested persons'' as defined in section 2(a)(1) of the Act (''Disinterested Trustees''), and by a majority of each Fund's shareholders (''Master Management Agreement''). The Master Management Agreement permits the Adviser to enter into investment advisory agreements (''Subadvisory Agreements'') with subadvisers (''Subadvisers'') and delegate to the Subadvisers the responsibility for providing investment advice and making investment decisions for a Fund. Under the Master Management Agreement, the Adviser, among other things, set each Fund's overall investment strategy, monitors and evaluates the Subadvisers' performance, and recommends their hiring, termination and replacement. The Adviser compensates the subadvisers out of the fees paid to the Adviser by the Fund.

3. Applicants requests relief to permit the Adviser to enter into and materially amend Subadvisory Agreements without obtaining shareholder approval. The requested relief will not extend to any Subadvisers that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Trust or the Adviser, other than by reason of serving as a Subadviser to one or more of the Funds (''Affiliated Subadviser'').

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company, except pursuant to a written contract that has been approved by a majority of the investment company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approved the matter if the Act requires shareholder approval.

2. Section 6(c) of the Act authorizes the Commission to exempt persons or transactions from the provisions of the Act to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants state that the requested relief meets this standard for the reasons discussed below.

3. Applicants assert that each Fund's shareholders have determined to rely on the Adviser to select, monitor and replace Subadvisers. Applicants assert that, in this regard, the role of the Subadvisers is comparable to that of individual portfolio managers employed by traditional investment management organizations, and that shareholder approval should not be required for changes to Subadvisers or Subadvisory Agreements any more than it should be required for changes (in traditional investment companies) of individual portfolio managers or portfolio managers' contracts. Applicants state that the Master Management Agreement will remain fully subject to sections 15(a) and 15(c) of the Act and rule 18f–2 under the Act. Applicants further submit that requiring shareholder approval of each Subadvisory Agreement would impose unnecessary costs and delays on the Funds, and may preclude the Adviser from acting promptly in a manner considered advisable by the Board.

Applicant's Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the requested order, the operation of the Fund as described in the application will be approved by the vote of a majority of the Fund's outstanding voting securities, as defined in the Act, or in the case of a Fund whose public shareholders purchased shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholders before offering shares of that Fund to the public.

2. Each Fund relying on the requested order will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. In addition, each Fund will hold itself out to the public as employing the management structure described in the application. The prospectus will prominently disclose that the Adviser has the ultimate responsibility (subject to oversight by the Board) to monitor and evaluate Subadvisers and recommend their hiring, termination and replacement.

3. At all times, a majority of the Board will be Disinterested Trustees, and the nomination of new or additional Disinterested Trustees will be placed

[1] Applicants request that any relief granted pursuant to the application also apply to future series of the Trust and toany other registered open-end management investment company and its series that (a) are advised by the Adviser or any entity controlling, controlled by or under common control with the Adviser; (b) use the multi-manager structure described in the application; and (c) comply with the terms and conditions in the application (''Future Funds,'' included in the term ''Funds''). No Fund will have in its name the name of a Subadviser, as defined below.

within the discretion of the then existing Disinterested Trustees.

4. Neither the Trust nor the Adviser will enter into a Subadvisory Agreement for a Fund with any Affiliated Subadviser without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. When a change of Subadviser is proposed for a Fund with an Affiliated Subadviser, the Board, including a majority of the Disinterested Trustees, will make a separate finding, reflected in the minutes of the meeting of the Board, that such change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

6. Within 90 days of the hiring of any new Subadviser, the Adviser will furnish shareholders of the Fund with all information about the new Subadviser that would be contained in a proxy statement; including any change in such disclosure caused by the addition of the new Subadviser. The Adviser will meet this condition by providing shareholders with an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

7. The Adviser will provide general management services to each Fund, including overall supervisory responsibility for the general management and investment of each Fund's assets, and, subject to review and approval by the Board, will: (i) Set the Funds' overall investment strategies, (ii) evaluate, select and recommend Subadvisers to manage all or a part of a Fund's assets, (iii) when appropriate, allocate and reallocate a Fund's assets among multiple Subadvisers, (iv) monitor and evaluate the performance of the Subadvisers, and (v) ensure that the Subadvisers comply with each fund's investment objectives, policies and restrictions by, among other things, implementing procedures reasonably designed to ensure compliance.

8. No trustee or officer of the Trust or director or officer of the Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in a Subadviser, except for (i) ownership of interests in the Adviser or any entity that controls, is controlled by or is under common control with the Adviser; or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Subadviser or an entity that controls, is controlled by or is under common control with a Subadviser.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–28354 Filed 11–9–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44990; File No. SR–Amex–2001–45]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment Nos. 1, 2, 3, and 4 by the American Stock Exchange LLC, Relating to Listing Additional Funds of iShares, Inc. Based on Foreign Stock Indexes

October 25, 2001.

Correction

In notice document 01–27524 beginning on page 55712 for Friday, November 2, 2001, the release number for File No. SR–2001–45 was incorrectly stated as 34–44900. *The correct release number is 34–44990, as stated above.*

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Dated: November 5, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–28350 Filed 11–9–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45025; File No. SR–DTC–2001–04]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to the Implementation of the Global Corporate Action Hub Service

November 5, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], notice is hereby given that on March 30, 2001, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items, I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to activate the Global Corporate Action Hub (''GCAH''), a new service that will provide efficient means of systemically transmitting corporate actions information and consolidating related messages between investment managers and their multiple custodians.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

DTC proposes to activate GCAH that will provide an efficient means of systemically transmitting corporate actions information and consolidating related messages between investment managers and their multiple custodians using GCAH.

GCAH will (1) Provide a single, automated point of access through a centralized communications conduit for custodians and investment managers; (2) standardize corporate action market practice and embrace the recently released ISO 15022 MT56X message formats; (3) use Internet-based technology to provide easy access to all parties; (4) offer a seamless exchange of information between bank and broker custodians, investment managers and DTC; and (5) enhance service delivery by providing an efficient, industry-wide corporate action processing solution.

Each custodian will create the corporate action message for its recipients, who are investment managers servicing mutual customers. Custodians may, but are not required to, use information supplied by DTC in

[1] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

creating their corporate action message. Regardless of whether or not custodians use information supplied by DTC, custodians remain responsible for the content of the messages. Using event-specific templates with standardized election options, each custodian will provide or validate the terms and conditions, then add account and position information for each customer. GCAH will route these announcements, along with those generated by other custodians, to the specified investment managers. DTC will ensure that mandatory fields are completed but will not edit, change, or validate the terms and conditions of the announcements that remain unique to the custodians.

Each investment manager will receive all of its custodians' (and, where available, DTC's) announcements for a single event on a single display. Investment managers will select their election option for voluntary offers. Investment managers will have the opportunity to make their election decisions for all accounts, for accounts handled by individual custodians, or by customer account, and their election decisions will be sent back to the custodians using GCAH. Investment managers will receive status updates reflecting the state of the message (*e.g.,* unread).

GCAH contains built-in, real-time status flow monitoring that keeps all parties informed of a transaction's status at all times, with each party seeing changing status indicators that effectively track the progressive stages in the communication process. The GCAH home page includes summary alerts to highlight pending transactions and deadlines with additional protection provided by e-mail alert built into the system that also provide warning messages well in advance of transaction deadlines. Each party, therefore, sees both status indicators and affirmative messages warning of any problem.

Users of GCAH who are not DTC participants will sign an agreement substantially in the form of the agreement attached hereto as Exhibit B to DTC's filing. ''Participant Operating Procedures,'' containing more detailed information about GCAH, are attached hereto as Exhibit C to DTC's filing.

The proposed rule change is consistent with the requirements of section 17A(b)(3)(A) of the Act and the rules and regulations thereunder applicable to DTC because it will increase the speed of data transmission between investment managers and custodians, thereby promoting efficiencies in corporate actions matters.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, in the public interest, and for the protection of investors.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments from DTC Participants or others have not been solicited or received on the proposed ruled change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety 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 DTC consents, the Commission will:

(A) by order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–2001–04 and should be submitted by December 4, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–28278 Filed 11–9–01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45020; File No. SR–NASD–2001–80]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc., To Extend the Pilot for Limit Order Protection of Securities Priced in Decimals

November 5, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 2, 2001, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), 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 filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6)[4] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to extend through January 14, 2002, the current pilot price-improvement standards for decimalized securities contained in NASD Interpretive Material 2110–2—Trading Ahead of Customer Limit Order (''Manning Interpretation'' or ''Interpretation''). Without such an extension these standards would terminate on November 5, 2001. Nasdaq does not propose to make any substantive changes to the pilot; the only change is an extension of the pilot's expiration date through January 14, 2002. Nasdaq requests that the

[3] 17 CFR 200.30–3(a0(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

Commission waive both the 5-day notice and 30-day pre-operative requirements contained in Rule 19b–4(f)(6)(iii) [5] of the Act. If such waivers are granted by the Commission, Nasdaq will implement this rule change immediately.

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 its proposal and discussed any comments it received regarding the proposal. 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

NASD's Manning Interpretation requires NASD member firms to provide a minimum level of price improvement to incoming orders in NMS and SmallCap securities if the firm chooses to trade as principal with those incoming orders at prices superior to customer limit orders they currently hold. If a firm fails to provide the minimum level of price improvement to the incoming order, the firm must execute its held customer limit orders. Generally, if a firm fails to provide the requisite amount of price improvement and also fails to execute its held customer limit orders, it is in violation of the Manning Interpretation.

On April 6, 2001,[6] the Commission approved, on a pilot basis, Nasdaq's proposal to establish the following price improvement standards whenever a market maker wished to trade proprietarily in front of its held customer limit orders without triggering an obligation to also execute those orders:

(1) For customer limit orders priced at or inside the best inside market displayed in Nasdaq, the minimum amount of price improvements required is $0.01; and

(2) For customer limit orders priced outside the best inside market displayed in Nasdaq, the market maker must price improve the incoming order by executing the incoming order at a price at least equal to the next superior minimum quotation increment in Nasdaq (currently $0.01).[7]

Since approval, these standards have operated on a pilot basis and are currently scheduled to terminate on November 5, 2001. Nasdaq selected the termination date of its Manning Interpretation pilot to coincide with deadline for submitting rule filings related to decimalization contained in the Commission's June 8th, 2000 Order directing the submission of a Decimals Implementation Plan for the Equities and Options Markets.[8]

Subsequent to the Interpretation pilot's approval, the Commission extended the deadline for the submission of decimal-related rule filings to January 14, 2002.[9] As such, Nasdaq has determined to seek an extension of its current Manning Interpretation pilot until that date. Nasdaq believes that such an extension will provide needed additional time for Nasdaq and the Commission to analyze data and the many complex issues related to customer limit order protection in a decimalized Nasdaq.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act [10] in that it is designed to: (1) Promote just and equitable principles of trades; (2) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities; (3) perfect the mechanism of a free and open market and a national market system; and (4) protect investors and the public interest.

B. Self-Regulatory Organizations' Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if its 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.

Nasdaq has requested the Commission waive both the 5-day notice and 30-day pre-operative requirements contained in Rule 19b–4(f—(6) [13] and has requested that the Commission accelerate the operative date. The Commission finds good cause to designate the proposal to become operative immediately because such designation is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the pilot to continue uninterrupted through January 14, 2002, the deadline for which self-regulatory organizations must file proposed rule changes to set the minimum price variation for quoting in a decimals environment. For these reasons, the Commission finds good cause to designate that the proposal is both effective and operative upon filing with the Commission.[14]

[5] 17 CFR 240.19b–4(f)(6)(iii).

[6] *See* Securities Exchange Act Release No. 44165 (April 6, 2001), 66 FR 19268 (April 13, 2001) (order approving proposed rule change modifying NASD's Interpretative Material 2110–2—Trading Ahead of Customer Limit Order).

[7] Pursuant to the terms of the Decimals Implementation Plan for the Equities and Options Markets, the minimum quotation increment for Nasdaq securities (both National Market and SmallCap) at the outset of decimal pricing is $0.01. As such, Nasdaq displays priced quotations to two places beyond the decimal point (to the penny). Quotations submitted to Nasdaq that do not meet this standard are rejected by Nasdaq systems. *See* Securities Exchange Act Release No. 43876 (January 23, 2001), 66 FR 8251 (January 30, 2001).

[8] *See* Securities Exchange Act Release No. 42914 (June 8, 2000), 65 FR 38010 (June 19, 2000).

[9] See Securities Exchange Act Release No. 44846 (September 25, 2001), 66 FR 49983 (October 1, 2001), *see also* Securities Exchange Act Release No. 44336 (May 22, 2001), 66 FR 29368 (May 30, 2001) (order extending the deadline for submission of decimal-related rule filings to November 5, 2001).

[10] 15 U.S.C. 78o–3(b)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] *Id.*

[14] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on

Continued

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 Nasdaq. All submissions should refer to file number SR–NASD–2001–08 and should be submitted by December 4, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

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efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45024; File No. SR–NASD–2001–79]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Enhanced Return Notes Linked to the Nasdaq 100-Index

November 5, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 31, 2001, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to list and trade Enhanced Return Notes Linked to the Nasdaq–100 Index (the ''Notes'') issued by Merrill Lynch & Co., Inc. (''Merrill Lynch'').

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 III 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*

Under NASD Rule 4420(f), ''Other Securities,'' Nasdaq may approve for listing and trading innovative securities that cannot be categorized readily under traditional listing guidelines.[3] Nasdaq proposes to list for trading the Notes, as described below, under NASD Rule 4420(f).

Description of the Notes

The Notes[4] are a series of senior debt securities that will be issued by Merrill Lynch and will not be secured by collateral. The Notes will be issued in denominations of whole units (''Units''), with each Unit representing a single Note. The original public offering price will be $10 per Unit. The Notes will not pay interest and are not subject to redemption by Merrill Lynch or at the option of any beneficial owner before maturity in February 2003.[5]

At maturity, if the value of the Nasdaq-100 Index (''Index'')[6] has increased, a beneficial owner will be entitled to receive a payment on the Notes based on twice the amount of that percentage increase, not to exceed a maximum payment of $14.00 per Unit (the ''Capped Value'').[7] Thus, the Notes provide investors with an opportunity to obtain leveraged returns based on the Index. Unlike ordinary debt securities, the Notes do not guarantee any return of principal at maturity. Therefore, if the value of the Index has declined at maturity, a beneficial owner will receive less, and possibly significantly less, than the original public offering price of $10 per Unit.

The payment that a beneficial owner will be entitled to receive (the ''Redemption Amount'') depends entirely on the relation of the average of the values of the Index at the close of the market on five business days shortly before the maturity of the Notes (the ''Ending Value'') and the closing value of the Index on the date the Notes are priced for initial sale to the public (the ''Starting Value'').

[3] *See* Securities Exchange Act Release No. 32988 (September 29, 1993), 58 FR 52124 (October 6, 1993) (order approving File No. SR–NASD–93–15) (''1993 Order'').

[4] For a detailed description of the Notes, including the risks associated with investing in the Notes, see the registration statement Merrill Lynch filed with the Commission (File No. 333–52822).

[5] The maturity date will be determined on the day the Notes are priced. After Nasdaq filed its proposal, Merrill Lynch revised the terms of the Notes to establish a maturity date of February 2003, rather than January 2003, and to provide for a maximum payment on the Notes of $14.00 per Unit. Telephone conversation between John Nachmann, Senior Attorney, Nasdaq, and Yvonne Fraticelli, Special Counsel, Office of Market Supervision, Division of Market Regulation, Commission, on November 5, 2001.

[6] The Index is a modified capitalization-weighted index of 100 of the largest non-financial companies listed on The Nasdaq National Market tier of Nasdaq. The Index constitutes a broadly diversified segment of the largest and most actively traded securities listed on Nasdaq and includes companies across a variety of major industry groups. To limit domination of the Index by a few large stocks, the Index is calculated under a ''modified capitalization-weighted'' methodology. This capitalization weight distribution is evaluated on a quarterly basis and is rebalanced if either one or both of the following two weight distribution requirements are not met: (1) The current weight of the single largest market capitalization security must be less than or equal to 24.0%, and (2) the ''collective weight'' of those Index component securities whose individual current weights are in excess of 4.5%, when added together, must be less than or equal to 48.0%. Index securities are ranked by market value and are evaluated annually to determine which securities will be included in the Index. Moreover, if at any time during the year an Index security is no longer trading on Nasdaq, or is otherwise determined by Nasdaq to become ineligible for continued inclusion in the Index, the security will be replaced with the largest market capitalization security not currently in the Index that meets the Index eligibility criteria. For a detailed description of the Index, see the registration statement filed by Merrill Lynch with the Commission (File No. 333–52822).

[7] The final Capped Value will be determined on the day the Notes are priced.

If the Ending Value is less than or equal to the Starting Value, the Redemption Amount per Unit will equal:

$$\$10 \times \left(\frac{\text{Ending Value}}{\text{Starting Value}} \right)$$

If the Ending Value is greater than the Starting Value, the Redemption Amount per Unit will equal:

$$\$10 + \left(\$10 \times \left(2 \times \left(\frac{\text{Ending Value} - \text{Starting Value}}{\text{Starting Value}} \right) \right) \right)$$

not to exceed the Capped Value of $14.00 per Unit.

Criteria for Initial and Continued Listing

The Notes will be subject to Nasdaq's initial listing criteria for other securities under NASD Rule 4420(f). Specifically, under NASD Rule 4420(f)(1):

(A) The issuer shall have assets in excess of $100 million and stockholders' equity of at least $10 million. In the case of an issuer which is unable to satisfy the income criteria set forth in paragraph (a)(1), Nasdaq generally will require the issuer to have the following: (i) Assets in excess of $200 million and stockholders' equity of at least $10 million; or (ii) assets in excess of $100 million and stockholders' equity of at least $20 million;

(B) There must be a minimum of 400 holders of the security, provided, however, that if the instrument is traded in $1,000 denominations, there must be a minimum of 100 holders.

(C) For equity securities designated pursuant to this paragraph, there must be a minimum public distribution of 1,000,000 trading units;

(D) The aggregate market value/principal amount of the security will be at least $4 million.

In addition, Nasdaq notes that Merrill Lynch satisfies the listed marketplace requirement set forth in NASD Rule 4420(f)(2).[8] Lastly, pursuant to NASD Rule 4420(f)(3), prior to the commencement of trading of the Notes, Nasdaq will distribute a circular to the membership providing guidance regarding member firm compliance responsibilities and requirements, including suitability recommendations, and highlighting the special risks and characteristics of the Notes. In particular, Nasdaq will advise members, member organizations and employees thereof recommending a transaction in the Notes to: (1) Determine that such transaction is suitable for the customer; and (2) have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of, such transaction.

The Notes will be subject to Nasdaq's continued listing criteria for other securities in NASD Rule 4450(c), which requires that the aggregate market value or principal amount of publicly-held units must be at least $1 million. Furthermore, the Notes must have at least two registered and active market makers as required by NASD Rule 4450(e).

The Notes will be registered under section 12 of the Act.

Rules Applicable To the Trading of the Notes

Because the Notes will be deemed equity securities for the purpose of NASD Rule 4420(f), the NASD and Nasdaq's existing equity trading rules will apply to the Notes. First, pursuant to NASD Rule 2310, ''Recommendations to Customers (Suitability),'' and IM–2310–2, ''Fair Dealing with Customers,'' NASD members must have reasonable grounds for believing that a recommendation to a customer regarding the purchase, sale or exchange of any security is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs.[9] In addition, as previously mentioned, Nasdaq will distribute a circular to advise members, member organizations and employees thereof recommending a transaction in the Notes to, among other things, have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of, such transaction. Second, the Notes will be subject to the equity margin rules. Third, the regular equity trading hours of 9:30 a.m. to 4 p.m. will apply to transactions in the Notes. Lastly, NASD Regulation's surveillance procedures for the Notes will be the same as the current surveillance procedures governing equity securities, and will include additional monitoring on key pricing dates.

Disclosure and Dissemination of Information

Merrill Lynch will deliver a prospectus in connection with the initial purchase of the Notes. The procedure for the delivery of a prospectus will be the same as Merrill Lynch's current procedure involving primary offerings. In addition, Nasdaq will issue a circular to NASD members explaining the unique characteristics and risks of the Notes.

(2) Basis

Nasdaq believes that the proposed rule change is consistent with section 15A of the Act, in general, and furthers the objectives of section 15A(b)(6), 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, in general, to protect investors and the public interest.

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.

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. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

[8] NASD Rule 4420(f)(2) generally requires that issuers of securities designated pursuant to NASD Rule 4420(e) be listed on Nasdaq or the New York Stock Exchange, Inc. (''NYSE'') or be an affiliate of a company listed on Nasdaq or the NYSE.

[9] NASD Rule 2310(b) requires members to make reasonable efforts to obtain information concerning a customer's financial status, a customer's tax status, a customer's investment objectives, and such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2001–79 and should be submitted by December 4, 2001.

IV. Commission Findings and Order Granting Accelerated Approval of the Proposed Rule Change

Nasdaq has asked the Commission to approve the proposal on an accelerated basis to accommodate the timetable for listing the Notes.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association and, in particular, with the requirements of section 15A(b)(6) of the Act[10] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.[11] The Commission believes that the Notes will provide investors with a means to participate in any percentage increase in the Index that exists at the maturity of the Notes, subject to the Capped Value. Specifically, as described more fully above, a beneficial owner will be entitled to receive at maturity a payment on the Notes based on twice the amount of any percentage increase in the Index, not to exceed the Capped Value.

The Notes are leveraged debt instruments whose price will be derived from and based upon the value of the Index. In addition, as discussed more fully above, the Notes do not guarantee any return of principal at maturity. Thus, if the Index has declined at maturity, a beneficial owner may receive significantly less than the original public offering price of the Notes. Accordingly, the level of risk involved in the purchase or sale of the Notes is similar to the risk involved in the purchase or sale of traditional common stock. Because the final rate of return on the Notes is derivatively priced and based upon the performance of an index of securities, because the Notes are debt instruments that do not guarantee a return of principal, and because investors' potential return is limited by the Capped Value, there are several issues regarding trading of this type of product. For the reasons discussed below, the Commission believes that Nasdaq's proposal adequately addresses the concerns raised by this type of product.

First, the Commission notes that the protections of NASD Rule 4420(f) were designed to address the concerns attendant to the trading of hybrid securities like the Notes.[12] In particular, by imposing the hybrid listing standards, heightened suitability for recommendations,[13] and compliance requirements, noted above, the Commission believes that Nasdaq has adequately addressed the potential problems that could arise from the hybrid nature of the Notes. The Commission notes that Nasdaq will distribute a circular to its membership that provides guidance regarding member firm compliance responsibilities and requirements, including suitability recommendations, and highlights the special risks and characteristics associated with the Notes. Specifically, among other things, the circular will indicate that the Notes do not guarantee any return of principal at maturity, that the maximum return on the Notes is limited to $14.00 per unit, that the Notes will not pay interest, and that the Notes will provide full exposure to any downside movement in the Index. Distribution of the circular should help to ensure that only customers with an understanding of the risks attendant to the trading of the Notes and who are able to bear the financial risks associated with transactions in the Notes will trade the Notes. In addition, the Commission notes that Merrill Lynch will deliver a prospectus in connection with the initial purchase of the Notes.

Second, the Commission notes that the final rate of return on the Notes depends, in part, upon the individual credit of the issuer, Merrill Lynch. To some extent this credit risk is minimized by the NASD's listing standards in NASD Rule 4420(f), which provide that only issuers satisfying substantial asset and equity requirements may issue these types of hybrid securities. In addition, the NASD's hybrid listing standards further require that the Notes have at least $4 million in market value. Financial information regarding Merrill Lynch, in addition to information concerning the issuers of the securities comprising the Index, will be publicly available.[14]

Third, the Notes will be registered under section 12 of the Act. As noted above, the NASD's and Nasdaq's existing equity trading rules will apply to the Notes, which will be subject to equity margin rules and will trade during the regular equity trading hours of 9:30 a.m. to 4 p.m. NASD Regulation's surveillance procedures for the Notes will be the same as its current surveillance procedures for equity securities, and will include additional monitoring on key pricing dates.

Fourth, the Commission has a systemic concern that a broker-dealer, such as Merrill Lynch, or a subsidiary providing a hedge for the issuer will incur position exposure. However, as the Commission has concluded in previous approval orders for other hybrid instruments issued by broker-dealers,[15] the Commission believes that this concern is minimal given the size of the Notes issuance in relation to the net worth of Merrill Lynch.

Finally, the Commission believes that the listing and trading of the proposed Notes should not unduly impact the market for the securities underlying the Index or raise manipulative concerns. The Commission notes that the Index is

[10] 15 U.S.C. 78o–3(b)(6).

[11] In approving the proposed rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] *See* 1993 Order, *supra* note 3.

[13] As discussed above, Nasdaq will advise members, member organizations, and employees thereof recommending a transaction in the Notes to: (1) Determine that the transaction is suitable for the customer; and (2) have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of, the transaction.

[14] The companies comprising the Index are reporting companies under the Act.

[15] *See, e.g.*, Securities Exchange Act Release Nos. 44913 (October 9, 2001), 66 FR 52469 (October 15, 2001) (order approving File No. SR–NASD–2001–73) (approving the listing and trading of notes issued by Morgan Stanley Dean Witter & Co. whose return is based on the performance of the Index); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (order approving File No. SR–Amex–2001–40) (approving the listing and trading of notes issued by Merrill Lynch whose return is based on a portfolio of 20 securities selected from the Amex Institutional Index); and 37744 (September 27, 1996), 61 FR 52480 (October 7, 1996) (order approving File No. SR–Amex–96–27) (approving the listing and trading of notes issued by Merrill Lynch whose return is based on a weighted portfolio of healthcare/biotechnology industry securities).

well-established and broad-based. In addition, the Commission continues to believe, as it has concluded previously, that the large capitalizations, liquid markets, and relative weighings of the Index's component stocks significantly minimize the potential for manipulation of the Index.[16] The Commission also believes that the weighting methodology for the Index should ensure that no one stock or groups of stocks dominates the Index, and reduces the potential influence of any one stock on the movement of the Index.[17] In addition, Nasdaq's surveillance procedures should serve to deter as well as detect any potential manipulation.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that the Notes will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the Notes promptly. Accordingly, the Commission believes that there is good cause, consistent with sections 15A(b)(6) and 19(b)(2) of the Act,[18] to approve the proposal on an accelerated basis.

The Commission is approving Nasdaq's proposed listing standards for the Notes. The Commission specifically notes that, notwithstanding approval of the listing standards for the Notes, other similarly structured products will require review by the Commission prior to being traded on Nasdaq.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–NASD–2001–79) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–28275 Filed 11–9–01; 8:45 am]

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[16] *See* Securities Exchange Act Release No. 33428 (January 5, 1994), 59 FR 1576 (January 11, 1994) (order approving File No. SR–CBOE–93–42) (approving the listing and trading of Index options on the Chicago Board Options Exchange).

[17] *See* Securities Exchange Act Release No. 40642 (November 5, 1998) 63 FR 63759 (November 16, 1998) (order approving File No. SR–CBOE–98–43).

[18] 15 U.S.C. 78o–3(b)(6) and 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45016; File No. SR–NASD–2001–66]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change, Amendment No. 1, and Amendment No. 2 Thereto by the National Association of Securities Dealers, Inc. Relating To Display Requirements When Using Reserve Size in the Nasdaq National Market Execution System

November 5, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 4, 2001, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. On October 23, 2001, the NASD submitted Amendment No. 1 to the proposed rule change.[3] On October 29, 2001, the NASD submitted Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to amend NASD Rule 4710 to reduce the 1000 share display size requirement to 100 shares for using the reserve size functionality in the Nasdaq National Market Execution System (''NNMS'' or ''SuperSOES'').

The text of the proposed rule change, as amended, appear below. New text is in italics; deletions are in brackets.

4710. Participant Obligations in NNMS

(a) No Change.

(b) Market Makers

(1) An NNMS Market Maker in an NNMS Security shall be subject to the following requirements:

(A) For each NNM security in which it is registered as an NNMS Market Maker, the market maker must execute individual orders against its quotation including its Agency Quote (if applicable), in an amount equal to or smaller than the combination of the displayed quotation and reserve size of such quotation(s). For purposes of this rule, the term ''reserved size'' shall mean that a NNMS Market Maker or a customer thereof wishes to display publicly part of the full size of its order or interest with the remainder held in reserve on an undisplayed basis to be displayed in whole or in part as the displayed part is executed. To utilize the reserve size function, a minimum of [1,000] *100* shares must initially be displayed in the market maker's quote (including the Agency Quote), and the quotation must be refreshed to [1,000] *100* shares consistent with subparagraph (b)(2)(A) of this rule.

(B)–(E) No Change.

(2) Refresh Functionality

(A) Reserve Size Refresh—Once an NNMS Market Maker's displayed quotation size on either side of the market in the security has been decremented to zero due to NNMS executions, Nasdaq will refresh the market maker's displayed size out of reserve size to a size-level designated by the NNMS Market Maker, or in the absence of such size-level designation, to the automatic refresh size. If the market maker is using the reserve size function for its proprietary quote or Agency Quote, the market maker must refresh to a minimum of [1,000] *100* shares, consistent with subparagraph (b)(1)(A) of this rule.

(B) No Change.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated October 23, 2001 (''Amendment No. 1''). In Amendment No. 1, the NASD intended to amend rule text; however, an unintentional oversight by the NASD resulted in the rule text remaining the same.

[4] *See* letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine England, Assistant Director, Division, Commission, dated October 29, 2001 (''Amendment No. 2''). In Amendment No. 2, the NASD included the rule text change it unintentionally omitted in Amendment No. 1. Specifically, the NASD amended Nasdaq Rule 4710(b) to require a minimum of 100 shares displayed in a market maker's quote and that the market maker's quotation must be refreshed to 100 shares consistent with other provisions within the Rule. The NASD also changed the status of the proposed rule change from one filed pursuant to section 19(b)(3)(A) of the Act, 15 U.S.C. 78s(b)(3)(A), to one filed pursuant to section 19(b)(2) of the Act, 15 U.S.C. 78s(b)(2).

these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The NASD asserts that NNMS/SuperSOES allows market makers to divide quoted share amounts submitted to the system between those shares they direct to display publicly in the Nasdaq montage and the shares they desire to keep in reserve. Known as ''reserve size,'' shares kept in reserve are available for execution through SuperSOES, but are not shown to the marketplace.[5] The NASD believes that reserve size is an important tool for market participants seeking to execute large securities transactions while limiting negative market price impacts associated with public knowledge of those attempted sales of purchases.

Currently, the rules of Nasdaq's SuperSOES system prohibit the use of its reserve size functionality unless a market maker is displaying at least 1000 shares in its public quote. To Nasdaq's knowledge, it is the only market or trading venue that imposes such a display obligation. The NASD claims that this requirements was initially imposed in the belief that it would encourage the display of larger sized share amounts in the Nasdaq market. The NASD believes that the advent of decimalization, however, has resulted in a diffusion of trading interest and liquidity across multiple price points that militates against the continuous display of large share amounts at a single price level. The NASD asserts that this particularly true for stocks that trade less frequently. In addition, the NASD believes that the continuation of the current rule places NNMS at a competitive disadvantage to other execution systems that allow the use of reserve size without a 1000-share display requirement.

As a result, Nasdaq proposes to eliminate the 1000-share display requirement for using NNMS reserve size. Under the proposed rule change, market makers would be allowed to use NNMS' reserve size anytime they displayed a quote of at least one round lot (100 shares). Nasdaq would continue its policy of allowing the use of reserve size even if a particular displayed quotation dropped below 100 shares based on partial, interim, executions against that un-updated quote. The NASD believes that the elimination of the 1000-share display requirement makes NNMS reserve size functionality available to market makers on terms similar to the reserve size facilities of competing trading systems while continuing to encourage the display of trading interest through NNMS' ''displayed size first'' execution algorithm.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[6] in general, and with Section 15A(b)(6) of the Act,[7] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the NASD consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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, as amended, 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 filings will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2001–66 and should be submitted by December 4, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

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[5] Under NNMS's execution algorithm, the system executes against all publicly-displayed shares at the same price level before executing in time priority against reserve size at that same price.

[6] 15 U.S.C. 78o–3.

[7] 15 U.S.C. 78o–3(b)(6).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45021; File No. SR–OCC–2001–04]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Forms of Margin Collateral

November 5, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on March 9, 2001, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') and on August 24, 2001, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to

[1] 15 U.S.C. 78s(b)(1).

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 proposed rule change would expand the forms of high quality debt securities that OCC may accept as margin collateral to include non-callable fixed income debt securities issued by approved government sponsored enterprises.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this rule change is to expand the types of debt securities that clearing members may deposit with OCC as margin collateral. The declining supply of U.S. Treasury bills, notes, and bonds has been the subject of increased scrutiny from the financial markets. In light of this decreasing supply, OCC proposes to accept non-callable, fixed income debt securities issued by approved government sponsored enterprises (''GSEs'') as another form of high quality, liquid debt securities that clearing members may deposit as margin. OCC's membership/margin committee has approved the debt securities issued by two GSEs, the Federal Home Loan Mortgage Corporation (Freddie Mac) and the Federal National Mortgage Association (Fannie Mae), as being eligible for deposit. Both companies are stockholder-owned, Congressionally chartered corporations with the public purpose of increasing the supply and availability of home mortgages.

In 1998, Freddie Mac initiated its Reference Debt Program (''RDP'') in order to finance the mortgages it retains. Through the RDP program, which was expanded to include bills in 2000, Freddie Mac sells large issues of long and short-term non-callable debt (*i.e.,* bills, notes, and bonds) to provide investors with high quality debt securities. The debt securities generally are distributed through a group of participating dealers that also support secondary trading in the securities. To ensure broad based dealer participation, Freddie Mac limits the allocation to any one dealer to 35 percent of the offered amount. The debt securities are offered according to a predetermined schedule and issued in sufficient quantities to provide investors with liquid secondary markets.[3] The RDP debt securities issued by Freddie Mac are the general obligations of the company and are not secured by the full faith and credit of the U.S. Government. Not all RDP debt has been rated. However, all such debt that has been rated has received S&P and Moody's top ratings. Domestic clearing and settlement may be done through organizations participating in one or more U.S. clearing systems, principally the book entry system operated by the Board of Governors of the Federal Reserve System or the DTC system. As a result, OCC will be readily able to perfect its security interest in these securities.

Also in 1998, Fannie Mae launched the Benchmark Debt Program (BDP), its debt financing initiative. The BDP model is almost identical to the RDP model. Through the BDP, Fannie Mae sells large issues of non-callable long and short-term debt securities[4] that are the general obligations of the company and are not secured by the full faith and credit of the U.S. Government. Other than the total value of securities issued in the programs, the most notable difference between the RDP and BDP is that all BDP securities have been rated and have received Moody's and S&P's top credit ratings.

The debt securities issued by Freddie Mac and Fannie Mae are liquid, marketable, and of high credit quality, making them an appropriate form of collateral. These characteristics ensure that OCC will be readily able to liquidate the securities and realize their market value in order to cover any clearing member default. Securities haircuts have been prescribed to cover any market and liquidity risk.[5] They are based upon OCC's analysis of the daily volatility of these issues since their launch. The haircuts in all cases cover the largest one-day decline in the securities and, therefore, are considered appropriate.

OCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations. In particular, OCC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[6] because it responds to the decreasing supply of U.S. Government securities by allowing clearing members to deposit other high quality, liquid debt securities with OCC as margin collateral in a manner that safeguards securities that are within OCC's custody and control.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety 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 OCC consents, the Commission will:

(a) By order approve the proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the

[2] The Commission has modified parts of these statements.

[3] At the end of 2000, the total outstanding notional value of non-callable RDP bonds and notes approached $100 billion while the outstanding notional value of the non-callable RDP bills approached $600 billion. Freddie Mac's web site, *www.freddiemac.com,* provides a detailed description of the RDP program.

[4] At the end of 2000, the total outstanding notional value of non-callable BDP bonds and notes approached $180 billion. The outstanding notional value of BDP bills approached $350 billion in notional value at the end of 2000. Fannie Mae's web site, *www.fanniemae.com,* provides a detailed description of its BDP program.

[5] Technical changes are also being made to Rule 604(b)(1) in order to more accurately describe the maturity periods of Government securities for purposes of valuation as margin collateral.

[6] 15 U.S.C. 78q–1(b)(3)(F).

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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–2001–04 and should be submitted by December 4, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45030; File No. SR–OCC–2001–15]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Correspondent Clearing Corporations

November 6, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 22, 2001, The Options Clearing Corporation (''OCC'') 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 primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend OCC's by-laws and rules to eliminate the theoretical ability of clearing members to choose a correspondent clearing corporation.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A). Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend OCC by-laws and rules to eliminate the theoretical ability of a clearing member to choose a correspondent clearing corporation to act on the clearing member's behalf for purposes of effecting settlements of exercised stock options, BOUNDs, and matured physically settled security futures (collectively, ''physical delivery contracts''). The current by-laws describe a correspondent clearing corporation as a clearing corporation, as defined under the Act, which by agreement with OCC provides facilities for settling physical delivery contracts. The correspondent clearing corporation selected by a clearing member to effect settlement on its behalf is referred to as a designated clearing corporation.

Presently, National Securities Clearing Corporation (''NSCC'') is the only entity that qualifies as a correspondent clearing corporation, which therefore negates the need for OCC's rules to allow for clearing member choice. OCC does not anticipate that any other entity will qualify as a correspondent clearing corporation in the foreseeable future.[3] Accordingly, OCC desires to update its by-laws and rules to reflect the current reality that only NSCC qualifies as a correspondent clearing corporation. This change should not have any adverse impact of the membership.

The proposed rule change is consistent with the requirements of Section 17A of the Act because it keeps current OCC by-law and rule provisions that address linked or coordinated facilities for clearance and settlement of transactions in securities, securities options, and securities futures.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been 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 and Rule 19b–4(f)(4) thereunder because it effects a change in an existing service of OCC that does not adversely affect the safeguarding of securities or funds in the custody or control of OCC or for which it is responsible, and it does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty days of the filing of this 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 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

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[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by OCC.

[3] Should any entity qualify as a correspondent clearing corporation, OCC will work with that entity to create a linked facility with OCC as a correspondent clearing corporation for purposes of settling physical delivery contracts.

the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–2001–15 and should be submitted by December 4, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45031; File No. SR–OCC–2001–14]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Correction of an Erroneous Cross-Reference in Section 5(e) of Article VIII of the By-Laws

November 6, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], notice is hereby given that on September 28, 2001, the Options Clearing Corporation (''OCC'') 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 primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend Article VIII, Section 5(e) of OCC's by-laws to correct an erroneous cross-reference.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In 1999, OCC filed a rule change to merge its stock and non-equity clearing funds into a single clearing fund.[4] In that filing, OCC inadvertently neglected to change a cross-reference in Section 5(e) of Article VIII of its by-laws. Specifically, the reference to paragraph (c) in Section 4(e)(ii) has been corrected to refer to paragraph (b).

The proposed rule change is consistent with the requirements of Section 17A of the Act because it clarifies the meaning of the referenced by-law by correcting the erroneous cross-reference.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been 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)(i) of the Act[5] and Rule 19b–4(f)(1)[6] thereunder for it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within sixty days of the filing of this 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 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–0CC–2001–14 and should be submitted by December 4, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–28353 Filed 11–9–01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45013; File No. SR–Phlx–2001–97]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Numbers 1 and 2 by the Philadelphia Stock Exchange, Inc. Relating to Competing Specialists

November 2, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934[1] (''Act''), and Rule 19b–4 thereunder,[2] notice is hereby given that on October 22, 2001, the Philadelphia Stock

[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] A copy of the text of OCC's proposed rule change and the attached exhibit are available at the Commission's Public Reference Section or through OCC.

[3] The Commission has modified the text of the summaries prepared by OCC.

[4] Securities Exchange Act Release Nos. 42195 (December 8, 1999), 64 FR 68712 [File No. SR–OCC–99–09] (notice of filing proposing to merge the equity and non-equity elements of the OCC's clearing fund); 42897 (June 5, 2000), 65 FR 36750 [File No. SR–OCC–99–09] (order allowing OCC to merge its equity and non-equity clearing funds into a single clearing fund).

[5] 5 U.S.C. 78s(b)(3)(A)(i).

[6] 17 CFR 240.19b–4(f)(1).

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[1] 17 CFR 240.19b–4.

Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Phlx. The Exchange filed with the Commission Amendments 1 and 2 on October 30, 2001 and October 31, 2001 respectively. The Commission is publishing this notice to solicit comments on the proposed rule change and amendments from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Phlx proposes to establish a competing specialist program. Specifically, the Exchange proposes to adopt new Phlx Rule 460, which contains a specific procedure for application, withdrawal and participation in the Competing Specialist Program, new Phlx Rule 517, which integrates Competing Specialists into the existing equity allocation rules, and new section (f) of Phlx Rule 506 which imposes a 3 business day notice requirement for specialists withdrawing from their equity securities. Phlx also proposes to adopt new Phlx Rule 229A providing for PACE order executions in a competing specialist environment and new Phlx Rule 229B providing for an Order Entry Window, a new feature of the Exchange's equity trading system. Finally, the Exchange proposes to amend Phlx Rule 155 regarding the obligations of a Floor Broker to clarify the nature of such obligations in a competing specialist environment. The following is the text of the proposed rule change (all new language in italics):

Rule 229A Operation of PACE System When Competing Specialists Are Trading

(a) Applicability. This Rule 229A applies only where a Competing Specialist (as defined below) has been approved by the Equity Allocation, Evaluation and Securities Committee pursuant to Rule 460 and has commenced its competing specialist operations. This rule applies to orders which are entered into the PACE system pursuant to Rule 229, Philadelphia Stock Exchange Automated Communication and Execution System.

(b) Defined Terms. (1) ''Directed Order'' shall mean an order that a member organization directs to a particular specialist pursuant to an agreement with that specialist in which the member organization agrees to place orders in the security with that specialist.

(2) ''Non-Directed Order'' shall mean an order which is not directed to a particular specialist.

(3) ''Directed Specialist'' shall mean the specialist to whom a Directed Order is directed. In any given case the Directed Specialist may be the Primary Specialist (as defined below) or a Competing Specialist.

(4) ''Non-Directed Specialist'' shall mean any specialist other than the specialist to whom a Directed Order is directed.

(5) ''Primary Specialist'' shall mean the primary specialist identified as such by the Equity Allocation, Evaluation and Securities Committee. The Primary Specialist may be either the Directed Specialist or the Non-Directed Specialist in the case of any particular Directed Order. The Primary Specialist shall be deemed to be the Directed Specialist with respect to any Non-Directed Order.

(6) ''Competing Specialist'' shall mean any competing specialist identified as such by the Equity Allocation, Evaluation and Securities Committee pursuant to Rule 460. A Competing Specialist may be either the Directed Specialist or the Non-Directed Specialist in the case of any particular Directed Order.

(7) ''PACE'' shall mean the Exchange's automatic order routing, delivery, execution and reporting system for equity securities which is governed by Rule 229, Philadelphia Stock Exchange Automated Communication and Execution System.

(8) ''API'' shall mean the PACE automatic price improvement feature which specialists may elect to activate pursuant to Rule 229, Supplementary Material .07(c)(i).

(9) ''Extend API'' shall mean the PACE quote feature which a Directed Specialist may elect to activate and which will commit the Directed Specialist to extend the maximum size of his API guarantee up to the volume specified in the Directed Specialist's manual principal quote when the quote is at or part of the NBBO and at the same time greater than his automatic execution level.

(10) ''API Execution Price'' shall mean the execution price of an order which is better than the NBBO price as a result of the application of API.

(11) ''API Situation'' shall mean a situation where (a) Extend API applies, or (b) the Directed Specialist has elected to activate API and where the size of the NBBO spread and the size of the order are such that an API Execution Price is available pursuant to the terms of Rule 229, Supplementary Material Rule .07(c).

(12) ''Calculated Automatic Execution Level'' shall mean the lower of (a) the automatic execution level established by the Specialist under Rule 229, Supplementary Material .05, or (b) the size of the NBBO market if the Specialist has activated Volume Check (as defined below); provided, however, that in no event shall the Calculated Automatic Execution Level be less than the minimum automatic execution level established by the Exchange under Rule 229.

(13) ''Step-Up API'' shall mean the PACE system's quote feature whereby a Non-Directed Specialist commits to trade against any Directed Specialist's Directed Orders at the Directed Specialist's API Execution Price.

(14) ''Specialist'' '' All references in this rule to a specialist, including references to a Directed Specialist, a Non-Directed Specialist, a Primary Specialist, or a Competing Specialist, shall be deemed to be references to a specialist unit and not to an individual specialist.

(15) ''Volume Check'' shall mean the PACE system feature which may be activated by a specialist on a security by security basis and which, when activated, will prevent the automatic execution of incoming orders (within the Directed Specialist's automatic execution level) if the size of the NBBO market is less than the size of the incoming order.

(c) PACE Guarantees. Each specialist shall determine his minimum PACE acceptance (delivery) and automatic execution guarantees with respect to a security as provided in Rule 229. An order may be automatically executed up to the aggregate of the Directed Specialist's automatic execution guarantee combined with the quoted size of each Non-Directed Specialist. The price of any order automatically executed against either the Directed Specialist or any Non-Directed Specialist shall be (1) the NBBO, or (2) if the Directed Specialist has activated API, the API Execution Price established by the Directed Specialist. Notwithstanding Rule 229 Supplementary Material .02 which would otherwise permit each specialist to determine whether to provide automatic execution parameters to non-agency orders, both agency and non-agency orders under Rule 229A will be executed against Non-Directed Specialists as provided herein, without distinction.

(d) PACE Delivered Orders Executed Manually. All orders which are to be executed manually pursuant to the terms of Rule 229 shall be executed manually by the Directed Specialist.

(e) PACE Order Execution Rules for Market and Marketable Limit Orders. In circumstances where orders are not to be executed manually pursuant to subsection (d) above, where the bid (offer) is comprised of an order on the book or agency interest represented in a Directed or Non-Directed Specialist's quote, then consistent with Rules 119, 120 and 218, an incoming eligible sell (buy) market or marketable limit order is executable based on price and time priority first against such book or agency interest and then as follows:

(1) No Non-Directed Specialist Quoting at NBBO. If at the time the order is received, there are no Non-Directed Specialists quoting at the NBBO, the order is executed against the Directed Specialist as provided in Rule 229.

(2) Non-Directed Specialist Quoting at NBBO and Directed Specialist Not Quoting at NBBO. If at the time the order is received, any Non-Directed Specialist is quoting at the NBBO and the Directed Specialist is not quoting at the NBBO, orders are to be executed as follows:

(A) In cases that are not an API Situation,

(i) If the Directed Specialist has not activated API or if the spread is too small to permit API to occur pursuant to Rule 229, then the order is to be automatically executed against the Non-Directed Specialist up to the Non-Directed Specialist quote size. Any reminder shall (a) if such remainder is equal to or less than the Directed Specialist's Calculated Automatic Execution Level, be automatically executed against the Directed Specialist, up to the Directed Specialist's Calculated Automatic Execution Level, or (b) if such remainder is greater than the Directed Specialist's Calculated Automatic Execution Level, be executed manually by the Directed Specialist; or

(ii) If the Directed Specialist has activated API and if the spread is sufficiently wide to permit API pursuant to Rule 229 Supplementary Material Rule .07(c), but the size of the order is greater than the Directed Specialist's Calculated Automatic Execution Level, then the order would be executed manually be the Directed Specialist.

(B) In an API Situation, the order shall be executed as follows.

(i) If the Non-Directed Specialist has activated Step-Up API, the order shall be executed against the Non-Directed Specialist up to the Non-Directed Specialist's quote size. Any remainder shall, if such remainder is equal to or less than the Directed Specialist's Calculated Automatic Execution Level, be automatically executed against the Directed Specialist.

(ii) If the Non-Directed Specialist has not activated Step-Up-API, the order shall be executed against the Directed Specialist as provided in Rule 229.

(3) Directed Specialist and any Non-Directed Specialist Both Quoting at NBBO. If at the time the order is received both the Directed and any Non-Directed Specialists are quoting at the NBBO, then, regardless of which specialist first quoted at the NBBO prior to the time the order was received:

(A) In cases that are not an API Situation, the order is to be executed as follows.

(i) If the Directed Specialist has not activated API or if the spread is too small to permit API to occur pursuant to Rule 229, then the order is to be executed automatically against the Directed Specialist if the order is less than or equal to the Directed Specialist's automatic execution level, otherwise (a) against the Directed Specialist up to an amount (the ''Directed Specialist's Component'') equal to (I) his quoted size, plus (II) the remainder of the order size less the Non-Directed Specialist's quoted size, and (b) against the Non-Directed Specialist up to the Non-Directed Specialist's quoted size.

(ii) If the Directed Specialist has activated API and if the spread is sufficiently wide to permit API pursuant to Rule 229 Supplementary Material Rule .07(c), but the size of the order is greater than the Directed Specialist's Calculated Automatic Execution Level and

(I) If the Directed Specialist's quote size is less than or equal to the Directed Specialist's automatic execution level established pursuant to Rule 229, Supplementary Material .05, then the order would be executed manually by the Directed Specialist, or

(II) If the Directed Specialist's quote size is greater than the Directed Specialist's automatic execution level established pursuant to Rule 229, Supplementary Material .05, then the order would be executed automatically up to the Directed Specialist's quote size, with the remainder handled manually by the Directed Specialist.

(B) In an API Situation, the order shall be executed as follows:

(i) If the Non-Directed Specialist has not activated Step-Up API, the order shall be executed as provided in Rule 229.

(ii) If the Non-Directed Specialist has activated Step-Up API, the order is to be executed as provided in section (e)(3)(A) above.

(4) Multiple Non-Directed Specialists. In any case under (1) through (3) above where an order is executable in full or in part against multiple Non-Directed Specialists because they are each quoting at the NBBO, the portion of the order to be executed against such Non-Directed Specialists will be automatically executed against them based upon time priority.

Rule 460 Procedures for Competing Specialists

(a) Application

Any specialist unit approved pursuant to Rule 501 can apply to the Exchange to function as a competing specialist unit (as opposed to a primary specialist) pursuant to the following procedures.

(i) Application to become a competing specialist must be directed to the Equity Allocation, Evaluation and Securities Committee (the ''ES Committee'') in writing on the appropriate form submitted to the appropriate Exchange department and must list, in order of preference, the securities in which the applicant seeks to be a competing specialist.

(ii) Once a competing specialist application is received by the Exchange, a written notification will be issued to the primary specialist. Each primary specialist is required to sign and date such notification acknowledging receipt, and return the notification to the Securities Department representative. Any objection by the primary specialist in one or more of such specialist's securities must be in writing on a form designated by the Exchange and filed with the Exchange within 48 hours of notice of the competing specialist's application. Only the primary specialist can object to a competing specialist application in his/her securities. The objection will be considered by the EAES Committee in reviewing the application.

All applicant specialist units, existing or newly created, must satisfy the EAES Committee that they have sufficient staff to enable them to fulfill the functions of a specialist as set forth in Rule 203, in all of the securities in which the applicant will be registered either as a primary or a competing specialist. The EAES Committee will determine whether to approve the application based upon the criteria set forth in Rule 511(b) as well as any objection by the primary specialist. The decision may be appealed consistent with Exchange By-laws and procedures.

(b) Obligations

Each competing specialist unit must be registered with the Exchange as such and must meet the current minimum requirements for specialists as set forth

in Exchange Rules, including the minimum capital and equity requirements, and must conform to all other performance requirements, standards, policies and rules set forth in the Rules of the Exchange.

(c) Withdrawal

If a competing specialist seeks to withdraw from acting as such in a security, it should so notify the Committee at least three business days prior to the desired effective date of such withdrawal. Withdrawal by a competing specialist bars that Competing Specialist from applying to compete in that same security for 90 days following the effective date of withdrawal. When the primary specialist requests to withdraw from a security, it shall be posted for reallocation by the EAES Committee. In the interim, if the EAES Committee is satisfied that a competing specialist can continue to maintain a fair and orderly market in such security, the competing specialist shall serve as the primary specialist until the security has been reallocated. Where there is more than one competing specialist in the security, a primary specialist shall be selected from among the competing specialists by the EAES Committee until reallocation.

(d) Competing Markets in a Security

(i) Notwithstanding the existence of competing specialist situations, there is only one Exchange market in a security. Each specialist (primary or competing) shall quote their own market. Competing specialists must cooperate with the primary specialist regarding openings, halts and reopenings to ensure that they are unitary. One market, the Phlx Best Bid/Offer (''PBBO''), will be disseminated.

(ii) Competing and primary specialists in a particular security must keep each other informed and communicate to inquiring Floor Brokers the full size of any executable ''all or none'' orders or any other order in their possession that cannot be represented in the published quote. Competing specialists are expected to represent such orders on a ''best efforts'' basis to ensure the execution of the entire order at a single price or prices, or not at all.

Rule 229B Order Entry Window

Floor Brokers and Specialists may elect to enter orders through an order entry window (the ''Order Entry Window'' or ''OEW''), which will route orders to the appropriate specialist, in accordance with Rule 229A, with all OEW orders treated as Non-Directed Orders, as that term is defined in Rule 229A. Specialists may enter orders only in those stocks that they have been approved to trade as a specialist by the Equity Allocation, Evaluation and Securities Committee. Orders sent through the OEW will be displayed to the specialist for a period of time to be determined by the Exchange. During that time, the specialist can choose to interact with the OEW order. At the end of the time period, absent previous specialist action, the OEW order will be automatically executed or cancelled.

Rule 506 (new language is italic)

(a)–(e) [no change]

(f) *If a specialist seeks to withdraw from acting as such in a security, it should so notify the Committee at least three business days prior to the desired effective date of such withdrawal.*

Rule 517 Competing and Remote Competing Specialist

Rules governing the approval of trading as a competing specialist and as a remote competing specialist are set forth in 460, Procedures for Competing Specialists and Rule 461, PACE Remote Specialist, respectively, and are incorporated by reference herein. Rules 500 through 599 shall apply both to the specialist selected by the Committee following solicitation of applications under Rule 506(a) to serve as primary specialist and to any competing specialist approved under Rule 460, except that the primary specialist shall determine whether a security shall be PACE registered. Applications for allocation of competing specialist privileges pursuant to Rule 460 shall contain the information required in Rule 506(b), and competing specialist privileges may be terminated on the same basis that primary specialist privileges may be removed and reallocated.

Rule 155 General Responsibility of Floor Brokers (new language italic)

A Floor Broker handling an order is to use due diligence to execute the order at the best price or prices available to him in accordance with the Rules of the Exchange. *A Floor Broker may (a) enter an order into the Order Entry Window as provided in Rule 229B, or (b) take the order to the specialist in that security on the trading floor or, where there are competing specialists, to the primary specialist in that security.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to adopt a Competing Specialist Program on the Exchange. The purpose of each proposed rule is discussed below.

Rule 460 Procedures for Competing Specialists

The purpose of proposed Rule 460 is to establish a framework pursuant to which multiple specialists could trade on the equity trading floor of the Exchange.[3] Currently, there is one specialist unit (referred to herein as the ''Primary Specialist'') for each equity security traded on the floor. This Primary Specialist is approved by the Exchange's Equity Allocation, Evaluation and Securities Committee (the ''EAES Committee'')[4] pursuant to applications solicited by the Exchange under Rule 506(a) and criteria set forth in Rule 511(b). Those rules, generally, provide for the allocation of equity securities (commonly called ''books'') to particular specialist units, which consist of specialists and other staff.[5]

Proposed Rule 460 would permit approved specialist units to apply to trade in a given security as Competing Specialists. The Primary Specialist would continue to trade as well and would have certain privileges and responsibilities that a Competing Specialist would not have.[6] The

[3] The Exchange is also separately proposing new Rule 461, which would provide for the trading by Competing Specialists from a remote location. *See* SR-Phlx-2001–98. Additionally, this proposed rule change dealing with Competing Specialists will have no impact on Exchange Rules 201A and 202A dealing with Alternate Specialists. Exchange specialists approved as Alternate Specialists may continue to trade in that capacity regardless of the existence of Competing Specialists.

[4] *See* By-Law Article 10–6 and Rule 500.

[5] *See* Rule 501.

[6] For example, the Primary Specialist determines whether or not a security will trade on or off the PACE system. If the Primary Specialist determines that the security will trade on PACE, then all Competing Specialists must trade that security on PACE. If the Primary Specialist elects to take the security off the PACE system, the security is subject to reallocation to another specialist unit willing to

Exchange's proposal does not limit the number of Competing Specialists in each security (in addition to the Primary Specialist), but each shall be approved by the EAES Committee. Each Competing Specialist would have the same affirmative and negative obligations under Phlx Rule 203 as are imposed on the Primary Specialist.

The proposal is intended to attract additional order flow to the Exchange. In addition, the Competing Specialist program should encourage specialist units to actively market their services, as well as benefits and guarantees provided by Phlx rules, to a new customer base.

Proposed Rule 460 consists of four sections dealing with application for approval as a Competing Specialist, the obligations of a Competing Specialist once approved, the withdrawal of a Competing Specialist from Competing Specialist status in a security, and a description of competing markets in a security. Proposed Rule 460(a) provides that Competing Specialist applications are to be submitted in writing on the appropriate form to the EAES Committee and must list in order of preference the securities in which the applicant intends to function as a Competing Specialist. The EAES Committee will make a determination whether to approve such application based on the factors set forth in Rule 511(b) for the selection of a Primary Specialist in a security, in addition to any objection that may have been registered with the EAES Committee by the Primary Specialist in that security.[7] The EAES Committee will not approve any application to act as a Competing Specialist in any security not traded on the Exchange's PACE System.[8]

Proposed Rule 460(b) establishes that each Competing Specialist must be registered with the Exchange as such and must meet all current minimum requirements for specialists. Thus, each Competing Specialist is to meet the same minimum standards applicable to the Primary Specialist. For instance, a Competing Specialist must meet the financial responsibility requirements of Rule 703.[9]

Proposed Rule 460(c) outlines the procedures for Competing Specialists who wish to withdraw from the Competing Specialist program in a particular security. The Competing Specialist is required to give three business days notice to the Exchange prior to the withdrawal.[10] Rule 460(c) would bar any competing specialist from applying for that same security for a period of ninety days following the effective date of withdrawal.

If a Primary Specialist requests to be relieved of a security, the security is to be posted for reallocation by the EAES Committee and, in the interim, one of the Competing Specialists may be required to serve as the Primary Specialist until reallocation.

Proposed Rule 460(d) establishes that each Primary Specialist and Competing Specialist shall quote its own market but that, nevertheless, there is only one Exchange market in a security. That one market, the Phlx best bid/offer, is disseminated; it may consist of aggregated sizes of various specialists. Further, the rule requires Competing Specialists to cooperate with the Primary Specialist regarding openings, halts and reopenings to determine they are unitary. It also requires Competing Specialists and Primary Specialists to keep each other informed and communicate to inquiring Floor Brokers the full size of any orders in their possession that cannot be represented in the published quote. These requirements are intended to address the co-existence of multiple specialists.

Rule 229A Operation of PACE System When Competing Specialists Are Trading

Today, Rule 229 governs execution of orders on the PACE system. Because the Exchange currently operates under a sole specialist system, Rule 229 does not address how orders would be executed if more than one specialist were making a market in a particular security; incoming PACE orders are generally executed against either the specialist, at the National Best Bid/Offer (''NBBO''),[11] or a PACE order on the book, as described further below.

New Rule 229A would provide an algorithmic handling of orders through the PACE system in cases where Competing Specialists are trading. The Rule 229 algorithm determines the specialist against which an incoming PACE order is executed, and details the amount of shares. Rule 229A builds on the guarantees and operation of the PACE System, as provided in Rule 229. Thus, how PACE operates is an important underpinning of this proposal.

The PACE System

By way of background, PACE is the Exchange's order routing, delivery, execution and reporting system, governed by Rule 229. Rule 229 is a voluntary system, such that specialists are not required to participate. Specialists who choose to participate in PACE are required to provide its guarantees to agency orders, including, among other things, accepting orders up to 2,099 shares for delivery and automatically executing eligible orders up to 599 shares. Above these minimum levels, specialists may set their delivery or execution levels at higher numbers.

Automatic execution is one of the features and guarantees of PACE. Only certain orders are eligible for automatic execution; other orders are handled manually even when delivered electronically. Certain conditions cause PACE orders to be handled manually, including when the execution price would be outside the high/low range of the day for that security (out-of-range protection) and when the execution would be at a down-tick. Certain orders are subject to a 30 second order exposure window prior to automatic execution, pursuant to Supplementary Material .05.

Another PACE guarantee under Rule 229 pertains to non-marketable limit orders. Specifically, Supplementary Material .10(a)(ii) provides that round-lot limit orders up to 500 shares and the round-lot portion of PRL limit orders up to 599 shares which are entered at a price different than the PACE Quote (non-marketable limit orders) will be executed in sequence at the limit price when an accumulative volume of 1,000 shares of the security named in the order prints at the limit price or better

trade the security on the PACE system. See Rule 520–523. Additionally, under proposed new Rule 229A (see below), the Primary Specialist will be deemed to be the Directed Specialist with respect to any Non-Directed Orders. Pursuant to Rule 155, also described further below, floor brokers must represent orders to the Primary Specialist, except as provided for in proposed Rule 229B. Under this proposal, there must be a Primary Specialist in order for there to be Competing Specialists.

[7] Although the Exchange seeks approval to trade all equity securities in its competing specialist program, the Exchange intends initially to limit the competing specialist program to common stock. The Exchange may determine to include other equity securities, such as Trust Shares, Index Fund Shares and Trust Issued Receipts, in the competing specialist program at a later date.

[8] The Exchange notes that pursuant to Rule 522 any security not traded on the PACE system may be reallocated to a specialist that is willing to trade the security on PACE. Thus, if a security is unavailable to be traded by a Competing Specialist because it is not on PACE, any specialist unit which otherwise may have applied to trade the security as a Competing Specialist may apply to trade the security as the Primary Specialist pursuant to Rule 522. Thereafter, the former Primary Specialist may apply to be a competing specialist.

[9] The Exchange's Equity Floor Procedure Advices would also apply to Competing Specialists.

[10] Proposed new Rule 506(f) would also impose a three-day notice of withdrawal requirement on all specialists, including Primary Specialists.

[11] Rule 229 refers to the NBBO as the ''PACE Quote.''

on the New York market [12] after the time of entry of any such order into PACE. For each accumulation of 1,000 shares executed at the limit price on the New York market, the specialist shall execute a single limit order up to a maximum of 500 shares for each round-lot limit order up to 500 shares or the round-lot portion of a PRL limit order up to 599 shares. This guarantee is commonly referred to as primary market print protection.

With respect to non-agency orders, specialists may choose to accept non-agency orders [13] under Rule 229.02, under the conditions specified in that rule. Specialists may also choose to accept orders through PACE without participating in PACE execution guarantees, where the entering member organization has generally elected not to receive such guarantees.

PACE also offers an automatic price improvement feature (''API''). API is a feature of the PACE system that automatically affords price improvement to eligible orders, pursuant to Rule 229.07(c). Specifically, API executes at a price better than the NBBO, in certain situations, by $.01 or a percentage of the spread between the bid and offer, as determined by the specialist. Even when a specialist does not choose to activate API, the specialist is required by Rule 229.07(c)(ii) to manually provide double-up/double-down price protection to PACE orders.

In summary, the PACE System and Rule 229 together provide certain execution guarantees to eligible orders, including automatic execution at the NBBO.

Rule 229A Summary

In cases where only the Primary Specialist is trading a security, PACE orders will continue to be executed as provided in Rule 229, and Rule 229A would not apply. In cases where Competing Specialists are trading a security, Rule 229 would continue to apply to the extent that it is not inconsistent with Rule 229A. For example, the provisions of Rule 229 dealing with API (as well as many of the guarantees and obligations of Rule 229) would continue to apply in both Competing Specialist and sole specialist situations.

To begin, new Rule 229A would apply to PACE orders where there is at least one Competing Specialist in a security. Paragraph (b) of Rule 229A provides a number of defined terms used throughout the rule. Most notably, ''Directed Order'' is defined to mean an order that a member organization directs to a particular specialist pursuant to an agreement with that specialist in which the member organization agrees to place orders in the security with that specialist. Any orders not placed with a particular specialist are called ''Non-Directed Orders.'' The specialist to whom a Directed Order is directed is defined as the ''Directed Specialist'' and any other specialist (regardless of whether the Primary Specialist or a Competing Specialist) is defined as a Non-Directed Specialist. Thus, the identity of the Directed Specialist and the Non-Directed Specialist is determined on an order-by-order basis. The Primary Specialist [14] is deemed to be the Directed Specialist with respect to any Non-Directed Orders.

Rule 229A defines a number of new procedures in the routing and execution of PACE orders that are affected by the bid (offer) posted by each specialist, whether each specialist is quoting at the NBBO, the automatic execution size of each specialist, the size of each specialist's bid (offer), the size of the NBBO, the spread of the NBBO as it relates to (whether API applies) application by the Directed Specialist, the activation of a step-up price improvement feature by Non-Directed Specialists and the priority of Non-Directed Specialist's bids (offers). The operation of these factors is discussed more fully below.

In summary, Rule 229A expressly preserves the priority of the limit order book consistent with Rules 119, 120 and 218. When there is no such order involved, Rule 229A will allow the Directed Specialist to trade against its own directed order flow and execute orders [15] in accordance with Rule 229 where no other specialist is at the NBBO, or where just the Directed Specialist is at the NBBO. However, Rule 229A also permits the Non-Directed Specialist to trade against Directed Orders. Specifically, when a Non-Directed Specialist is at the NBBO, he will attract away from the Directed Specialist part or all of Directed Order, depending on the size of the order and the applicability of the Directed Specialist's API level. Generally, if the Directed Specialist and other Non-Directed Specialists are at the NBBO, the Directed Specialist may retain part or all of an order depending on the size of the order and the applicability of the Directed Specialist's API or, in the case of Non-Directed Specialists, whether the PACE system's step-up automatic price improvement feature (''Step-Up API'') has been activated by the Non-Directed Specialist. Where specialists are bidding/offering at the same price, time priority will prevail, except that a Directed Specialist will be given priority over any Non-Directed Specialist (despite time priority of any Non-Directed Specialist) when they are bidding (offering) at the NBBO. Other factors which play a part in the direction and execution of orders are the size of the NBBO and the activation of extended API by the Directed Specialist, all of which are discussed more fully below. Depending on the circumstances, when an overage of order volume exists, it will be sent to the Directed Specialist.

More specifically, the execution methodology of Rule 229A is divided into three scenarios, discussed in greater detail below.

No Non-Directed Specialist at NBBO

The first scenario, covered by paragraph (e)(1), is where, if at the time the incoming PACE order is received, there are no Non-Directed Specialists quoting at the NBBO, in which case the incoming order is executed against the Directed Specialist as provided in Rule 229,[16] whether or not the Directed Specialist is quoting at the NBBO. The order would be automatically executed up to the Directed Specialist's automatic execution size or quote size, whichever is greater. For instance,[17] where the market (NBBO) for a particular stock is $50 × $50.10 (10,000 × 10,000 shares), and the Phlx market (PBBO) is $50 × $50.15 (500 1,000 shares), with the Non-Directed Specialist bidding $49.95 for 500 shares, an incoming order for 1,000

[12] Within the PACE Rule, New York market refers to the primary market, which is usually the New York Stock Exchange or the American Stock Exchange.

[13] Agency orders are defined as orders entered on behalf of a public customer, and does not include any order entered for the account of a broker-dealer, the account of an associated person of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest. *See* Securities Exchange Act Release No. 26968 (June 23, 1989), 54 FR 28141 (July 5, 1989)(SR-Phlx-89–13).

[14] The Primary Specialist is the specialist identified as such by the EAES Committee.

[15] See letter from Carla Behnfeldt, Director, Legal Department New Product Development Group, Phlx to John Riedel, Attorney Adviser, Division of Market Regulation (''Division''), Commission, dated October 30, 2001 (''Amendment No. 1''). Most references to orders hereinafter refer to an incoming PACE sell order.

[16] The cross-reference to Rule 229 is intended, here and throughout Rule 229A, to capture the various guarantees and situations where automatic executions occur under the PACE Rule today.

[17] In all of the examples provided in this proposed rule change for purposes of illustration, each specialist's maximum automatic execution level and API level is assumed to be 1,099 shares, and all quotes reflect the specialist's principal (not agency) interest, the order book is away from the market, and the PACE system's volume check feature (as described below) has been activated by the specialist.

shares would automatically execute against the Directed Specialist, whether he was bidding $49.95 or $50.00.[18] This is because the Non-Directed Specialist was not quoting at the NBBO.

Where multiple Non-Directed Specialists are quoting at prices other than the NBBO, those quotes, even if better than the quote of the Directed Specialist, are not relevant because the execution price against the Directed Specialist is generally the NBBO or better. This is consistent with how the PACE System currently operates, as automatic executions occur at the NBBO, regardless of the (sole) specialist's actual quote.

Non-Directed Specialist at NBBO; Directed Specialist Not at NBBO

Secondly, Rule 229A(e)(2) applies where the Directed Specialist is not quoting at the NBBO and at least one Non-Directed Specialist is quoting at the NBBO. In this sub-paragraph, how the order is executed depends on whether there is an API Situation. An API Situation is defined in Rule 229A as a situation: (a) where Extend API applies,[19] or (b) where the Directed Specialist has elected to activate API and where the size of the NBBO spread and the size of the order are such that an API Execution Price is available pursuant to the terms of Rule 229, Supplementary Material Rule .07(c). In essence, an API Situation is where an API execution price (a price better than the NBBO) can be given by the system, because the specialist has activated the API feature and the situation would allow it.

In an API Situation (where the Directed Specialist is not quoting at the NBBO but a Non-Directed Specialist is), Rule 229A(e)(2)(B) provides that the incoming PACE order is executed against the Directed Specialist at the API price, unless the Non-Directed Specialist quoting at the NBBO has activated Step-Up API. Step-Up API is the PACE system's quote feature whereby a Non-Directed Specialist commits to trade against any Directed Specialist's Directed Orders at the Directed Specialist's API Execution Price.[20] For example, where the market (NBBO) for a particular stock is $50 × $50.10 (10,000 × 10,000 shares), and the Phlx market (PBBO) is $50 × $50.15 (500 × 100 shares), with the Directed Specialist bidding $49.95 for 500 shares (with API on) and the Non-Directed Specialist bidding $50 for 500 shares (with Step-Up API not activated), an incoming order for 1,000 shares would automatically execute against the Directed Specialist at his API price ($50.03). Even though he was quoting at a better price, the Non-Directed Specialist was unwilling to step up to the Directed Specialist's API price, such that he did not participate. Thus, if the Non-Directed Specialist has not activated Step-Up API, then Rule 229A(e)(2)(B)(ii) provides that the order shall be executed against the Directed Specialist.

If the Non-Directed Specialist has activated Step-Up API, Rule 229A(e)(2)(B)(i) provides that the order shall be executed against the Non-Directed Specialist at the Directed Specialist's API price up to the Non-Directed Specialist's quoted size. Any remainder that is less than the Directed Specialist's Calculated Automatic Execution Level (''CAEL'')[21] will be automatically executed against the Directed Specialist at his API price. For example, where the NBBO is $50 × $50.10 (10,000 × 10,000 shares), and the Phlx market is $50 × $50.15 (500 × 1,000 shares), with the Directed Specialist bidding $49.95 for 500 shares (with API on) and the Non-Directed Specialist bidding $50 for 500 shares (with Step-Up API activated), an incoming order for 1,000 shares would be automatically executed as follows: 500 shares against the Non-Directed Specialist at the Directed Specialist's API price ($50.03) and 500 shares against the Directed Specialist at $50.03. In this example, each specialist receives their quoted size.

Rule 229A(e)(2)(A) applies where there is no API Situation and the Directed Specialist is not quoting at the NBBO, while at least one Non-Directed Specialist is. The two sub-paragraphs thereunder, in determining against whom the order is executed, focus on why there is no API Situation. Sub-paragraph (i) applies where the Directed Specialist has not activated API or the spread is too small to permit API to occur.[22] In both cases, the incoming PACE order is automatically executable against the Non-Directed Specialist up to the Non-Directed Specialist's quoted size, because the Non-Directed Specialist is quoting at the NBBO. For example, where the NBBO is $50 × $50.01 (10,000 × 10,000 shares), and the Phlx market is $50 × $50.15 (500 × 100 shares), with the Directed Specialist bidding $49.95 for 500 shares (with API on) and the Non-Directed Specialist bidding $50 for 500 shares (with Step-Up API activated), an incoming order for 1,000 shares would be automatically executed 500 shares against the Directed Specialist and 500 shares against the Non-Directed Specialist. Because the spread is too small, neither API (even if activated) are applicable here.

In another example, where the NBBO is $50 × $50.01 (10,000 × 10,000 shares) and the Phlx market is $50 × $50.15 (2.000 × 100 shares), with the Directed Specialist bidding $49.95 for 500 shares and the Non-Directed Specialist bidding $50 for 2,000 shares, an incoming order for 2,000 would be automatically executed against the Non-Directed Specialist for 2,000 shares. The entire order went to the Non-Directed Specialist, because he was quoting at the NBBO for the entire size of that order.

Rule 229A(e)(2)(A)(i) further provides that any remainder of an incoming PACE order is automatically executed against the Directed Specialist up to the Directed Specialist's CAEL. Referring back to the prior example, where the NBBO is $50 × $50.01 (10,000 × 10,000 shares) and the Phlx market is $50 × $50.15 (2,000 × 100 shares), with the Directed Specialist bidding $50 for 2,000 shares, an incoming order for 2,200 shares would be automatically executed against the Non-Directed Specialist for 2,000 shares (who was quoted at the NBBO) and 200 shares against the Directed Specialist. If the

[18] If the Directed Specialist was bidding for 1,200 shares, an incoming order for 1,200 shares would automatically execute against him, because his 1,099 automatic execution level would be extended to his quoted size of 1,200 shares.

[19] Extend API is defined as the PACE quote feature which a Directed Specialist may elect to activate and which will commit the Directed Specialist to extend the maximum size of his API guarantee up to the volume specified in the Directed Specialist's manual principal quote when the quote is at or part of the NBBO and at the same time greater than his automatic execution level. If the Directed Specialist activates Extend API, an order could automatically execute against the Directed Specialist for a size greater than his automatic execution (maximum) level, up to his quoted size.

[20] Step-Up API does not apply to a specialist's own directed orders, because API would; Step-Up API only applies to Non-Directed Specialists, because it is a way of stepping up to someone else's API price that would otherwise apply to that order.

[21] The CAEL is the lower of (a) the automatic execution level established by the Specialist under Rule 229, Supplementary Material .05 (599 shares or more), or (b) the size of the NBBO market if the Specialist has activated Volume Check (as defined below); provided, however, that in no event shall the Calculated Automatic Execution Level be less than the minimum automatic execution level established by the Exchange under Rule 229 (599 shares). Volume Check is the PACE system feature which may be activated by a Specialist on a security by security basis and which, when activated, will prevent the automatic execution of incoming orders if the size of the NBBO market does not equal or exceed the Directed Specialist's automatic execution level.

[22] API only operates where the spread is: (1) $.02 or greater where the specialist chooses to give API in the form of a percentage of the spread; or (2) either $.03 or $.05, depending on the specialist's choice, where the specialist chooses to give API of $.01.

remainder of the order is greater than the Directed Specialist's CAEL, then the order is handled manually by the Directed Specialist. For instance, where the NBBO is $50 × $50.01 (10,000 × 10,000 shares) and the Phlx market is $50 × $50.15 (500 × 100 shares), with the Directed Specialist bidding $49.95 for 500 shares and the Non-Directed Specialist bidding $50 for 500 shares, an incoming order for 2,000 shares is automatically executed 500 shares against the Non-Directed specialist and 1,500 shares are handled manually by the Directed Specialist.

Rule 229A(e)(2)(a)(ii) applies where there is no API situation for a different reason. If there is not an API Situation because, although the Directed Specialist has activated API and the spread is sufficiently wide to permit API, the size of the incoming order is too large (it exceeds the Directed Specialist's CAEL), the order would be executed manually by the Directed Specialist. For example, where the NBBO is $50 × $50.10 (10,000 × 10,000 shares), and the Phlx market is $50 × $50.15 (2,000 × 100 shares), with the Directed Specialist bidding $49.95 for 500 shares (with API on) and the Non-Directed Specialist bidding $50 for 2,000, an incoming order for 2,000 shares would be manually handled by the Directed Specialist, because the volume of the incoming order (2,000 shares) exceed the Directed Specialist's CAEL—both his automatic execution level (1,099 shares) and his quote size (500 shares).

Directed Specialist and a Non-Directed Specialist at NBBO

The third situation is where the Directed Specialist and a Non-Directed Specialist are quoting at the NBBO; Rule 229A(e)(3) applies. The execution of the incoming PACE order depends on whether there is an API Situation, regardless of which specialist quoted at the NBBO first. Rule 229A(e)(3)(A) applies where there is no API Situation. Pursuant to Rule 229A(e)(3)(A)(i), if the Directed Specialist has not activated API or if the spread is too small for API to occur, the order is to be executed automatically against the Directed Specialist if it is within his automatic execution level, otherwise against the Directed Specialist up to his quoted size, then against any Non-Directed Specialist quoting at the NBBO up to his quoted size, with the remainder manually against the Directed Specialist. Thus, the Directed Specialist has priority up to his quoted size, regardless of whether any Non-Directed Specialist may have quoted at the NBBO first.

For example, where the NBBO is $50 × $50.01 (10,000 × 10,000 shares), and the Phlx market is $50 × $50.15 (1,000 × 100 shares), with the Directed Specialist bidding $50 for 500 shares and the Non-Directed Specialist bidding $50 for 500 shares, an incoming order for 1,000 shares would automatically execute against the Directed Specialist. An incoming order for 1,500 shares would automatically execute against the Directed Specialist for 1,000 shares and against the Non-Directed Specialist for 500 shares.

The size of the order may result in manual handling of the Directed Specialist's portion. For instance, referring back to the prior example, an incoming order for 1,700 shares would automatically execute against the Non-Directed Specialist for 500 shares, and 1,200 shares would be handled manually by the Directed Specialist. The 1,200 shares exceeds the Directed Specialist's automatic execution level, as well as his quote size.

In a similar example, where the NBBO is $50 × $50.01 (500 × 10,000 shares), the Phlx market is $50 × $50.15 (400 × 100 shares), the Directed and Non-Directed Specialist are each bidding $50 for 200 shares, an incoming order for 1,000 shares would automatically execute 200 shares against the Non-Directed Specialist and 800 shares would be handled manually by the Directed Specialist. Only 200 shares would automatically execute in this example because 800 shares (although within the Directed Specialist's automatic execution level) exceeds the NBBO size (which is 500 shares). Thus, 800 shares exceeds the Directed Specialist's CAEL.[23]

Where the NBBO is $50 × $50.01 (10,000 × 10,000 shares)[24] and the Phlx market is $50 × $50.15 (1,700 shares × 100 shares) with the Directed Specialist is bidding $50 for 1,200 shares and the Non-Directed Specialist is bidding $50 for 500 shares, an incoming order for 2,000 shares would automatically execute 500 shares against the Non-Directed Specialist, 1,200 shares automatically against the Directed Specialist and 300 shares would be manually handled by the Directed Specialist; this is because the Directed Specialist's quoted size of 1,200 shares is greater than his automatic execution level of 1,099 shares.

Where the Directed Specialist is bidding for 500 shares and the Non-Directed Specialist is bidding for 1,200 shares, an incoming order for 2,000 shares would automatically execute 1,200 shares against the Non-Directed Specialist and 800 shares against the Directed Specialist; this is because 800 shares is less than the Directed Specialist CAEL.

There is a second scenario where there is no API situation, which is covered by Rule 229A(e)(3)(A)(ii). If the Directed Specialist has activated API and the spread is sufficiently wide for API to occur, but the order size is too big (it exceeds the Directed Specialist's CAEL and the Directed Specialist's quote size exceeds his automatic execution level), then the order would be automatically executed up to the Directed Specialist's quote size, with the remainder handled manually by the Directed Specialist. For example, where the NBBO is $50 × $50.10 (10,000 × 10,000 shares), and the Phlx market is $50 × $50.15 (1,700 × 100 shares), with the Directed Specialist bidding $50 for 1,200 shares and the Non-Directed Specialist bidding $50 for 500 shares, an incoming order for 2,000 shares would automatically execute 500 shares against the Non-Directed Specialist and 1,200 shares against the Directed Specialist, with the remaining 300 shares handled manually by the Directed Specialist. The 1,200 shares was automatically executed against the Directed Specialist because that was his quote size (even though greater than his automatic execution size).

If the order size exceeds the Directed Specialist's CAEL, but his quote size does not exceed his automatic execution level, then the order would be handled manually by the Directed Specialist. For example, where the NBBO is $50 × $50.10 (10,000 × 10,000 shares) and the Phlx market is $50 × $50.15 (1,700 × 100 shares), with the Directed Specialist bidding $50 for 600 shares and the Non-Directed Specialist is bidding $50 for 500 shares, an incoming order for 2,000 shares would automatically execute 500 shares against the Non-Directed Specialist and 1,500 shares would be handled manually by the Directed Specialist. In this example, the Directed Specialist's portion is handled manually because his quote size is less than his automatic execution level.

Even if there is an API Situation, this result may occur—that the Directed Specialist gets priority and an automatic execution up to his quoted size or the ability to execute the entire order manually—where the Non-Directed Specialist has not activated Step-Up API. This is provided for in Rule

[23] If volume check were not activated, the order would have automatically executed.

[24] Telephone call between Carla Behnfeldt, Director, Legal Department New Product Development Group, Phlx and John Riedel, Attorney Adviser, Division, Commission, dated October 31, 2001 (''Amendment No. 2'').

229A(e)(3)(B)(ii), which cross-references Rule 229A(e)(3)(A).

If there is an API situation where a Non-Directed Specialist is quoting at the NBBO and the Directed Specialist is not, then how an incoming order is executed depends on whether the Non-Directed Specialist has activated Step-Up API. If the Non-Directed Specialist has not activated Step-Up API, the order is executable against the Directed Specialist at the Directed Specialist's API price, and pursuant to Rule 229A(e)(3)(A)(i) and (ii).

For example, where the NBBO is $50 × $50.10 (10,000 × 10,000 shares), and the Phlx market is $50 × $50.15 (1,700 × 100 shares), with the Directed Specialist bidding $50 for 1,200 shares (with API on) and the Non-Directed Specialist bidding $50 for 500 shares (with Step-Up API not activated), an incoming order for 1,000 shares would automatically execute against the Directed Specialist at $50.03.

An incoming order for 2,000 shares would execute as follows against the Directed Specialist: 1,200 shares automatically at the Directed Specialist's API price ($50.03) and 800 shares to be handled manually. In this example, the Non-Directed Specialist does not participate in the incoming order because he was unwilling to step up to the Directed Specialist's API price of $50.03. This example also illustrates that 1,200 shares automatically execute against the Directed Specialist, even though his automatic execution level is only 1,099 shares because his quote size of 1,200 shares extended his automatic execution size to 1,200 shares.

If the Non-Directed Specialist has activated Step-Up API, the order is executable against the Directed Specialist at the Directed Specialist's API price up to the Directed Specialist's quoted size, and then against the Non-Directed Specialist, up to his quoted size, with the remainder to the Directed Specialist. If the Directed Specialist's quote size is greater than his automatic execution level, then the remainder is automatically executed up to the quote size and the rest is handled manually. If the Directed Specialist's quote size is less than his automatic level, then the remainder is either all automatically executed or all handled manually, depending on the size.

For example, where the NBBO is $50 × $50.10 (10,000 × 10,000 shares), and the Phlx market is $50 × $50.15 (1700 × 100 shares), with the Directed Specialist bidding $50 for 1,200 shares (with API on) and the Non-Directed Specialist bidding $50 for 500 shares (with Step-Up API activated), an incoming order for 1,000 shares would automatically executed against the Directed Specialist, because 1,000 shares is within the quoted size.

An incoming order for 2,000 shares would execute as follows: 500 shares automatically against the Non-Directed Specialist at the Directed Specialist's API price of $50.03, 1,200 shares automatically against the Directed Specialist at the API price, and 300 shares would be handled manually by the Directed Specialist; this is because the order was automatically executed up to his quote size with the remainder handled manually.

The next example demonstrates how the size of the quote impacts the outcome. First, where the market (NBBO) for a particular stock is $50 × $50.10 (10,000 × 10,000 shares), and the Phlx market (PBBO) is $50 × $50.15 (2700 × 100 shares), with the Directed Specialist bidding $50.00 for 1,200 shares (with API on) and the Non-Directed Specialist bidding $50 for 1,500 shares (with Step-Up API activated), an incoming order for 2,000 shares would execute as follows: 1,200 shares automatically against the Directed Specialist at his API price of $50.03 and 800 automatically against the Non-Directed Specialist at the Directed Specialist's API price. This example shows that the Directed Specialist has priority and gets filled first up to his quoted size.

Multiple Non-Directed Specialists

Rule 229A(e)(4) provides that where multiple Non-Directed Specialists are quoting at the NBBO, each will be treated with time priority. For example, where the NBBO is $50 × $50.10 (10,000 × 10,000 shares), and the Phlx market is $50 × $50.15 (2,200 × 100 shares), with the Directed Specialist bidding $50 for 1,200 shares (with API on) at 10:05 AM, Non-Directed Specialist 1 bidding $50 for 500 shares (with Step-Up API activated) at 10:00 AM, and Non-Directed Specialist 2 bidding $50 for 500 shares at 10:01 AM, an incoming order for 2,000 shares would automatically execute against the Directed Specialist for 1,200 shares at his API price of $50.03, 500 shares against Non-Directed Specialist 1 at $50.03 and 300 shares against Non-Directed Specialist 2 at $50.03.

Rule 155 General Responsibility of Floor Brokers

Rule 155 currently provides that a Floor Broker is to use due diligence to execute orders at the best prices available to him in accordance with the Rules of the Exchange. This rule is proposed to be revised to establish how a Floor Broker may discharge his or her due diligence obligation where there is more than one specialist. As revised, the Floor Broker's obligation would be discharged if he or she (a) enters the order into the Order Entry Window under Rule 229B (see below), or (b) takes the order to the specialist in that security on the trading floor or, where there are competing specialists, to the Primary Specialist in that security. This rule is intended to establish that Floor Brokers must represent orders to the Primary Specialist, unless relying on the Order Entry Window of Rule 229B.

Rule 229B Order Entry Window

New Rule 229B would provide for a new feature of the Exchange's equity trading system, the Order Entry Window (''OEW''). The OEW would allow members the ability to access or probe the internal Phlx market. Specialists may enter orders only in those stocks that they have been approved to trade as a specialist by the EAES Committee. Orders entered into the OEW will be routed to the appropriate Phlx specialists (Competing and Primary), in accordance with Rule 229A as a Non-Directed Order.[25] For example, where there is no Competing Specialist quoting at the NBBO, the OEW would route an incoming order to the Directed Specialist—in this example, the Primary Specialist. Unlike PACE orders, however, orders routed to a specialist by the OEW will not be immediately executed according to the Rule 229A algorithm but will be displayed for a period of time, to be determined by the Exchange. During that time, the specialist can choose to interact with the OEW order. For instance, the specialist may choose to execute the order. At the end of the time period, absent previous specialist action, the OEW order will be automatically executed, if executable, or cancelled. The OEW is intended to serve as an order routing mechanism for Floor Brokers as well as specialists seeking to access other specialists' markets.

Rule 517

Proposed Rule 517 incorporates Rules 460 and 461 by reference into the 500—599 series of Exchange rules. The purpose of Rule 517 is to integrate the provisions of the Competing Specialist and Remote Specialist rules into the existing framework for allocation of securities and specialist performance evaluation.

[25] Thus, the Primary Specialist will be deemed to be the Directed Specialist with all OEW orders.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act [26] in general, and furthers the objectives of section 6(b)(5) [27] in particular, in that it is designed to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; 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 or dealers. Specifically, the proposed rule change will permit member firms to direct order flow to the specialist of their choice and promotes competition to provide the best market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Phlx has neither solicited nor received written comments 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 Phlx consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2001–98 and should be submitted by December 4, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–28272 Filed 11–9–01; 8:45 am]

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[26] 15 U.S.C. 78f(b).

[27] 15 U.S.C. 78f(b)(5).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45014; File No. SR-Phlx-2001–98]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the Philadelphia Stock Exchange, Inc. Relating to Remote Specialists

November 2, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 [1] (''Act''), and Rule 19b-4 thereunder,[2] notice is hereby given that on October 22, 2001, the Philadelphia Stock Exchange, Inc., (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Phlx. The Phlx submitted to the Commission Amendment No. 1 on November 1, 2001. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Phlx proposes to establish a remote specialist program. Specifically, the Exchange proposes to adopt new Phlx Rule 461, PACE Remote Specialists. The text of the proposed rule is set forth in full below.

Rule 461 PACE Remote Specialist

PACE terminals and related equipment will be provided to member organizations for trading by remote specialists. The terminals will be linked to the PACT Trading System and will provide the same functionality as is available to on-floor specialists. All orders to remove specialists, including ITS commitments and administrative messages, will be processed the same as orders and ITS Commitments to an on-floor specialist. Floor Broker orders will be routed to remote specialists under the same criteria by which they are routed to on-floor specialists. There will be no remote floor brokerage services. The following shall apply to remote specialists:

(a) All rules and policies of the Board of Governors of the Exchange shall apply except as specifically excluded or amended under this section.

(b) Any specialist unit approved pursuant to Rule 501 may apply to the Equity Allocation, Evaluation and Securities Committee (the ''EAES Committee'') to trade as a remote specialist, pursuant to this Rule and Rule 511(b).

(c) Unless the EAES Committee specifically authorizes otherwise, participating specialist units shall be prohibited from trading remotely any securities which are currently being traded on-floor by that specialist unit. Individual securities may not be traded by one specialist unit in more than one Phlx remote location under any circumstances.

(d) The number and identity of specialty securities that may be traded remotely by any specialist unit shall be determined by the EAES Committee on a case by case basis.

(e) All non-electronic layoff orders entered on another exchange shall be recorded and submitted to the Exchange pursuant to Exchange procedures.

(f) All rule, by-law and Certificate of Incorporation references pertaining to the trading floor of the Exchange shall be deemed to include any bids, offers, orders and trading done remotely, and all such bids, offers, orders and trades shall be deemed to be Phlx bids, offers, orders and executions on the Exchange.

(g) A written confidentiality policy regarding the location of equipment and

access to information, terminals and equipment must be adopted by the firm and filed with and approved by the Exchange prior to the commencement of remote trading. Moreover, this policy must conform to all of the requirements set forth in the rules of the Exchange, including, but not limited to rules dealing with the specialist's book. In accordance therewith, reasonable principles must be applied to limit access by non-specialists to remote specialist facilities and information, and to limit remote specialists' access to and from other proprietary trading venues, including access from outcry or visible communication, intentional or otherwise. Access to the area designated as that of the remote specialist shall be restricted to the specialist, assistant specialist, backup specialist, clerks, designated management of the specialist, and Exchange authorized personnel, consistent with the rules of the Exchange.

(h) Provisions regarding dress code, smoking and the requirement in Rule 108 that birds and offers be made within six feet of the post shall not apply. Rule 204, Hours, and Floor Procedure Advice E–1 shall not apply, provided that the specialist shall be immediately available by dedicated telephone line at all times required by the Floor Procedure Committee.

(i) Exchange correspondence, memoranda, bulletins and other publications shall be sent to remote specialists via electronic mail, if available, and via U.S. mail or overnight delivery, as well as other web-based means, as they become available.

(j) All remote specialists will have dedicated telephone access to the physical trading floor. Any regulatory requirements including trading halts, trading practices, policies, procedures or rules requiring floor official involvement will be coordinated by Exchange personnel with the remote specialist through the dedicated telephone line.

(k) Servicing of PACE terminals and related equipment shall be by Exchange authorized personnel only. Remote specialists may not link any hardware or software to enhance any of the systems or functionality without first requesting in writing and receiving approval to do so from the Exchange.

(l) The Exchange's examination program will include the remote specialist operations. Every firm must submit specific supervisory procedures, in accordance with the Exchange's Examinations procedures, relating to the remote specialist operations and appropriate identification of all individuals who will have access to the remote specialist operation, including all supervisory personnel.

(m) Any arbitration or disciplinary action arising out of trading activity pursuant to this section would be subject to Rules 950 and 960 respectively regardless of the remote location of the trade or dispute.

(n) ''Remote Authorization'' Requirement. Each remote PACE terminal assigned and registered by the Exchange will require a non-transferable Remote Authorization, and will be subject to the following:

(1) Each approved specialist unit may be authorized to trade such number of issues remotely as the EAES Committee may determine on a case by case basis.

(2) Each remote specialist must have at least one registered Exchange membership.

(A) A specialist unit may be authorized to obtain additional Remote Authorizations for qualified registered clerks to access PACE in support of the specialist unit.

(B) All specialists and registered clerk Remote Authorization holders must be approved by the EAES Committee after they have completed the following:

(i) File a Remote Authorization application with the Exchange.

(ii) Completion of the required floor training program. On-site floor training would be waived for current floor specialists and registered clerks who transfer to remote specialist operations. The on-site floor training period could also be waived by the EAES Committee in exceptional circumstances, if other arrangements are made with and approved by the Exchange. In such exceptional circumstances, a waiver will be permitted if the Committee is assured that the person requesting the waiver has made other arrangements that ensure the person meets all of the requirements listed below. However, the on-site floor training period will not be waived for easily remedied reasons such as geographical location or inconvenience, and will include, among other things,

—Questioned trade procedures
—Communication procedures with Floor Brokers, PACE Desk, Surveillance, Systems Support, and ITS coordination with the floor
—The remote/competing specialist program and Unlisted Trading Privilege (''UTP'') applications and procedures
—Allocations and procedures
—Book or symbol change procedures
—Trading Halt procedures
—Floor official rulings
—Minor Rule Plan Violations policies and application
—Books and Records/reports available
—Explanation of the specialist performance evaluation categories and procedures
—Certain other rules and policies deemed appropriate by the Exchange (e.g., Limit Order Display Rule, auto-executions, Price Improvement, etc.)
—ITS Quick Reference Card

(iii) Successful completion of any applicable state requirements.

(iv) Submission of fingerprint records to the Phlx.

(3) Each remote specialist firm will be evaluated under the Exchange's specialist evaluation program.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Phlx 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. Phlx has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to establish rules to permit competing Phlx specialist units [3] to conduct specialist trading activities off the Phlx trading floor using the PACE terminal/trading system, including the Exchange's Order Entry Window feature of the Exchange's equity trading system.[4]

Specialists currently access the PACE system only from the Exchange's physical trading floor, and all market making occurs on that floor.[5] Under the remote program being proposed, specialists will have the ability to access the PACE system from approved remote locations using PACE terminals. Like floor specialists, remote specialists will

[3] Currently, only one specialist unit is selected as the specialist in any given security. Phlx is filing, contemporaneously with this filing, proposed Rule 460, Procedures for Competing Specialists, which establishes rules for trading by more than one specialist unit in any given security. *See* SR–Phlx–2001–97.

[4] PACE is the Exchange's automatic order routing, delivery, execution and reporting system for equity securities which is governed by Rule 229, Philadelphia Stock Exchange Automated Communication and Execution System. *See also* proposed Rule 229A in SR–Phlx–2001–97.

[5] Eligible order entry firms may route orders into the PACE System as well.

receive orders, commitments over the Intermarket Trading System (''ITS''), and administrative messages through the PACE system. The Exchange will provide Phlx competing specialist firms the option to operate remotely under existing Exchange systems and rules, while retaining the ability to permit specialists to trade on the physical trading floor. All bids, offers, orders and executions, occurring within PACE or otherwise, whether conducted on the floor or electronically from remote locations, will be considered to be bids, offers, orders and executions occurring on the Exchange. All rule, by-law and Certificate of Incorporation references to the trading floor of the Exchange shall be deemed to include bids, offers, orders and executions done remotely, which shall also be deemed to be on the Exchange.[6]

To authorize the remote specialist program, the Exchange proposes to adopt Phlx Rule 461. The introductory part of Phlx Rule 461 generally provides that the Exchange will provide terminals linked to the PACE system for specialist trading in remote locations with the same functions that are available to on floor specialists. The remainder of proposed Phlx Rule 461 describes how remote specialists will operate, discusses the information barrier and other requirements that remote specialists must follow, and sets forth the way the Exchange will select and surveil remote specialists as well as other minimum criteria that remote specialists must satisfy.

Under this proposal, the ''Primary Specialist'' may not operate remotely. Any specialist unit approved to trade as a specialist pursuant to existing Rules 506(a) and 511(b), whether such appointment occurred prior to or after the commencement of the competing specialist program, would be the Primary Specialist in that security. Other specialist units would be permitted to apply under new Phlx Rule 460 to trade as competing specialists in the security. The Exchange is proposing in this filing to permit only competing specialists to trade remotely. Specialist units will not be permitted to trade remotely as alternate specialists under Phlx Rules 201A and 202A.

Application of Phlx Rules to Remote Specialists. The Exchange will apply all of its membership, net capital, equity, examination, specialist performance evaluation, competing specialist, allocation, and trading rules and policies to remote specialists in the same way that the Exchange applies those rules and policies to on-floor specialists, to the extent that such rules are not inconsistent with Phlx Rule 461. For example, the Exchange will require remote specialists—like other specialists—to make two-sided markets in specialty securities, execute customer orders they have accepted, and act as odd-lot dealers.

Remote Specialist Access to PACE system. Remote specialist terminals will be linked to the PACE trading systems using dedicated lines. These terminals will provide the same functionality that is available to on-floor specialists. Like on-floor specialists, remote specialists will have access to the Intermarket Trading System. Remote specialists will be routed orders, ITS commitments, and administrative messages through the PACE terminal. Remote specialists may also receive orders by telephone. Remote specialists will be subject to the same limit order display requirements that apply to other Phlx specialists. Floor broker orders will also be routed to remote specialists under the same criteria by which they are routed to on-floor specialists.[7] Servicing of PACE terminals will be by Exchange authorized personnel only.

Remote Specialist Communication with the Exchange. Phlx Rule 461(e) provides that Exchange correspondence, memoranda, bulletins and other publications shall be sent to remote specialists via electronic mail, if available, and via U.S. mail or overnight delivery, as well as other web-based means, as they become available. The Exchange believes that there are only limited situations in which a specialist would consult with a floor official—trading halts, issues involving ITS, and executions at an inferior price. The Exchange will keep a record of any situation that requires a floor official ruling involving remote specialists. The Exchange will monitor communications between remote specialists and Exchange personnel to ensure that such communications are done in a timely manner, particularly if the communication involves a regulatory issue. Exchange personnel will coordinate floor official involvement with remote specialists. The Exchange's disclaimer of liability also applies.[8]

Surveillance and Examinations. Before the Exchange begins remote specialist trading, it will develop and put into place specific information barrier policies and surveillance policies that are consistent with the Exchange's existing rules and acceptable to the Commission's Office of Compliance Inspection Examinations. The Exchange's examination program will include the examination of books and records of all non-DEA member firms with remote specialist operations. Every firm will be required to submit supervisory procedures relating to remote specialist operations and to identify all individuals who will have access to remote specialist operations, including all supervisory personnel. The Exchange will conduct surveillance of limit order display practices by remote specialists to ensure that those practices are consistent with all applicable requirements including the Commission's limit order display rule. Before the Phlx allows remote specialist trading to begin at an off-site facility, the Exchange must fully investigate that facility, and ensure that trading at the facility will be subject to information barrier and surveillance policies that address the particular circumstances of the facility.

Selection of Remote Specialists. Specialist units will apply to the EAES Committee for approval to operate as a remote specialist unit. The EAES Committee will determine the number and identity of securities any particular specialist unit may trade remotely, on a case-by-case basis.[9] As a condition of such approval, each clerk and individual specialist in the unit must receive a ''Remote Authorization'' as provided in Phlx Rule 461(n). The

[6] Consequently, Remote Specialists would be subject to the jurisdiction of the Floor Procedure Committee in the same manner they would if their operations were conducted on the physical trading floor. Remote Specialists would be eligible to serve on Board of Governors and in committee positions reserved for persons associated with member organizations primarily engaged in business on the Exchange's Equity Floor (*i.e.*, in the case of the Board as ''On-Floor Equity Governors'') even though the member organization is not actually on the physical trading floor. Similarly, persons associated with Remote Specialist units may not be eligible to serve as Off-Floor Governors, even though the member organization conducts no business on the Exchange's physical trading floor. A person associated with a Remote Specialist unit would be eligible to serve as On-Floor Vice Chairman of the Board of Governors. *See* Article IV, Section 4–1 of the Exchange's By-Laws. *See also* Article IV, Section 17 of the Exchange's By-Laws regarding the powers of the Board to interpret the By-Laws.

[7] Member will not be able to use the PACE remote specialist program to conduct remote floor brokerage services in non-speciality securities.

[8] Section 12–11 of the Exchange's By-Laws provides that the Exchange shall not be liable for any damages sustained by a member or member organization growing out of the use or enjoyment by such member or member organization of the facilities afforded by the Exchange to members for the conduct of their business.

[9] The EAES Committee will approve remote specialist units pursuant to this Rule 461 and Rule 511(b). Rule 511(b) will continue to govern the allocation of securities to specialist units, whether the Primary Specialist or a competing specialist. Those criteria will also apply to any determination by the EAES Committee to permit a Competing Specialist to trade remotely under Rule 461.

Exchange will authorize and approve Remote Authorizations based on certain qualifications. Each remote PACE terminal will then be individually identified and associated with a particular Remote Authorization holder such that all activity on any particular PACE terminal will be specifically identified and associated, by the use of the Remote Authorization, with an authorized and qualified specialist or registered clerk. The Exchange is proposing to issue Remote Authorizations primarily as a surveillance tool to monitor its remote specialists' operations. Remote Authorization is not transferable and is independent of Exchange membership requirements. Although PACE remote clerks will be required to obtain a Remote Authorization, there is nothing in the Remote Authorization which will grant them any more rights or privileges than a current on-floor clerk possesses. Rule 104, for example, would continue to restrict members in their dealings with non-members, including clerks. Additionally, Rule 748 would require the remote location of a specialist unit to be under the supervision and control of a member and of an appropriately qualified supervisor. The Remote Authorization requirement is designed to permit the Exchange to better surveil the activities of specialists and clerks that utilize the PACE system remotely.[10] Remote Authorization holders will be subject to an on-floor training program as a condition of Remote Authorization, subject to waiver under certain circumstances, pursuant to the terms of Phlx Rule 461(n)(2)(B)(ii).

Implementation. For an initial period, the Exchange intends to limit its remote program to specialist member organizations that maintain concurrent equity floor operations. The EAES Committee will determine the identity and the total number of individual securities that will be included in the remote program. In the future, the Exchange may determine to accept applications from specialist units that do not have concurrent equity floor operations.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act [11] in general, and furthers the objectives of section 6(b)(5)[12] in particular, in that it is designed to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; 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 or dealers. Specifically, the Exchange believes that the proposed rule change will promote efficiency by potentially reducing the costs associated with transactions on the Exchange, and will promote liquidity and competition on the Exchange by enabling specialists to make markets either on or off of the Phlx's physical trading floor. In particular, by allowing Phlx specialists to conduct their activities off of the Exchange's physical trading floor, while retaining the availability of on-floor market making, the Exchange believes that the proposal will permit Phlx specialists to choose the most efficient and cost-effective way to conduct business. At the same time, remote specialists will have full access to the information and functions available on the PACE terminal/trading system, and the PACE trading system will maintain and display limit orders represented by remote specialists consistent with the practice applicable to other Phlx specialists. Accordingly, the Exchange believes that the proposal uses technology in a manner that should promote competition in the securities markets, consistent with the congressional mandate set forth in section 11A of the Act.[13]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Phlx has neither solicited nor received written comments 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 Phlx 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 person are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2001–98 and should be submitted by December 4, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–28277 Filed 11–9–01; 8:45 am]

BILLING CODE 8010–01–M

[10] See letter from Carla Behnfeldt, Director, Legal Department New Product Development Group, Phlx to John Riedel, Attorney Adviser, Division of Market Regulation, Commission, dated November 1, 2001 (''Amendment No. 1'').

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78k)a).

[14] 17CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3364]

State of New York; (Amendment #2)

In accordance with a notice received from the Federal Emergency Management Agency, dated November 1, 2001, the above numbered declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to January 10, 2002.

All other information remains the same, i.e., the deadline for filing

applications for economic injury is June 11, 2002.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: November 6, 2001.

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 01–28373 Filed 11–9–01; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3372]

Commonwealth of Pennsylvania (And Contiguous Counties in the State of New Jersey)

Philadelphia County and the contiguous counties of Bucks, Montgomery and Delaware in the Commonwealth of Pennsylvania; and Burlington, Camden and Gloucester counties in the State of New Jersey constitute a disaster area due to damages caused by a five alarm fire that occurred on October 22, 2001. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on January 2, 2002 and for economic injury until the close of business on August 2, 2002 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Floor, Niagara Falls, NY 14303.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.500
Homeowners without credit available elsewhere	3.250
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	6.375
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 337205 for Pennsylvania and 337305 for New Jersey. For economic injury, the numbers are 9M9800 for Pennsylvania and 9M9900 for New Jersey.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 2, 2001.

Hector V. Barreto,

Administrator.

[FR Doc. 01–28372 Filed 11–9–01; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3838]

Bureau of Nonproliferation; Waiver of Certain Missile Proliferation Sanctions Imposed on the Pakistani Ministry of Defense (MOD)

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: A determination has been made, pursuant to Section 73(e) of the Arms Export Control Act (22 U.S.C. 2797b(e)) and section 11B(b)(5) of the Export Administration Act of 1979 (50 U.S.C. app. 2401b(b)(5)), and in accordance with section 2 of Public Law 107–57, that it is essential to the national security of the United States to waive certain aspects of the missile proliferation sanctions imposed on the Pakistani Ministry of Defense in November 2000.

EFFECTIVE DATE: November 2, 2001.

FOR FURTHER INFORMATION CONTACT: On missile sanctions issues: Pamela Roe, Office of Chemical, Biological and Missile Nonproliferation, Bureau of Nonproliferation, Department of State, (202) 647–4931. On U.S. Government contracts: Gladys Gines, Office of the Procurement Executive, Department of State, (703–516–1691).

SUPPLEMENTARY INFORMATION: Pursuant to section 73(e) of the Arms Export Control Act (22 U.S.C. 2797b(e)), section 11B(b)(5) of the Export Administration Act of 1979 (50 U.S.C. app. 2410b(b)(5))(as carried out under Executive Order 13222 of August 17, 2001 (66 FR 44025)), and section 2 of Public Law 107–57, a determination was made on November 2, 2001, that it is essential to the national security of the United States to waive missile proliferation sanctions imposed on November 21, 2000, on the Pakistani Ministry of Defense (''MOD''), its sub-units and successors, as follows: The prohibition on exports of items and technology and U.S. Government contracts as described in section 73(a)(2)(B) of the Arms Export Control Act (22 U.S.C. 2797b(a)(2)(B)) and the prohibition on new individual export licenses as described in section 11B(b)(1)(B)(ii) of the Export Administration Act of 1979 (50 U.S.C. app. 2410b(b)(1)(B)(ii)) were waived for transactions determined to be needed (1) To support Operation Enduring Freedom and (2) to permit sale or export to Pakistan of defense articles or defense services comparable to those delivery of which was blocked by the imposition of sanctions on May 30, 1998.

The following missile proliferation sanctions will remain in place:

(1) Sanctions against the Pakistani entities Space and Upper Atmosphere Research Commission (SUPARCO) and National Development Complex (NDC);

(2) import sanctions against the Pakistani MOD pursuant to section 73(a)(2)(C) of the Arms Export Control Act and section 11B(b)(1)(B)(iii) of the Export Administration Act;

(3) prohibition on new State or Commerce export licenses to and new USG contracts with the Pakistani MOD in the absence of a determination that the transaction is within the scope of the waiver described above.

Implementing Procedures

This notice also serves as instruction to all U.S Government agencies as to the procedures for implementing this waiver. Initiating authorities will seek concurrence from the Under Secretary of State for Arms Control and International Security that proposed new individual export licenses or U.S. Government contracts with the Pakistani MOD are within the scope of the waiver. Initiating authorities are instructed to obtain the views of the Departments of State, Defense, Commerce and Treasury as to whether proposed individual export licenses or U.S. Government contracts with the Pakistani MOD are within the scope of the waiver and include those interagency views in their submission to the Under Secretary of State for Arms Control and International Security, who will make the final determination as to whether the proposed licenses or

contracts are within the scope of the waiver.

These procedures will remain in effect until November 21, 2002 or until otherwise notified prior to this date.

Dated: November 5, 2001.

John S. Wolf,

Assistant Secretary of State for Nonproliferation, Department of State.

[FR Doc. 01–28390 Filed 11–9–01; 8:45 am]

BILLING CODE 4710–25–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Issuance by the Free Trade Area of the Americas (FTAA) Committee of Government Representatives on the Participation of Civil Society of a Third Open Invitation for Public Comment

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative is providing notification that the Committee of Government Representatives on the Participation of Civil Society (Civil Society Committee), established by the 34 countries participating in the negotiations for the Free Trade Area of the Americas (FTAA), has issued an invitation for public comment throughout the Western Hemisphere on all aspects of the FTAA, including the preliminary draft consolidated texts of the FTAA Agreement, released on July 3, 2001; the on-going FTAA negotiations; and the FTAA process in general. Submissions in response to the Invitation should be sent directly to the FTAA addresses indicated below. This Third Open Invitation of the FTAA Civil Society Committee can be found on the USTR Web site, *www.ustr.gov,* and the FTAA Web site at *www.ftaa-alca.org.*

DATES: Public comment in response to the Third Open Invitation is welcome by the FTAA Civil Society Committee on an ongoing basis. However, in order for submissions to be reflected in the Committee's Report to the FTAA Ministers for their seventh meeting in Quito, Ecuador in October 2002, submissions must be received by the Chairperson of the FTAA Civil Society Committee no later than May 1, 2002. Contributions can be submitted by e-mail, fax, courier, or postal mail and must be accompanied by the submission cover sheet (printed below). In the interest of facilitating translation into the working languages of the FTAA (English and Spanish), distribution among the countries of the hemisphere, and analysis by the relevant national negotiators, it is highly recommended that contributions be submitted via e-mail or via electronic format (i.e. 3.5 diskette containing submission), to one of the addresses below. Contributions submitted by other means will be given equal consideration and every effort will be made to process the transmission of these documents expeditiously.

ADDRESSES: Submissions should be sent directly to the ''Chair of the Committee of Government Representatives on the Participation of Civil Society'', at only one of the following addresses:

Via Electronic Mail:

soc@ftaa-alca.com

Via Postal Mail:

c/o Secretaria del Area de Libre Comercio de Las Americas (ALCA)
Apartado Postal 89–10044
Zona 9, Cuidad de Panama
Republica de Panama

Via Private Messenger/Courier Service:

c/o Secretaria del Area de Libre Comercio de Las Americas (ALCA)
Hotel Caesar Park Panama
Via Israel y Calle 77
San Francisco
Cuidad de Panama
Republica de Panama

Via Facsimile:

(011) (507) 270–6993

FOR FURTHER INFORMATION CONTACT: The official text of the Third Open Invitation for public comment and a cover sheet identifying information to be included with submissions to the Civil Society Committee are available on the USTR website and the official FTAA website. The cover sheet is reproduced below. The USTR and FTAA websites also contain background information regarding the FTAA process, including the Civil Society Committee's Report of April 2001 to the FTAA Trade Ministers as well as the Buenos Aires, Toronto, and San Jose Ministerial Declarations. Any questions concerning the FTAA negotiations or the Third Open Invitation should be addressed to USTR's Office of the Americas at (202) 395–5190.

SUPPLEMENTARY INFORMATION:

1. Background

Committee of Government Representatives on the Participation of Civil Society

At the 1998 FTAA Ministerial meeting in San Jose, Costa Rica, the hemisphere's trade ministers jointly recognized and welcomed the interests and concerns expressed by a broad spectrum of interested non-governmental parties in the hemisphere, and encouraged these and other parties to provide their views on trade matters related to the FTAA negotiations. In order to facilitate this process, the ministers agreed to establish the FTAA Civil Society Committee. At its first meeting in October 1998, and again in April 2000, the Committee approved Open Invitations soliciting views from the hemisphere's public. The Open Invitations were announced on the FTAA Web site, and countries agreed to use national mechanisms to disseminate the invitations further. In the United States, the invitations were disseminated through a variety of means, including press releases, letters to advisory committees, use of the **Federal Register**, and public meetings.

Prior to both the Toronto and Buenos Aires Ministerials, the Committee prepared reports for Ministers describing the submissions it received from the public. These reports have been published on the official FTAA Web site.

Buenos Aires Ministerial Mandate

At the Sixth FTAA Ministerial Meeting held in Buenos Aires, Argentina, on April 7, 2001, the ministers responsible for trade in the hemisphere reaffirmed their commitment to the principle of transparency in the FTAA process and recognized the need for increasing participation of the different sectors of civil society.

The Ministers underscored the importance of the FTAA Civil Society Committee as a mechanism for fulfilling their commitment to transparency, and welcomed the Committee's written report which presented the range of viewpoints received during the previous stage of negotiations from individuals and organizations from the hemisphere. The Second Report of the Committee to the Ministers may be found on the FTAA Web site.

The FTAA Civil Society Committee acknowledged the receipt of the contributions submitted in response to its Second Open Invitation to Civil Society (issued April 2000), and thanked all those organizations and persons who took the time and effort to contribute their views. Contributions which referred to specific issue areas, and those related to the FTAA process in general, were forwarded to the corresponding FTAA entities as listed on the attached cover sheet.

In view of the Ministerial mandate issued in April 2001 to the FTAA Civil Society Committee to foster a process of

increasing and sustained participation of the different sectors of civil society, as well as the Committee's interest in the continued contribution by these sectors on issues of relevance to the FTAA, and taking into account the availability of the preliminary draft consolidated texts of the FTAA Agreement on the FTAA Web site, the FTAA Civil Society Committee issued on November 1, 2001 a Third Open Invitation to civil society in the Western Hemisphere for the submission of written contributions.

Public Release of FTAA Draft Texts

Western Hemisphere trade ministers decided at the Buenos Aires Ministerial meeting on April 7, 2001 to make public the FTAA preliminary draft consolidated texts. That decision was endorsed by the hemisphere's leaders at the Quebec Summit of the Americas on April 20–22, 2001. The ministers' decision to publish the text necessitated the translation of the preliminary draft consolidated texts produced by the nine Negotiating Groups (market access; agriculture; services; intellectual property rights; investment; government procurement; competition policy; dispute settlement; and subsidies, antidumping and countervailing duties) into the four official languages of the FTAA: English, Spanish, French, and Portuguese. The text was made available on July 3, 2001 on the USTR Web site and on the official FTAA Web site in all four languages. The preliminary draft consolidated texts contain many brackets, indicating that the text enclosed by such brackets has not been agreed to by all FTAA governments. The Trade Policy Staff Committee previously issued a **Federal Register** notice [66 FR 134 of July 12, 2001] inviting comment from the U.S. public on the preliminary draft consolidated texts.

2. Invitation for Public Comments

The FTAA Civil Society Committee issued a Third Open Invitation to the public in the Western Hemisphere for comments on the FTAA process on November 1, 2001. The U.S. Government encourages wide participation in this process, and will ensure that U.S. negotiators review all submissions for consideration in the ongoing FTAA negotiations. The Third Invitation is an important part of U.S. efforts to ensure that the views of the public receive consideration in the FTAA negotiating process. Public comment in response to the Third Open Invitation is welcome by the FTAA Civil Society Committee on an ongoing basis. Comments received by the Committee through May 1, 2002 will form the basis for the Committee's next report to the FTAA Trade Ministers.

In order to be considered, each submission must:

- Identify the submitter(s), specifying name(s) and contact information;
- Make reference to matters relating to the FTAA process and/or the draft FTAA Agreement;
- Be in written form, in at least one of the official FTAA languages (Spanish, English, French, Portugese);
- Be accompanied by the cover sheet which follows (and also is available on the USTR and FTAA Web sites), with an indication of the FTAA entit(y)(ies) to which the contribution pertains;
- If greater than five pages, include an executive summary, no longer than two pages, which summarizes and identifies the issues considered in the document. (The FTAA Secretariat will translate executive summaries and contributions if less than five pages. Contributions longer than five pages will only be available to FTAA entities in the submission's original language.);
- Be sent directly to the Chair of the Committee of Government Representatives on the Participation of Civil Society at one of the above addresses.

Regina K. Vargo,

Assistant United States Trade Representative for the Office of the Americas.

BILLING CODE 3901–01–P

FTAA– Committee of Government Representatives on the Participation of Civil Society

COVER SHEET FOR OPEN INVITATION CONTRIBUTIONS

Name(s)			
Organization(s)			
Address			
Telephone		Country	
Email		Fax	

Number of Pages		Language	
Contribution covers the following country(ies) or region(s):			

FTAA ENTITIES (Please check the FTAA entity(ies) addressed in the contribution)

Negotiating Group on Agriculture		Committee of Government Representatives on the Participation of Civil Society	
Negotiating Group on Competition Policy		Joint Government-Private Sector Committee of Experts on Electronic Commerce	
Negotiating Group on Dispute Settlement		Consultative Group on Smaller Economies	
Negotiating Group on Government Procurement		Technical Committee on Institutional Issues (general and institutional aspects of the FTAA Agreement)	
Negotiating Group on Intellectual Property Rights		FTAA Process (check if the contribution is of relevance to all the entities)	
Negotiating Group on Investment			
Negotiating Group on Market Access			
Negotiating Group on Services			
Negotiating Group on Subsidies, Antidumping and Countervailing Rights			

EXECUTIVE SUMMARY (2 pages maximum) must accompany any contribution with more than five pages. (Executive summaries of contributions of more than five pages as well as contributions totaling less than five pages are to be forwarded to FTAA Negotiating Groups and other entities according to the information provided above.)

[FR Doc. 01–28260 Filed 11–9–01; 8:45 am]
BILLING CODE 3901–01–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 20–66A, Vibration and Fatigue Evaluation of Airplane Propellers

AGENCY: Federal Aviation (FAA), DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This notice announces the issuance of Advisory Circular (AC) 20–66A, titled ''Vibration and Fatigue Evaluation of Airplane Propellers''. This advisory circular (AC) provides guidance and describes one method, but not the only method, for demonstrating compliance with §§ 23.907 and 25.907 of Title 14 of the Code of Federal Regulations, for the evaluation of vibration stresses on propellers installed on airplanes. Like all AC material, this AC is not, in itself, mandatory and does not constitute a regulation. While these guidelines are not mandatory, they are derived from extensive Federal Aviation Administration (FAA) and industry experience in determining compliance with the pertinent regulations.

DATES: Advisory Circular 20–66A was issued by the Manager, Engine and Propeller Directorate, Aircraft Certification Office, ANE–100, on September 17, 2001.

How to Obtain Copies: A paper copy of AC 20–66A may be obtained by writing to the U.S. Department of Transportation, Subsequent Distribution Office, DOT Warehouse, SVC–121.23, Ardmore East Business Center, 3341Q 75th Ave., Landover, MD 20785, telephone 301–322–5377, or by faxing your request to the warehouse at 301–386–5394. The AC will also be available on the Internet at *http://www.faa.gov/avr/air/airhome.htm*, at the link titled ''Advisory Circulars'' under the ''Available Information'' down-drop menu.

Issued in Burlington, Massachusetts on October 23, 2001.

Thomas Boudreau,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 01–28377 Filed 11–9–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 21–12B, Application for U.S. Airworthiness Certificate, FAA Form 8130–6

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of Advisory Circular (AC) 21–12B, Application for U.S. Airworthiness Certificate, FAA Form 8130–6. AC 21–12B provides information and guidance on the preparation of Form 8130–6. The form is completed to obtain an airworthiness certificate and for an amendment or modification to a current airworthiness certificate. This AC provides an acceptable means, but not the only means, of demonstrating compliance with the requirements of Title 14 Code of Federal Regulations part 21, Certification Procedures for Products and Parts, regarding application for a U.S. airworthiness certificate.

ADDRESSES: Copies of AC21–12B can be obtained from the following: U.S. Department of Transportation, Subsequent Distribution Office, Ardmore East Business Center, 3341 Q 75th Ave., Landover, MD 20785.

Issued in Washington, DC, on November 6, 2001.

Frank P. Paskiewicz,

Manager, Production and Airworthiness Division, AIR–200.

[FR Doc. 01–28380 Filed 11–9–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 35.37–1A, Guidance Material for Fatigue Limit Tests and Composite Blade Fatigue Substantiation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This notice announces the issuance of Advisory Circular (AC) 35.37–1A. Guidance Material for Fatigue Limit Tests and Composite Blade Fatigue Substantiation. This advisory circular (AC) provides guidance and describes methods, but not the only methods, for demonstrating compliance with § 35.37 of Title 14 of the Code of Federal Regulations, Fatigue limit tests. This AC also provides methods for the fatigue evaluation of propellers and the fatigue substantiation of composite propeller blades. Lake all AC material, this AC is not, in itself, mandatory and does not constitute a regulation. While these guidelines are not mandatory, they are derived from extensive Federal Aviation Administration (FAA) and industry experience in determining compliance with the applicable regulations.

DATES: Advisory Circular 35.37–1A was issued by the Manager, Engine and Propeller Directorate, Aircraft Certification Office, ANE–100, on September 17, 2001.

How to Obtain Copies: A paper copy of AC 37.37–1A may be obtained by writing to the U.S. Department of Transportation, Subsequent Distribution Office, DOT Warehouse, SVC–121.23, Ardmore East Business Center, 3341Q 75th Ave., Landover, MD 20785, telephone 301–322–5377, or by faxing your request to the warehouse at 301–386–5394. The AC will also be available on the Internet at *http://www.faa.gov/avr/air/airhome.htm,* at the link titled ''Advisory Circulars'' under the ''Available Information'' down-drop menu.

Issued in Burlington, Massachusetts on October 23, 2001.

Thomas Boudreau,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 01–28376 Filed 11–9–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Program Management Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Program Management Committee meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the RTCA Program Management Committee.

DATES: The meeting will be held November 28, 2001 starting at 8:30 am.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC, 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 850, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Program Management Committee meeting. The agenda will include:

- November 28:
- Opening Session (Welcome and Introductory Remarks, Review/Approve Summary of Previous Meeting)
- Publication Consideration/Approval:

• Final Draft, Change 2, DO–210D, Minimum Operational Performance Standards (MASPS) for Geosynchronous Orbit Aeronautical Mobile Satellite Services (AMSS) Avionics, RTCA Paper No. 349–01/PMC–180, prepared by SC–165.

• Final Draft, Change 1, DO–262 Minimum Operational Performance Standards (MOPS) for Avionics Supporting Next Generation Satellite Systems (NGSS), RTCA Paper No. 350–01/PMC–181, prepared by SC–165.

• Final Draft, DO–229C, Minimum Operational Performance Standards for Global Positioning System/Wide Area Augmentation System Airborne Equipment, RTCA Paper No. 345–01/PMC–177, prepared by SC–159.

• Final Draft, DO–246B, GNSS Based Precision Approach Local Area Augmentation System (LAAS)—Signal-in-Space Interface Control Document, RTCA Paper No. 346–01/PMC–178, prepared by SC–159.

• Final Draft, DO–253A, Minimum Operational Performance Standards for GPS Local Area Augmentation System Airborne Equipment, RTCA Paper No. 347–01/PMC–179, prepared by SC–159.

• Discussion:

• Special Committee 189, NEXCOM; Update to Terms of Reference.

• Special Committee Chairman's Reports.

• Action Item Review:

• Action Item 06–01, Modular Avionics Special Committee; Status and Recommendations

• Action Item 07–01, Enhancement to TCAS; Proposed Additional Tasking

• Action Item 08–01, DO–181C Revision for ''Time Critical'' Revision to DO–181C.

• Action Item 09–01, Open SC–165 Issues; Status

• Action Item, 10–01, Portable Electronic Device Request; Status and Recommendations.

• Closing Session (Other Business, Document Production, Date and Place of Next Meeting, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 6, 2001.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 01–28378 Filed 11–9–01; 8:45 am]

BILLING CODE 4410–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Terminal Area Operations Aviation Rulemaking Committee

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of public meeting.

SUMMARY: This document announces announces a public meeting in which the Federal Aviation Administration (FAA) and other interested parties will discuss the draft charter, tasking, and organization of the proposed Terminal Area Operations Aviation Rulemaking Committee.

DATES: The public meeting will be held on December 5 and 6, 2001 at 9 a.m. in the Washington, DC area. Registration will begin at 8:30 a.m. on each day.

ADDRESSES: The public meeting will be held in the Washington, DC area. The exact meeting location will be published in a separate **Federal Register** notice and posted on the Terminal Area Operations Aviation Rulemaking Committee (TAOARC) web site at *http://www.faa.gov/avr/arm/index.htm* under the ''Committees'' heading.

People who plan to attend the meeting should contact Cindy Nordlie at *cindy.nordlie@faa.gov* or (202) 267–7627 no later than December 3, 2001. Please let Cindy Nordlie know if you plan to make a presentation at the meeting and if you need any audio-visual equipment for the presentation.

FOR FURTHER INFORMATION CONTACT: Questions regarding the logistics of the meeting should be directed to Ms. Cindy Nordlie, Airmen and Airspace Rules Division, ARM–108, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7627, facsimile (202) 267–5075; e-mail: *cindy.nordlei@faa.gov.* Technical questions should be directed to Ms. Katherine Perfetti, Air Transportation Division, AFS–200, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–3760, facsimile (202) 267–5229; *e-mail; katherine.perfetti@faa.gov.*

SUPPLEMENTARY INFORMATION: The public meeting wil be held in the Washington, DC area. The exact meeting location will be published in a separate **Federal Register** notice and posted on the Terminal Area Operations Aviation Rulemaking Committee (TAOARC) web site at *http://www.faa.gov/avr/arm/index.htm* under the ''Committees'' heading. The purpose of the meeting is to discuss the draft charter, tasking, and organization of the proposed Terminal Area Operations Aviation Rulemaking Committee. An electronic copy of this Notice of Public Meeting and a draft of the charter and other background information on the proposed Terminal Area Operations Aviation Rulemaking Committee can be found at the following web site: *http://www.faa.gov/avr/arm/index.htm* under the ''Committees'' heading.

Participation at the Public Meeting

Requests from persons who wish to attend the public meeting should be received by the FAA no later than December 3, 2001. Please also let the FAA know if you plan to make a presentation at the meeting and if you need any audio-visual equipment for the presentation. Such requests should be submitted to Ms. Cindy Nordlie, Airmen and Airspace Rules Division, as listed in the section above title **FOR FURTHER INFORMATION CONTACT.**

Background

Pursuant to the Administrator's authority under 49 U.S.C. 106(p)(5), the FAA is proposing to establish a Terminal Area Operations Aviation Rulemaking Committee. Safety issues and recommendations identified by the Commercial Aviation Safety Team (CAST) relating to Controlled Flight Into Terrain (CFIT) accidents and incidents, and airport capacity constraints with associated delays, dictate a need for improvements in terminal area operations. The capabilities of modern aircraft, specifically the use of area navigation (including the global positioning system), are not fully utilized. Evolving technologies and potential equipment upgrades provide increased operational and safety benefits not realized unless a practical means is established to facilitate implementation. The international aspects of aviation operations and aircraft production require that terminal area operational procedures and associated equipage be consistent.

The general goal of the committee will be to develop a means to implement improvements in terminal area operations that address safety, capacity, and efficiency objectives and that are consistent with international implementation. It will provide a forum

for the FAA, other government entities, and the aviation industry to discuss issues, develop resolutions, and develop processes to facilitate the evolution of safe and efficient terminal area operations. This committee will support the international harmonization process.

To achieve these objectives, the committee's proposed initial task is to resolve outstanding issues pertaining to draft Advisory Circular (AC) 120–29A and other draft required navigation performance (RNP) materials including, but not limited to AC 20–RNP, AC 90–RNP RNAV, Advisory Circular 120–xxx (airport obstacle analysis), and Order 8260.RNP.

Public Meeting Procedures

Persons who plan to attend the meeting should be aware of the following procedures established for this meeting:

1. There will be no admission fee or other charge to attend or to participate in the public meeting. The meeting will be open to all interested people who have confirmed attendance in advance or who register on the day of the meeting (between 8:30 a.m. and 9:00 a.m.), subject to availability of space in the meeting room.

2. Representatives from the FAA will conduct the public meeting.

3. The public meeting is intended as a forum to seek input to the draft charter, tasking, and organization of the proposed Terminal Area Operations Aviation Rulemaking Committee. Participants must limit their discussion to this issue.

4. The FAA will try to accommodate input from all attendees; therefore, it may be necessary to limit the discussion time available for an individual or group. If practicable, the meeting may be accelerated to enable adjournment in less than the time scheduled.

5. Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

6. Minutes of the meeting will be taken. The minutes and all material accepted by the FAA during the meeting will be included in TAOARC web site at http://www.faa.gov/avr/arm/index.htm under the ''Committees'' heading.

7. The meeting is designed to seek public input on the draft charter, tasking, and organization of the proposed Terminal Area Operations Aviation Rulemaking Committee. Therefore, the meeting will be conducted in an informal and nonadversarial manner.

Issued in Washington, DC, on November 6, 2001.

Ava L. Mims,

Acting Director, Flight Standards Service.

[FR Doc. 01–28379 Filed 11–13–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2001–10962]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel BATTLEWAGON.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before December 13, 2001.

ADDRESSES: Comments should refer to docket number MARAD–2001–10962. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested.

Name of vessel: BATTLEWAGON. Owner: Wayde C. Nichols Trustee, Loree R. Nichols, Trustee, Trustees of the Nichols Family.

(2) Size, capacity and tonnage of vessel. According to the Certificate of Documentation: ''Gross 33, Net 26, Length 43.8, Breadth 15.1, Depth 7.6″

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: ''The intended use for my vessel will be for chartering of six-pack fishing charters through my chain of tackle store's that I own by the name of Boss Bait and Tackle Inc.'' ''I will be fishing specifically on my charters between Los Angeles Harbor and the Mexican Border.''

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1972. Place of construction: Omastrand Hardanger, Norway.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: ''In regards to the impact this waiver will have on other commercial passengers vessels I do not believe that this waiver will affect them in any way. California has a need for more skilled six-pack charters boats and there is more than enough business for everyone.''

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: ''Regarding the impact on the ship yards it only means more money to them to repair the boats due to the use of the vessel commercially.''

Dated: November 6, 2001.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 01–28388 Filed 11–9–01; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2001–10961]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel *Lucky Strike.*

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before December 13, 2001.

ADDRESSES: Comments should refer to docket number MARAD–2001–10961. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW, Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW, Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: Lucky Strike. Owner: Triple A Fisheries, Inc.

(2) Size, capacity and tonnage of vessel. According to the applicant: ''Length 53.6 / Breadth 18.0 / Depth 9.2 / Gross Tonnage 59/Net Tonnage 47 pursuant to 46 U.S.C. 14502''

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: '''Day Charter trips/ Geographic Region of intended operations '' from the northern most tip of Maine to the Southern most tip of Florida''

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1975. Place of construction: Omstran Hardanger, Norway.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: ''The *Lucky Strike* would be chartered a few days a week, with mostly private charters, not really having any sort of major impact on commercial vessels.''

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: ''none to my knowledge''

Dated: November 6, 2001.

By Order of the Maritime Administrator.

Joel C. Richard, Secretary.

Maritime Administration.

[FR Doc. 01–28389 Filed 11–9–01; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2001–10960]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel PEZ VELA.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before December 13, 2001.

ADDRESSES: Comments should refer to docket number MARAD–2001–10960. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket

is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: PEZ VELA. Owner: John and Delilah Carroll.

(2) Size, capacity and tonnage of vessel. According to the Certificate of Documentation: ''Gross 16, Net 13, Length 42.8, Breadth 13.1, Depth 4.5.''

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: ''six (6) pack sport fishing charters'' ''Cabo San Lucas, Mexico to Santa Barbara, California.''

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1973. Place of construction: Unknown per Certificate of Documentation.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: ''Estimation of impact to fishing charter fleet industry little to none San Diego has a very large market for sport fishing and all available boats are usually 80 to 90 percent booked prior to start of fishing season.''

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: ''No impact expectation from such a small operation of one (1) boat.''

Dated: November 6, 2001.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 01–28387 Filed 11–9–01; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

International Standards on the Transport of Dangerous Goods; Public Meetings

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that RSPA will conduct a public meeting in preparation for the twentieth session of the United Nation's Sub-Committee of Experts on the Transport of Dangerous Goods (UNSCOE) to be held December 5–11, 2001 in Geneva, Switzerland.

DATES: November 28, 2001 9:30 AM–12:30 PM, Room 6200–6204.

ADDRESSES: The meeting will be held at DOT Headquarters, Nassif Building, Room 6200–6204, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Bob Richard, International Standards Coordinator, Office of Hazardous Materials Safety, Department of Transportation, Washington, DC 20590; (202) 366–0656.

SUPPLEMENTARY INFORMATION: The primary purpose of the meeting will be to prepare and discuss positions for the twentieth session of the UNSCOE. Topics to be covered during the public meeting will include (1) Criteria for Environmentally Hazardous Substances, (2) Intermodal requirements for the transport of solids in bulk containers, (3) Harmonized requirements for compressed gas cylinders, (4) Portable tank requirements, (5) Classification of individual substances, (6) Requirements for packagings used to transport hazardous materials, (7) Requirements for infectious substances, and (8) Hazard communication requirements.

The public is invited to attend without prior notification.

Documents

Copies of documents for the UNSCOE meeting may be obtained by downloading them for the United Nations Transport Division's Web site at *http://www.unece.org/trans/main/dgdb/dgsubc/c3doc.html.* Information concerning UN dangerous goods meetings including agendas can be downloaded at *http://www.unece.org/trans/main/dgdb/dgsubc/c3.html.* These sites may also be accessed through RSPA's Hazardous Materials Safety homepage at *http://hazmat.dot.gov/intstandards.htm.* RSPA's site provides information regarding the UNSCOE and the Globally Harmonized System of Classification and Labeling for Chemicals, a summary of decisions taken at the 21st session of the UN Committee of Experts, meeting dates and a summary of the primary topics which are to be addressed in the 2001–2002 biennium.

Issued in Washington, DC, on November 6, 2001.

Robert A. McGuire,

Associate Administrator, for Hazardous Materials Safety.

[FR Doc. 01–28375 Filed 11–09–01; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34123]

B&H Rail Corp.—Lease and Operation Exemption—Livonia, Avon & Lakeville Railroad Corporation and Norfolk Southern Railway Company

B&H Rail Corp. (B&H), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate two rail lines in Steuben County, NY, as follows: (1) B&H will acquire, by assignment, all of the contractual operating rights of Livonia, Avon & Lakeville Railroad Corporation (LAL) over an approximately 34.03-mile rail line that extends between approximately milepost 8.68, at Hammondsport, and approximately milepost 0.85, at Bath (which is also designated as approximately milepost 285.10), and from that point to approximately 311.3 in Wayland,[1] and (2) B&H will sublease from Norfolk Southern Railway Company (NSR) an approximately 17.08-mile connecting rail line that extends between approximately milepost 285.10, at Bath,

[1] The Steuben County Industrial Development Authority owns the 34.03-mile rail line (SCIDA line). LAL's operation of the SCIDA line was previously exempted by the Board in *Livonia, Avon & Lakeville Railroad Corp.—Acquisition and Operation Exemption—Steuben County Industrial Development Agency,* STB Finance Docket No. 32941 (STB served May 22, 1996). B&H states that it has operated the SCIDA line (under its former name, Conhocton Valley Railroad Corporation) as LAL's contract operator since January of 2001.

and approximately milepost 268.02, at Painted Post.[2]

The parties report that they intend to consummate the transaction on or soon after the effective date of the exemption. The earliest the transaction could be consummated was November 2, 2001 (7 days after the exemption was filed).

This transaction is related to STB Finance Docket No. 34124, *Livonia, Avon & Lakeville Railroad Corporation—Continuance in Control Exemption—B&H Rail Corp.,* wherein LAL has concurrently filed a petition for exemption from the requirements of 49 U.S.C. 11323 to control B&H once B&H consummates the transaction in STB Finance Docket No. 34123 and becomes a Class III rail carrier. The stock of B&H has been placed in an independent, irrevocable voting trust pursuant to 49 CFR 1013 in order to avoid an unlawful control violation pending a Board decision in STB Finance Docket No. 34124.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34123, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Kevin M. Sheys, Esq., Kirkpatrick & Lockhart, LLP, 1800 Massachusetts Avenue, NW., Second Floor, Washington, DC 20036.

Board decisions and notices are available on our website at *www.stb.dot.gov.*

Decided: November 2, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–28400 Filed 11–9–01; 8:45 am]

BILLING CODE 4915–00–P

[2] The 17.08-mile rail line is owned by Pennsylvania Lines LLC, and currently operated by NSR.

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Termination—Far West Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 11 to the Treasury Department Circular 570; 2001 Revision, published July 2, 2001 at 66 FR 35024.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6507.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to the above named Company, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 66 FR 35036, July 2, 2001.

With respect to any bonds, including continuous bonds, currently in force with above listed Company, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, in no event, should bonds that are continuous in nature be renewed.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570/index.html.* A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–04067–1.

Questions concerning this notice may be directed to the U.S. Department of Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: November 2, 2001.

Wanda J. Rogers,

Acting Assistant Commissioner, Financial Operations, Financial Management Service.

[FR Doc. 01–28356 Filed 11–9–01; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Amendment—United States Fidelity and Guaranty Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 10 to the Treasury Department Circular 570; 2001 Revision, published July 2, 2001, at 66 FR 35024.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6915.

SUPPLEMENTARY INFORMATION: The underwriting limitation for United States Fidelity and Guaranty Company, which was listed in the Treasury Department Circular 570, July 2, 2001, is hereby amended to read $89,596,000.

Federal bond-approving officers should annotate their reference copies of Treasury Circular 570, 2001 Revision, at 66 FR 35058 to reflect this change, effective today.

The Circular may be viewed and downloaded through the Internet (*http://www.fms.treas.gov/c570/index.html*). A hard copy may be purchased from the Government Printing Office (GPO), subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–04067–1.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: November 1, 2001.

Wanda J. Rogers,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 01–28355 Filed 11–9–01; 8:45 am]

BILLING CODE 4810–35–M

Corrections

Federal Register

Vol. 66, No. 219

Tuesday, November 13, 2001

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 41

RIN 3038–AB71

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 242

[Release No. 34–44853; File No. S7–16–01]

RIN 3235–A122

Customer Margin Rules Relating to Security Futures

Correction

In proposed rule document 01–24574 beginning on page 50720 in the issue of Thursday, October 24, 2001, make the following corrections:

1. On page 50727, in the table, under the heading ''Maintenance margin requirement'', in the second entry, in the third line, ''of the plus put plus'' should read, ''of the put plus''.

2. On the same page, in the table, under the heading, ''Initial margin requirement'', in the third entry, in the fourth line, delete ''aggregate''.

3. On the same page, under the heading ''Initial margin requirement'', in the sixth entry, in the second line, ''based'' should read, ''basket''.

4. On page 50728, under the heading, ''Maintenance margin requirement'',

(a) In the fifth entry, in the first line, ''(1) of'' should read, ''(1) 10%''.

(b) In the last entry, in the fifth line, after ''amount''insert ''if''.

5. On page 50729, in the table, under the heading ''Description of offset'', in the second entry, in the first line, delete ''(or stock''.

[FR Doc. C1–24574 Filed 11–9–01; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

48 CFR Part 213

Defense Federal Acquisition Regulation Supplement; Overseas Use of the Purchase Card in Contingency, Humanitarian, or Peacekeeping Operations

Correction

In rule document 01–27371 beginning on page 55123 in the issue of Thursday, November 1, 2001, make the following corrections:

1. On page 55123, in the third column, the heading

213.301 Government—wide commercial purchase card.

is corrected to read

213.301 Governmentwide commercial purchase card.

2. In the same column, in paragraph (3) under the heading, the last line of paragraph (3) ''threshold, if;'' is corrected to read ''threshold, if—''.

[FR Doc. C1–27371 Filed 11–9–01; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS-2133-N]

RIN 0938-ZA17

State Children's Health Insurance Program; Final Allotments to States, the District of Columbia, and U.S. Territories and Commonwealths for Fiscal Year 2002

Correction

In notice document 01–26037 beginning on page 54246 in the issue of Friday, October 26, 2001, make the following correction:

On page 54250, in the table titled ''State Children's Health Insurance Program Allotments for Federal Fiscal Year''in column (G), Allotment for the State of California, the number ''528,466,560'' is corrected to read ''528,446,560''.

[FR Doc. C1–26037 Filed 11–9–01; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

Establishment of Class E Airspace; Sharon, PA

Correction

In rule document 01–23938 beginning on page 49518 in the issue of Friday, September 28, 2001, make the following correction:

§71.1 [Corrected]

On page 49519, in the first column, the second line after the heading **AEA PA E5, Sharon, PA [NEW]** ''(lat. 42°'' is corrected to read ''(lat. 41°''

[FR Doc. C1–23938 Filed 11–9–01; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
November 13, 2001

Part II

Environmental Protection Agency

40 CFR Part 52

Approval and Promulgation of Implementation Plans; Illinois, Wisconsin, and Indiana, Ozone; Final Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL200–2; FRL–7088–8]

Approval and Promulgation of Implementation Plans; Illinois; Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving State Implementation Plan (SIP) revisions submitted by the State of Illinois to meet certain requirements of the Clean Air Act (CAA) regarding attainment of the ozone standard in the Chicago-Gary-Lake County ozone nonattainment area. These SIP revisions are primarily required by section 182 of the CAA. This action fully approves the following: An ozone attainment demonstration demonstrating attainment by November 15, 2007; a post-1999 ozone Rate-Of-Progress (ROP) plan with associated ROP mobile source conformity emission budgets; a contingency measures plan for both the ozone attainment demonstration and the post-1999 ROP plan; a commitment to conduct a Mid-Course Review (MCR) of the ozone attainment demonstration; motor vehicle emission budgets for Volatile Organic Compounds (VOC) and Oxides of Nitrogen (NO_X) for the 2007 attainment year, until such time that revised budgets are submitted and found to be adequate for conformity purposes as called for by the State in its commitment to recalculate and apply revised emissions budgets for conformity within two years of the formal release of MOBILE6; and, a demonstration that the State has fully implemented Reasonably Available Control Measures (RACM). The EPA is also revising the existing NO_X emissions control waiver for the Illinois portion of the Chicago-Gary-Lake County ozone nonattainment area to exclude from the waiver NO_X emission controls for certain Electrical Generating Units (EGUs), major non-EGU boilers and turbines, and major cement kilns in the ozone nonattainment area relied on by the State to attain the ozone standard, as noted in the State's ozone attainment demonstration. The existing NO_X emissions control waiver remains in place for Reasonably Available Control Technology (RACT), New Source Review (NSR), and certain requirements of vehicle Inspection and Maintenance (I/M) and transportation and general conformity. The EPA is denying a related citizen petition for the termination of the NSR portion of the NO_X waiver.

EFFECTIVE DATE: This rule becomes effective on December 13, 2001.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection by appointment weekdays from 9 a.m. to 4 p.m. Central Time at the offices of the Air Programs Branch, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room M–1500, 401 M Street (Mail Code 6102), SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Edward Doty, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number: (312) 886–6057, E-mail Address: *doty.edward@epa.gov.*

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

This supplementary information section is organized as follows:

I. What Is EPA Approving Or Disapproving In This Action?
II. What Previous Action Has Been Taken Or Proposed On This SIP Revision?
III. What Are The Requirements For Full Approval Of This SIP Revision?
IV. How Did Illinois Fulfill These Requirements For Full Approval?
V. What Other SIP Elements Did EPA Need To Approve Before It Could Give Full Approval To This SIP Revision?
VI. What Comments Were Received On The Proposed Approval Of This SIP Revision, And What Are EPA's Responses To These Comments?
VII. Final EPA Action
VIII. Administrative Requirements

I. What Is EPA Approving or Disapproving in This Action?

The EPA is approving SIP revisions submitted by the State of Illinois for purposes of attainment of the 1-hour ozone standard in the Chicago-Gary-Lake County ozone nonattainment area (the Illinois portion of which is referred to in this final rule as the ''Chicago nonattainment area'' or, more simply, as the ''Chicago area'').[1] These SIP revisions are primarily required by section 182 of the CAA. This action approves the following: (1) An ozone attainment demonstration; (2) a post-1999 ozone ROP plan with associated ROP conformity emission budgets for 2002 and 2007; (3) a contingency measures plan for both the ozone attainment demonstration and the post-1999 ROP plan; (4) a commitment to conduct a MCR of the ozone attainment demonstration; (5) motor vehicle emission budgets for VOC and NO_X for the 2007 attainment year, until such time that revised emission budgets are submitted and found to be adequate for conformity purposes as called for by the State in its commitment to recalculate and apply revised emission budgets for conformity within two years of the formal release of MOBILE6; and, (6) a demonstration that the State has fully implemented RACM in the Chicago ozone nonattainment area. These SIP elements are thoroughly described in a July 11, 2001 proposed rule (66 FR 36370).

The attainment emissions control strategy which we are approving in this final rule is summarized in Table I.

TABLE I.—OZONE ATTAINMENT EMISSION CONTROL STRATEGY

- Clean Air Act Title IV Acid Rain Controls for NO_X—Phase I.
- Rate-Of-Progress Plans (15 Percent ROP Plan and 9 Percent Post-1996 ROP Plan).
- National Low Emission Vehicle Standards.
- Reformulated Gasoline—Phase II (where required).
- Federal Phase II Small Engine Standards.
- Federal Marine Engine Standards.
- Federal Heavy Duty Vehicle (≥ 50 horsepower) Standards—Phase I.
- Federal Locomotive Standards—Including Rebuilds.
- Federal High Compression Engine Standards.
- Federal Tier I Light Duty Vehicle and Heavy Duty Vehicle Emission Standards.
- Enhanced Vehicle Inspection and Maintenance (I/M) (where required).
- Basic Vehicle I/M (where required).
- Federal Clean Fuel Fleets Requirements (where required).
- Federal Tier II and Low Sulfur Gasoline Standards.
- Utility 0.15 Pounds NO_X Per Million Btu of Heat Input Emission Limits (20 affected States, including Illinois).
- 60 Percent Reduction of NO_X Emissions From Large Non-Electric Generating Unit (Non-EGU) Boilers and Turbines (20 affected States, including Illinois).
- 30 Percent Reduction of NO_X Emissions From Large Cement Kilns (20 affected States, including Illinois).
- Wisconsin—0.28 Pounds NO_X Per Million Btu of Heat Input for Utilities (EGUs) in 8 Counties.
- Missouri—0.25 Pounds NO_X Per Million Btu of Heat Input for EGUs in the Eastern One-Third of the State.

[1] The Chicago nonattainment area is classified as a severe nonattainment for ozone, and is defined in 40 CFR part 81 to include the Counties of Cook, DuPage, Kane, Lake, McHenry, and Will, and the Townships of Aux Sable and Goose Lake in Grundy County and Oswego in Kendall County.

TABLE I.—OZONE ATTAINMENT EMISSION CONTROL STRATEGY—Continued

- Missouri—0.35 Pounds NO_X Per Million Btu of Heat Input for EGUs in the Western Two-Thirds of the State.

This emissions control strategy has been determined to be adequate to achieve attainment of the 1-hour ozone standard by November 15, 2007, the attainment date EPA is approving for the Chicago nonattainment area.

The post-1999 ROP plan emission control measures are given in Table II and III. Note in Comment/Response 39 below that we are not giving full VOC reduction credit for Transportation Control Measures as stated in Table VIII of our July 11, 2001 proposed rule (66 FR 36370, 36388). VOC and NO_X emission reduction credits for all other ROP emission control measures are as specified in Table VIII and Table IX in our July 11, 2001 proposed rule.

TABLE II.—CHICAGO NONATTAINMENT AREA VOC EMISSION REDUCTION MEASURES POST-1999 ROP PLAN

Mobile Source Measures:
- Post-1994 Tier I Vehicle Emission Rates.
- Federal Reformulated Gasoline—Phase I and II.
- Illinois 1992 I/M Improvements.
- Enhanced I/M Program.
- Conventional Transportation Control Measures.
- National Energy Policy Act of 1992.
- Federal Non-Road Small Engine Standards.
- National Low Emissions Vehicle Program.
- Federal Clean Fuel Fleet Vehicle Program.
- Tier II Vehicle Standards/Low Sulfur Fuel Standards.

Point Source Measures:
- Emissions Reduction Market System (ERMS).

Area Source Measures:
- 1999 Cold Cleaning Degreaser Limits.

TABLE III.—ILLINOIS OZONE ATTAINMENT AREA NO_X EMISSION REDUCTION MEASURES POST-1999 ROP PLAN

- CAA Tier I Vehicle Emission Standards.
- Tier II Vehicle Standards/Low Sulfur Fuel Standards.
- National Low Emission Vehicle/Heavy Duty Gasoline Vehicle Standards.
- Federal Off-Road Engine Standards.
- Title IV Acid Rain Controls on EGUs.
- NO_X SIP Call-based Rules for EGUs, Non-EGU Boilers and Turbines, and Cement Kilns.

These VOC and NO_X emission control measures have been determined to be adequate to achieve the required ROP by the milestone years (2002, 2005, and 2007) in the Chicago nonattainment area. Note that the plan depends on the substitution of NO_X emission controls in the attainment portion of Illinois for VOC emission reduction requirements in the Chicago nonattainment area. This substitution is more thoroughly discussed in the July 11, 2001 proposed rule.

For contingency measures, the adopted emission control measures and their associated VOC emission reduction levels in tons per day (TPD), as given in the SIP, are presented in Table IV. These emission reductions are in excess of those emission reductions included in the ozone attainment demonstration, and, therefore, are creditable as contingency measures. These controls are being implemented without the need for future rule development by the State.

TABLE IV.—ILLINOIS CONTINGENCY MEASURE EMISSION REDUCTIONS

Control measure	VOC emission reduction (TPD)
Mobile Source Measures	10.8
Tier II/Low Sulfur Fuel Program	1.4
On-Board Diagnostics	23.5
Non-Road Engine Standards	14.0
Total	49.7

We proposed to approve Illinois' Motor Vehicle Emissions Budget (MVEB) for the Chicago nonattainment area in the July 11, 2001 proposed rule (66 FR 36370), and approve the MVEB in this final rule. The VOC emissions budget for 2002 is 183.4 tons per day, and the VOC emissions budget for 2005 is 163.4 tons per day. The emissions budgets for the 2007 attainment year are 154.91 tons per day for VOC and 293.92 tons per day for NO_X. These emissions budgets were found adequate effective May 31, 2000, as posted on the EPA website at *www.epa.gov/otaq/traq* (once there, click on the ''conformity'' button).

The EPA is revising the existing NO_X emissions control waiver for the Chicago nonattainment area to exclude from the waiver those NO_X emission controls for certain EGUs, major non-EGU boilers and turbines, and major cement kilns in the Chicago nonattainment area relied on by the State to attain the ozone standard, as noted in the State's ozone attainment demonstration. The existing NO_X emissions control waiver remains in place for RACT, NSR, and certain requirements of vehicle I/M and transportation and general conformity. The EPA is denying a related citizen petition for the termination of the NSR portion of the NO_X waiver.

The basis for the NO_X waiver, as retained, is revised from that used in the original approval of the NO_X waiver.[2] Originally the NO_X waiver was based on a demonstration that NO_X emission controls in the Chicago nonattainment area are not beneficial toward the attainment of the ozone standard in this area, complying with the waiver criteria based on section 182(f)(1)(A) of the CAA. The revised basis is based on section 182(f)(2)(A) of the CAA, which provides for a waiver of excess NO_X emission reductions. The State has demonstrated attainment of the 1-hour ozone standard without application of the waivered NO_X emission controls.

Today's action finalizes EPA's approval of Illinois' 1-hour ozone attainment demonstration and post-1999 ROP SIP revisions as meeting the requirements of sections 182(c)(2) and (d) of the CAA.

II. What Previous Action Has Been Taken or Proposed on This SIP Revision?

EPA published a Notice of Proposed Rulemaking (NPR) for the Illinois ozone attainment demonstration SIP for the Chicago-Gary-Lake County ozone nonattainment area on December 16, 1999 (64 FR 70496). In that NPR, we proposed to conditionally approve the 1-hour ozone attainment demonstration SIP revision submitted by Illinois on April 30, 1998. This proposed conditional approval was based on the State's submitted ozone modeling analysis and the State's commitment to adopt and submit a final ozone attainment demonstration and a post-1999 ROP plan, including the necessary State air pollution control regulations, by December 31, 2000. We proposed, in the alternative, to disapprove this attainment demonstration plan, if, by December 31, 1999, the State did not select an emissions control strategy associated with its submitted ozone modeling analysis and did not submit adequate motor vehicle emissions budgets for VOC and NO_X for the Chicago nonattainment area that complied with EPA's conformity

[2] The EPA approved Illinois' original NO_X waiver petition in a final rule on January 26, 1996 (61 FR 2428), covering a waiver from NO_X emission control requirements for RACT, NSR, and certain I/M and general conformity NO_X requirements for the Chicago nonattainment area. The EPA also granted an exemption from certain transportation conformity NO_X requirements for the Chicago nonattainment area on February 12, 1996 (61 FR 5291).

regulations and that supported the attainment of the 1-hour ozone standard. We also required the State to submit, by December 31, 1999, an enforceable commitment to conduct a mid-course review of the ozone attainment plan in 2003.

The State met the submittal requirements of the proposed conditional approval, and submitted a final ozone attainment demonstration and post-1999 ROP plan on December 26, 2000. We reviewed this submittal, along with a related citizens petition requesting removal of the NSR portion of the existing NO_X emissions control waiver for the Chicago ozone nonattainment area, in a NPR on July 11, 2001 (66 36370). In this NPR, we proposed to approve the State's submittal and to deny the citizen's NO_X waiver petition.

Since the State largely replaced the April 30, 1998 ozone attainment demonstration with the December 26, 2000 submittal, the July 11, 2001 NPR primarily focused on the December 2000 ozone attainment demonstration. As such, this final rule also focuses on the December 26, 2000 version of the ozone attainment demonstration and the comments received on our July 11, 2001 NPF. This Notice of Final Rulemaking (NFR), however, also addresses the public comments received with regard to our December 16, 1999 NPR.

III. What Are the Requirements for Full Approval of This SIP Revision?

The ozone attainment demonstration and post-1999 ROP plan must meet applicable criteria as detailed in the CAA. The specific requirements of the CAA for ozone attainment demonstrations and post-1996 ROP plans in serious and severe ozone nonattainment areas are specified in sections 182(c)(2) and 182(d) of the CAA. Section 172 of the CAA provides the general requirements for air quality plans for nonattainment areas. Refer to our July 11, 2001 NPR for further details of requirements for ozone attainment demonstrations and ROP plans.

IV. How Did Illinois Fulfill the Requirements for Full Approval?

On December 26, 2000, as noted elsewhere in this final rule, the State of Illinois submitted a SIP revision covering the State's adopted ozone attainment demonstration, post-1999 ROP plan, associated motor vehicle emission budgets, and adopted emissions control strategy. This submittal, along with the submittal of adopted NO_X emission control regulations as discussed below, meets the requirements of the CAA for submission of attainment demonstrations and ROP plans.

V. What Other SIP Elements Did EPA Need To Approve Before It Could Give Full Approval to This SIP Revision?

This SIP revision depends significantly on the new NO_X emission reductions resulting from the implementation of NO_X emission control regulations for major EGUs, major non-EGU boilers and turbines, and major cement kilns. On September 25, 2001, EPA signed final rules approving Illinois' NO_X emission control regulations for major EGUs, major non-EGU boilers and turbines, and major cement kilns. These final rules are being published in separate rulemaking actions. In addition, other State emission control regulations affecting the attainment of the ozone standard and post-1999 ROP in the Chicago ozone nonattainment area—such as VOC RACT, I/M, and Illinois' Emission Reduction Market System, with an associated VOC emissions cap for stationary sources—have previously been adopted by the State and approved by the EPA.

All required State emission control regulations and related SIP elements needed to support the ozone attainment demonstration and the post-1999 ROP plan have been approved by the EPA.

Other related SIP actions are being acted upon in this final notice. These include Illinois' commitments to conduct a Mid-Course Review in 2004 and to recalculate the mobile vehicle transportation conformity emission budgets within two years after MOBILE6 is officially released. Illinois committed to revise within two years after the official release of MOBILE6, the 2007 attainment demonstration emission budgets and to revise the ROP conformity emission budgets. No conformity determinations can be made in the second year of the commitment without adequate MOBILE6-based emissions budgets. As we proposed on July 28, 2000 (65 FR 46383), the final approval action we are taking today on the 2007 attainment demonstration emission budgets will be effective for conformity purposes only until revised motor vehicle emissions budgets are submitted and we have found them to be adequate. In other words, the emissions budgets we are approving today as part of the attainment demonstration and the post-1999 ROP plan will apply for conformity purposes only until there are new, adequate emissions budgets consistent with the States commitments to revise the emissions budgets. The revised emissions budgets will apply for conformity purposes as soon as we find them adequate.

We are limiting the duration of the approval of the motor vehicle emissions budgets in this manner because the State has committed to revise them. Therefore, once we have confirmed that the revised motor vehicle emissions budgets are adequate, they will be more appropriate than the emissions budgets we are approving for conformity purposes now. If the revised motor vehicle emissions budgets raise issues about the sufficiency of the attainment demonstration or post-1999 ROP plan, EPA will work with the State on a case-by-case basis.

The Mid-Course Review commitment and MOBILE6-based revision commitment were discussed in detail in the July 11, 2001 proposed rule. In today's action, EPA is approving these State commitments.

VI. What Comments Were Received on the Proposed Approval of These SIP Revisions, and What Are EPA's Response to These Comments?

As noted above, we issued two NPRs, dated December 16, 1999 (64 FR 70496) and July 11, 2001 (66 FR 36370), related to the SIP revisions addressed in this final rule. We received comments on both of these NPRs. The following summarizes and addresses those comments.

Comment 1

A commenter opposes the proposed approval of the Chicago ozone attainment demonstration because the State of Illinois has not adopted an emissions control strategy. The commenter also stated that the MVEB is by definition inadequate because the SIP does not demonstrate timely attainment of the ozone standard nor does it include the emissions reductions required for all RACM. The commenter claims that EPA may not find as adequate a MVEB that is derived from a SIP that is inadequate for the purpose for which it is submitted.

Response 1

With regard to the adoption of an ozone attainment demonstration, as noted in the July 11, 2001 proposed rule (66 FR 36370), this problem has been resolved. The State has completed the adoption of the ozone attainment demonstration and its associated emissions control strategy. The State has revised its MVEB to reflect the adopted ozone attainment demonstration. It is also noted that the SIP does now demonstrate timely attainment of the 1-hour ozone standard by the November 15, 2007 deadline for the Chicago-Gary-

Lake County ozone nonattainment area as noted in the July 11, 2001 proposed rule.

The EPA reviewed the initial Illinois SIP submittal (the April 30, 1998 submittal) for the Chicago-Gary-Lake County ozone nonattainment area and determined that it did not include sufficient documentation concerning available RACM measures. For all of the severe nonattainment areas for which EPA proposed approvals in December 1999, EPA consequently issued a policy guidance memorandum [3] to have these States address the RACM requirements through an additional SIP submittal. (Memorandum of December 14, 2000, from John S. Seitz, Director, Office of Air Quality Planning and Standards, regarding: ''Additional Submission on RACM from States with Severe 1-hour Ozone Nonattainment Area SIP.'')

We conducted a review of Illinois' December 2000 submittal to determine whether it demonstrated that Illinois had implemented RACM in the Chicago nonattainment area. As noted in the July 11, 2001 proposed rule (66 FR 36370), we have proposed to approve the December 2000 submittal as demonstrating that Illinois has implemented RACM in the Chicago nonattainment area.

Section 172(c)(1) of the CAA requires SIPs to contain RACM and provides for areas to attain as expeditiously as practicable. EPA has previously provided guidance interpreting the requirements of section 172(c)(1). See 57 FR 13498, 13560. In that guidance, EPA indicated its interpretation of section 172(c)(1) that potentially available measures that would not advance the attainment date for an area would not be considered to be RACM. EPA also indicated in that guidance that States should consider all potentially available emission control measures to determine whether they are potentially available for implementation in an area and whether they would advance the attainment date. Further, States should indicate in their SIPs whether emission control measures considered were reasonably available or not, and, if measures are reasonably available, they must be adopted by the States as RACM. Finally, EPA indicated that States could reject emission control measures as not being RACM because they would cause substantial widespread and long-term adverse impacts, or would be economically or technologically infeasible. The EPA also issued a recent memorandum re-confirming the principles in the earlier guidance. The newer memorandum is titled, ''Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas,'' from John S. Seitz, Director, Office of Air Quality Planning and Standards (OAQPS). November 30, 1999. Web site: *http://www.epa.gov/ttn/oarpg/tlpgm.html*.

As noted in the July 11, 2001 proposed rule (66 FR 36370, 36398), the State's SIP has addressed the implementation of RACM, and we have determined that the SIP adequately meets the RACM requirements of the CAA. We addressed the implementation of emission control measures in the Chicago area for both mobile and stationary sources. We determined that the State could not significantly advance the 1-hour ozone standard attainment date through the implementation of emission controls not already adopted by the State. In addition, as we noted in the July 11, 2001 proposed rule (66 FR 36370, 36400), although we encourage areas to implement available RACM as potentially cost-effective methods to achieve emission reductions in the short term, we do not believe that section 172(c)(1) of the CAA requires implementation of potential RACM measures that either needlessly require costly implementation efforts or produce relatively small emissions reductions that will not be sufficient to allow an area to achieve attainment in advance of full implementation of all other required measures.

In addition to emission control measures already implemented locally, Illinois relies in large part on emission reductions from outside of the Chicago area resulting from EPA's NO_X SIP Call rule or section 126 NO_X rule (65 FR 2674, January 18, 2000) to reach attainment of the ozone standard. In the NO_X SIP Call (63 FR 57356), we concluded that NO_X emission reductions from various upwind States were necessary to provide for timely attainment of the 1-hour ozone standard in nonattainment areas in various downwind States, including Illinois on both counts. The NO_X SIP Call established requirements for control of sources of significant NO_X emissions in the relevant upwind States. These NO_X emission reductions are not expected to be fully implemented until May 2004.

The ozone attainment demonstration for Illinois indicates that the ozone reduction benefit expected to be achieved from the regional NO_X emission reductions is significant. We have seen no evidence for similar ozone benefits resulting from Illinois-specific emission controls not already adopted by the State that would also significantly advance the attainment date for the Chicago-Gary-Lake County ozone nonattainment area. Therefore, EPA concludes, based on the available documentation, that the emission reductions from additional emission control measures will not advance attainment, and, thus, none of the possible additional emission control measure can be considered to be RACM for the purposes of section 172(c)(1) of the CCA.

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

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

We previously responded to comments concerning the adequacy of Illinois' MVEB when we took final

[3] Memorandum of December 14, 2000 from John S. Seitz, Director, Office of Air Quality Planning and Standards, Subject: ''Additional Submission on RACM from States with Severe 1-hour Ozone Nonattainment SIPs.''

action determining the MVEB to be adequate and do not address those issues again here. Our findings of adequacy for the MVEB and responses to comments can be accessed at *www.epa.gov/otaq/traq* (once there, click on the ''conformity'' button).

Comment 2

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

Response 2

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

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

Comment 3

A commenter asks that EPA require full compliance with regulatory requirements now in place that govern the development of attainment strategies, and rigorous implementation of statutory requirements for RACT and RACM.

Response 3

As noted in responses to other comments in this final rule and in the July 11, 2001 (66 FR 36370) NPR, the Illinois SIP meets the CAA requirements for the implementation of RACM. In addition, it is noted that the State of Illinois has implemented RACT controls for VOC sources in the ozone nonattainment areas in Illinois in full compliance with CAA requirements. As noted elsewhere in this final rule and in the July 11, 2001 proposed rule, the Chicago nonattainment area is currently covered by a waiver from NO_X RACT controls.

Given the above, it is concluded that Illinois has met the requirements for RACT and RACM as requested by the commenter.

Comment 4

A commenter urges EPA to reject the dilatory approaches embodied in the proposed approvals, and to instead disapprove the SIP revisions until they demonstrate, using the approved Urban Airshed Model (UAM), that the areas will attain the 1-hour standard at the earliest possible date.

Response 4

As noted in the July 11, 2001 NPR (66 FR 36370), Illinois has demonstrated attainment of the 1-hour ozone standard using the UAM. Illinois used UAM data and a statistical approach, as defined in EPA's June 1996 Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS (EPA–454/B–95–007), to demonstrate attainment of the 1-hour ozone standard in the Chicago nonattainment area by November 15, 2007.

The commenter is objecting to States demonstrating attainment of the 1-hour ozone standard via procedures differing from the deterministic test as discussed in the June 1996 guidance. However, as discussed in more detail in the June 1996 guidance and elsewhere in this final rule, the deterministic test is not the only attainment demonstration test supported by the attainment demonstration requirements of the CAA. The CAA is not prescriptive as to the specific nature of the attainment demonstration, other than that the use of a photochemical dispersion model, such as UAM, is required for serious and above ozone nonattainment areas. The CAA does not prevent the consideration of additional data to support the attainment demonstration. In addition, the EPA has found that the simple use of the photochemical dispersion model through only the deterministic test may not be appropriate for some areas.

See the next comment and our response to that comment.

Comment 5

A commenter states that none of the air quality plans for severe ozone nonattainment areas demonstrate attainment in the manner required by section 182(c)(2)(A) of the CAA. Each State's photochemical grid modeling clearly predicts continued nonattainment of the 1-hour ozone standard, with predicted ozone peak concentrations well above the NAAQS. The Weight-Of-Evidence (WOE) approach does not satisfy the CAA's mandate to assure attainment of the ozone standard by the deadline, nor does it comply with the requirement of a modeled demonstration of attainment. EPA may not lawfully approve SIPs based on modeling that has been expressly prohibited by the rule.

Note that a number of commenters made related comments on the ozone attainment demonstrations (including those from states other than Illinois) reviewed in the December 16, 1999 proposed rules. These related comments are also addressed here.

Response 5

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

the broad deference Congress granted EPA to develop appropriate methods for determining attainment, as indicated in the last phrase of section 182(c)(2)(A).

The flexibility granted to EPA under section 182(c)(2)(A) of the CAA is reflected in the regulations EPA promulgated for modeled attainment demonstrations. These regulations provide, ''The adequacy of a control strategy shall be demonstrated by means of applicable air quality models, data bases, and other requirements specified in [40 CFR part 51 Appendix W] (Guideline on Air Quality Models).''[4] 40 CFR 51.112(a)(1). However, the regulations further provide, ''Where an air quality model specified in appendix W * * * is inappropriate, the model may be modified or another model substituted [with approval by EPA, and after] notice and opportunity for public comment * * *.'' Appendix W, in turn, provides that, ''The Urban Airshed Model (UAM) is recommended for photochemical or reactive pollutant modeling applications involving entire urban areas,'' but further refers to EPA's modeling guidance for data requirements and procedures for operating the model. 40 CFR 51 App. W section 6.2.1.a. The modeling guidance discusses the data requirements and operating procedures, as well as interpretation of model results as they relate to the attainment demonstration. This provision references guidance published in 1991, but EPA envisioned the guidance would change as we gained experience with model applications, which is why the guidance is referenced, but does not appear, in Appendix W. With updates in 1996 and 1999, the evolution of EPA's guidance has led us to use both the photochemical grid model, and additional analytical methods approved by EPA.

The modeled attainment test compares model predicted 1-hour daily maximum ozone concentrations in all grid cells for the attainment year to the level of the NAAQS. The results may be interpreted through either of two modeled attainment or exceedance tests: The deterministic test or the statistical test. Under the deterministic test, a predicted (attainment year, 2007 for the Chicago nonattainment area) 1-hour ozone concentration above 0.124 parts per million (ppm) indicates that the area is expected to exceed the standard in the attainment year and a prediction at or below 0.124 ppm indicates that the area is expected to not exceed the standard. Under the statistical test, attainment is demonstrated when all predicted (i.e., modeled) 1-hour ozone concentrations inside the modeling domain are at, or below, an acceptable upper limit above the NAAQS permitted under certain conditions (depending on the severity of the episode modeled).[5]

In 1996, EPA issued guidance[6] to update the 1991 guidance referenced in 40 CFR 50 App. W, to make the modeled attainment test more closely reflect the form of the NAAQS (i.e., the statistical test described above), to consider the area's ozone design value and the meteorological conditions accompanying observed exceedances, and to allow consideration of other evidence to address uncertainties in the modeling databases and application. When the modeling does not conclusively demonstrate attainment, EPA has concluded that additional analyses may be presented to help determine whether the area will attain the standard. As with other predictive tools, there are inherent uncertainties associated with air quality modeling and its results. The inherent imprecision of the model means that it may be inappropriate to view the specific numerical result of the model as the only determinant of whether the SIP controls are likely to lead to attainment. The EPA's guidance recognizes these limitations, and provides a means for considering other evidence to help assess whether attainment of the NAAQS is likely to be achieved. The process by which this is done is called a Weight-Of-Evidence (WOE) determination. Under a WOE determination, the state can rely on, and EPA will consider in addition to the results of the modeled attainment test, other factors such as other modeled output (e.g., changes in the predicted frequency and pervasiveness of 1-hour ozone NAAQS exceedances, and predicted change in the ozone design value); actual observed air quality trends (i.e., analyses of monitored air quality data); estimated emissions trends; and the responsiveness of the model predictions to further emission controls.

In 1999, EPA issued additional guidance[7] that makes further use of model results for base case and future emission estimates to predict a future design value. This guidance describes the use of an additional component of the WOE determination, which requires, under certain circumstances, additional emission reductions that are or will be approved into the SIP, but that were not included in the modeling analysis, that will further reduce the modeled ozone design value. An area is considered to monitor attainment if each monitor site has air quality observed ozone design values (4th highest daily maximum ozone using the three most recent consecutive years of data) at or below the level of the standard. Therefore, it is appropriate for EPA, when making a determination that a control strategy will provide for attainment, to determine whether or not the model predicted future design value is expected to be at or below the level of the standard. Since the form of the 1-hour NAAQS allows exceedances, it did not seem appropriate for EPA to require the test for attainment to be ''no exceedances'' in the future model predictions. The method outlined in EPA's 1999 guidance uses the highest measured design value across all sites in the nonattainment area for each of three years. These three ''design values'' represent the air quality observed during the time period used to predict ozone for the base emissions. This is appropriate because the model predicts the change in ozone from the base period to the future attainment date. The three yearly design values (highest across the area) are averaged to account for annual fluctuations in meteorology. The result is an estimate of an area's base year design value. The base year design value is multiplied by a ratio of the peak model predicted ozone concentrations in the attainment year (i.e., average of daily maximum concentrations from all days modeled) to the peak model predicted ozone concentrations in the base year (i.e., average of daily maximum concentrations from all days modeled). The result is an attainment year design value based on the relative change in peak model predicted ozone concentrations from the base year to the attainment year. Modeling results also show that emission control strategies designed to reduce areas of peak ozone concentrations generally result in similar ozone reductions in all core areas of the modeling domain, thereby

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

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

[6] Ibid.

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

providing some assurance of attainment at all monitors.

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

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

A commenter on our December 1999 proposed ozone rules criticized the component of this WOE factor that estimates ambient improvement because it does not incorporate complete modeling of the additional emissions reductions. However, the regulations do not mandate, nor does EPA guidance suggest, that States must model all control measures being implemented. Moreover, a component of this technique—the estimation of the future ozone design value—should be considered a model predicted estimate. Therefore, results from this technique are an extension of ''photochemical grid'' modeling and are consistent with Section 182(c)(2)(A). Also, a commenter believes EPA has not provided sufficient opportunity to evaluate the calculations used to estimate additional emission reductions. EPA provided a full 60-day period for comment on all aspects of the proposed rules. EPA has received several comments on the technical aspects of the approach and the results of its application, as discussed above and in the responses to the individual SIPs.

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

When reviewing a SIP, the EPA must make a determination that the control measures adopted are reasonably likely to lead to attainment. Reliance on the WOE factors allows EPA to make this determination based on a greater body of information presented by the States and available to EPA. EPA's decision was further strengthened by each State's commitment to check progress towards attainment in a mid-course review and to adopt additional measures, if the anticipated progress is not being made.

A commenter further criticized EPA's technique for estimating the ambient impact of additional emissions reductions not modeled on grounds that EPA employed a rollback modeling technique that, according to the commenter, is precluded under EPA regulations. The commenter explained that 40 CFR 51 App. W section 6.2.1.e. provides, ''Proportional (rollback/forward) modeling is not an acceptable procedure for evaluating ozone control strategies.'' Section 14.0 of appendix W defines ''rollback'' as ''a simple model that assumes that if emissions from each source affecting a given receptor are decreased by the same percentage, ambient air quality concentrations decrease proportionately.'' Under this approach if 20 percent improvement in ozone is needed for the area to reach attainment, it is assumed a 20 percent reduction in VOC emissions would be required. There was no approach for identifying NO_X reductions. The ''proportional rollback'' approach is based on a purely empirically/mathematically derived relationship. EPA did not rely on this approach in its evaluation of the attainment demonstrations. The prohibition in Appendix W applies to the use of a rollback method which is empirically/mathematically derived and independent of model estimates or observed air quality and emissions changes as the sole method for evaluating control strategies. For the demonstrations under proposal, EPA used a locally derived (as determined by the model and/or observed changes in air quality) ratio of change in emissions to change in ozone to estimate additional emission reductions to achieve an additional increment of ambient improvement in ozone. For example, if monitoring or modeling results indicate that ozone was reduced by 25 ppb during a particular period, and that VOC and NO_X emissions fell by 20 tons per day and 10 tons per day respectively during that period, EPA developed a ratio of ozone improvement related to reductions in VOC and NO_X. This formula assumes a linear relationship between the precursors and ozone for a small amount of ozone improvement, but it is not a ''proportional rollback'' technique. Further, EPA uses these locally derived adjustment factors as a component to estimate the extent to which additional emissions reductions [8]—not the core control strategies—would reduce ozone levels and thereby strengthen the weight of evidence test. EPA uses the UAM to evaluate the core control strategies. This

[8] Not applicable to the Chicago area ozone attainment demonstration addressed in this final rule, but applicable for other ozone nonattainment areas for which EPA is also publishing final rules.

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

A commenter expressed concerns that EPA used a modeling technique (proportional rollback) that was expressly prohibited by 40 CFR part 51 Appendix W without expressly proposing to do so in a notice of proposed rulemaking. However, the commenter is mistaken. As explained above, EPA did not use or rely on a proportional rollback technique in the relevant rulemaking [9] but used UAM to evaluate the core control strategies and then applied its WOE guidance. Therefore, because EPA did not use an ''alternative model'' to UAM, it did not trigger an obligation to modify Appendix W. Furthermore, EPA did propose to use the November 1999 guidance, ''Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled,'' in the December 16, 1999 NPR and has responded to all comments received on that guidance elsewhere in this final rule.

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

As another WOE factor, for areas within the NO_X SIP Call domain, results from the EPA regional modeling for NO_X controls as well as the Tier2/Low Sulfur program were considered. Also, for all of the areas, EPA considered recent changes in air quality and emissions. For some areas, this was helpful because there were emission reductions in the most recent years that could be related to observed changes in air quality, while for other areas there appeared to be little change in either air quality or emissions. For areas in which air quality trends, associated with changes in emissions levels, could be discerned, these observed changes were used to help decide whether or not the emission controls in the plan would provide progress towards attainment.

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

A commenter further criticized EPA's application of the WOE determination on grounds that EPA ignores evidence indicating that continued nonattainment is likely, such as, according to the commenter, monitoring data indicating that ozone levels in many cities during 1999 continue to exceed the NAAQS by margins as wide or wider than those predicted by the UAM. EPA has reviewed the evidence provided by the commenter. The 1999 monitor values do not constitute substantial evidence indicating that the SIPs will not provide for attainment. These values do not reflect either the local or regional control programs which are scheduled for implementation in the next several years. Once implemented, these controls are expected to lower emissions and thereby lower ozone values. Moreover, there is little evidence to support the statement that ozone levels in many cities during 1999 continue to exceed the NAAQS by margins as wide or wider than those predicted by the UAM. Since areas did not model 1999 ozone levels using 1999 meteorology and 1999 emissions which reflect emission reductions anticipated for control measures that are or will be approved into the SIP, there is no way to determine how the UAM predictions for 1999 compare to the 1999 air quality. Therefore, we can not determine whether the monitor values exceed the NAAQS by a wider margin than the UAM predictions for 1999. In summary, there is little evidence to support the conclusion that high exceedances in 1999 will continue to occur after adopted control measures are implemented.

In addition, a commenter argued that in applying the WOE determinations, EPA ignored factors showing that the SIPs under-predict future emissions, and the commenter included as examples certain mobile source emissions sub-inventories. EPA did not ignore possible under-prediction in mobile emissions. EPA is presently evaluating mobile source emissions data as part of an effort to update the computer model for estimating mobile source emissions. EPA is considering various changes to the model, and is not

[9] The rulemaking referred to here is not a proposed rule covering the ozone attainment demonstration for the Chicago nonattainment area. Rather, the rulemaking referred to here is a proposed rule for an area found to have a shortfall in a state's ozone attainment demonstration. This type of proposed rule generally applied to one of the Northeastern States. This paragraph of the response is not applicable to the Illinois ozone attainment demonstration.

prepared to conclude at this time that the net effect of all these various changes would be to increase or decrease emissions estimates. For attainment demonstration SIPs that rely on the Tier 2/Sulfur program for attainment or otherwise (i.e., reflect these programs in their motor vehicle emissions budgets), States have committed to revise their motor vehicle emissions budgets after the MOBILE6 model is released. EPA will work with States on a case-by-case basis if the new emission estimates raise issues about the sufficiency of the attainment demonstration. If analysis indicates additional measures are needed, EPA will take the appropriate action.

Comment 6

A commenter notes that the SIP revisions addressed in the December 16, 1999 proposed rules claim emission reduction credits from relatively recent national EPA rulemakings for surface coatings and consumer products. In most cases, the emission reduction credit claimed is based on EPA estimates of emission reductions from proposed versions of these rules. The final versions of these rules, however, are weaker than the proposed rules in a number of key respects. Therefore, the emission credits claimed for these national rules must be recalculated to reflect only the actual emission reductions that can be expected under the EPA rules as finally adopted.

Response 6

We respond to this comment by addressing each of EPA's rules for surface coatings and consumer products.

Architectural and Industrial Maintenance (AIM) Coatings

On March 22, 1995, EPA issued a memorandum [10] that provided that States could claim a 20 percent reduction in VOC emissions from the AIM coatings category in ROP and attainment plans based on the anticipated promulgation of a national AIM coatings rule. In developing the attainment and ROP SIPs for their nonattainment areas, States relied on this memorandum to estimate emission reductions from the anticipated national AIM rule. EPA promulgated the final AIM rule in September 1998, codified at 40 CFR Part 59 Subpart D. In the preamble to EPA's final AIM coatings regulation, EPA estimated that the regulation will result in a 20 percent reduction of nationwide VOC emissions from AIM coatings categories (63 FR 48855). The estimated VOC reductions from the final AIM rule resulted in the same level as those estimated in the March 1995 EPA policy memorandum. In accordance with EPA's final regulation, States have assumed a 20 percent reduction from AIM coatings source categories in their attainment and ROP plans. AIM coatings manufacturers were required to be in compliance with the final regulation within one year of promulgation, except for certain pesticide formulations which were given an additional year to comply. Thus, all manufacturers were required to comply, at the latest, by September 2000. Industry confirmed in comments on the proposed AIM rule that 12 months between the issuance of the final rule and the compliance deadline would be sufficient to ''use up existing label stock'' and ''adjust inventories'' to conform to the rule. 63 FR 48848 (September 11, 1998). In addition, EPA determined that, after the compliance date, the volume of nonconforming products would be very low (less than one percent) and would be withdrawn from retail shelves anyway. Therefore, EPA believes that compliant coatings were in use by the Fall of 1999 with full reductions to be achieved by September 2000 and that it was appropriate for the States to take credit for a 20 percent VOC emission reduction in their SIPs.

Autobody Refinish Coatings Rule

Consistent with a November 27, 1994 EPA policy,[11] to many States claimed a 37 percent VOC emission reduction from this source category based on a proposed rule. However, EPA's final rule, ''National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings,'' published on September 11, 1998 (63 FR 48806), did not regulate lacquer topcoats and will result in a smaller VOC emission reduction of around 33 percent overall nationwide. The 37 percent VOC emission reduction from EPA's proposed rule was an estimate of the total nationwide emission reduction. Since this number is an overall national average, the actual reduction achieved in any particular area could vary depending on the level of control which already existed in the area prior to the implementation of the national rule. For example, in California, the reduction from the national rule is zero because California's rules are more stringent than the national rule. In the proposed rule, the estimated percentage reduction for areas that were unregulated before the implementation of the national rule was about 40 percent. However, as a result of the lacquer topcoat exemption added between proposal and final rule, the VOC reduction is now estimated to be 36 percent for previously unregulated areas. Thus, most previously unregulated areas will need to make up the approximately 1 percent difference between the 37 percent estimate of VOC emission reductions assumed by States, following EPA guidance based on the proposal, and the 36 percent VOC emission reduction actually achieved by the final rule for previously unregulated areas. EPA's best estimate of the reduction potential of the final rule was spelled out in a September 19, 1996 memorandum entitled ''Emissions Calculations for the Automobile Refinish Coatings Final Rule'' from Mark Morris to Docket No. A–95–18.

Note that the 1 percent shortfall in VOC emission reductions in this case is limited to automobile refinishing operations only. The 1 percent shortfall does not apply to the State's VOC emission reduction estimates, as a whole. The State's ozone attainment demonstrations and ROP plan rely on VOC emission reductions from many emission source categories. Therefore, the actual shortfall in the SIP's VOC emission reduction strategy, as a whole and on a percentage basis, is significantly less than 1 percent, only a small fraction of 1 percent. Considering the ROP plan, this small shortfall is more than compensated for through an excess in NO_X emission reductions, which go well beyond what is required to achieve ROP for each milestone year. Considering the ozone attainment demonstration, a review of modeled ozone concentration changes against predicted changes in VOC and NO_X emissions shows that a very small change in emissions of well less than 1 percent should produce an undetectable impact on the modeled ozone concentrations. Therefore, this small shortfall is not a basis for disapproving either the ROP plan or the ozone attainment demonstration.

Consumer Products Rule

Consistent with a June 22, 1995 EPA guidance,[12] States claimed a 20 percent

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

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

[12] ''Regulatory Schedule for Consumer and Commercial Products under Section 183(e) of the Clean Air Act,'' June 22, 1995, John S. Seitz,

VOC emission reduction from this source category based on EPA's proposed rule. The final rule, ''National Volatile Organic Compound Emission Standards for Consumer Products,'' (63 FR 48819), published on September 11, 1998, has resulted in a 20 percent VOC emission reduction after the December 10, 1998 compliance date. Moreover, these reductions largely occurred by the Fall of 1999. In the consumer products rule, EPA determined and the consumer products industry concurred, that a significant proportion of subject products have been reformulated in response to State regulations and in anticipation of the final rule. 63 FR 48819. That is, industry reformulated the products covered by the consumer products rule in advance of the final rule. Therefore, EPA believes that complying products in accordance with the rule were in use by the Fall of 1999. It is appropriate for the States to take credit for a 20 percent VOC emission reduction for the consumer products rule in their SIPs.

Comment 7

A commenter states that the attainment and ROP demonstrations in most States are flawed because they assume a vehicle fleet mix that does not accurately reflect the growing proportion of sport utility vehicles (SUVs) and gasoline trucks, which pollute more than conventional cars. EPA and the States have not followed a consistent practice in updating ozone modeling to account for changes in vehicle fleets. The underestimation of emissions from this can be significant. Therefore, if the motor vehicle emissions inventory has not been updated to prepare the current SIP submission, the SIP should be disapproved.

Response 7

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

Comment 8

Several commenters note that the CAA requires nonattainment plans to provide for implementation of all RACM as expeditiously as practicable. The SIPs at issue in the December 16, 1999 proposed rules do not meet these requirements. The plans contain only a limited set of emission control measures, and fail to offer any justification for the States' failure to adopt numerous available measures that were specifically identified by EPA and others. In addition, the SIPs contain no demonstration or claim that the emission control schedules are the earliest practicable ones.

These commenters note that the Phase II NO_X limits agreed to by the Ozone Transport Commission States are clearly RACM, as they are widely in effect. States that have adopted such measures have not adopted enforceable NO_X RACT limits for all relevant facilities within their jurisdiction. It is not sufficient for States to assert that they will adopt additional NO_X emission controls if needed. The CAA requires each SIP to include all RACM now, and to show that such measures have been adopted in legally enforceable forms.

Response 8

EPA has previously provided guidance interpreting the RACM requirements of 172(c)(1). See 57 FR 13498, 13560. In that guidance, EPA indicated its interpretation that potentially available measures that would not advance the attainment date for an area would not be considered RACM. EPA concluded that a measure would not be reasonably available if it would not advance attainment. EPA also indicated in that guidance that states should consider all potentially available measures to determine whether they were reasonably available for implementation in the area, and whether they would advance the attainment date. Further, states should indicate in their SIP submittals whether measures considered were reasonably available or not, and if measures are reasonably available they must be adopted as RACM. Finally, EPA indicated that states could reject potential RACM measures either because they would not advance the attainment date, would cause substantial widespread and long-term adverse impacts, or for various reasons related to local conditions, such as economics or implementation concerns. The EPA also issued a recent memorandum on this topic, ''Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas.'' John S. Seitz, Director, Office of Air Quality Planning and Standards. November 30, 1999. Web site: http://www.epa.gov/ttn/oarpg/t1pgm.html.

More specifically with respect to the Chicago nonattainment area, as noted elsewhere in this final rule and in the July 11, 2001 proposed rule (66 FR 36370), we have determined that the Illinois SIP does provide for the implementation of RACM. In addition, the State has been granted a waiver from adopting and implementing NO_X RACT requirements in the Chicago nonattainment area. Therefore, these emission controls are not RACM for this area. Finally, the State has adopted and is implementing regional NO_X controls, which have been demonstrated to support the attainment of the ozone standard.

Although EPA encourages areas to implement available RACM measures as potentially cost-effective methods to achieve emissions reductions in the short term, EPA does not believe that section 172(c)(1) requires implementation of potential RACM measures that either require costly implementation efforts or produce relatively small emissions reductions that will not be sufficient to allow any of the four areas to achieve attainment in advance of full implementation of all other required measures. Because we believe that additional control measures are not reasonably available for the Chicago nonattainment area, EPA believes that the attainment date proposed for approval is as expeditious as practicable.

Comment 9

A commenter states that the air quality plans are deficient with respect to Transportation Control Measures (TCMs). The plans contain no or few serious new measures to reduce growth in vehicle travel. Most plans do not seriously consider the possibility of major expansion of transit service, reduced or zero transit fares, pricing strategies, etc. There is also substantial evidence that significant air quality

Director OAQPS, to Air Division Directors, Regions I–X.

benefits can be achieved by modifying land development patterns to limit urban sprawl and to facilitate transit use. The commenter cites several examples that would apply to this issue. The States have generally not included any of these types of measures in their SIPs, and have offered no justification for the failure to do so.

Response 9

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

Our approach toward TCMs as RACM and the RACM requirement is grounded in the language of the CAA. Section 172(c)(1) states that a SIP for a nonattainment area must meet the following requirement, ''In general,—Such plan provisions shall provide for the implementation of 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.'' The EPA interprets this language as tying the RACM requirement to the requirement for attainment of the primary air quality standards. The CAA provides that the attainment date shall be ''as expeditiously as practicable but no later than * * *.'' the deadlines specified in the CAA. EPA believes that the use of the same terminology in conjunction with the RACM requirement serves the purpose of specifying RACM as the way of expediting attainment of the NAAQS in advance of the attainment deadline(s) specified in the CAA. As stated in the ''General Preamble'' (57 FR 13498 at 13560, April 16, 1992), ''The EPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in the area as components of the area's attainment demonstration.'' In other words, because of the construction of the RACM language in the CAA, EPA does not view the RACM requirement as separate from the attainment demonstration requirement. Therefore, EPA believes that the CAA supports its interpretation that measures may be determined to not be RACM if they do not advance the attainment date. In addition, EPA believes that it would not be reasonable to require implementation of measures that would not in fact advance attainment. See 57 FR 13560.

The term ''reasonably available control measure'' is not actually defined in the definitions contained in the CAA. Therefore, the EPA interpretation that potential emission control measures may be determined not to be RACM if they require an intensive and costly implementation effort for numerous small area sources is based on the common sense meaning of the phrase, ''reasonably available.'' A measure that is reasonably available is one that is technologically and economically feasible and that can be readily implemented. Ready implementation also includes consideration of whether emission reductions from sources are relatively small and whether the administrative burden, to the States and regulated entities, of controlling such sources was likely to be considerable. As stated in the General Preamble, EPA believes that States can reject potential emission control measures based on local conditions, including costs. See 57 FR 13561.

As noted in our July 11, 2001 proposed rule (66 FR 36370, 36398), Illinois has addressed the adoption and implementation of TCMs through an ongoing and continuous evaluation and implementation of TCMs in the Chicago nonattainment area and through including reasonably available TCMs in the SIP. The IEPA has worked extensively with the Chicago Area Transportation Study (CATS), which is the Metropolitan Planning Organization (MPO) for Chicago nonattainment area, to evaluate and implement TCMs which are reasonably available. The IEPA has been an active participant in the evaluation of TCMs for funding with the Congestion Mitigation and Air Quality (CMAQ) Program.

The Illinois SIP has approved TCMs which are credited in both the 15 percent ROP plan (62 FR 66279) and the post-1996 ROP plan (65 FR 78961). The first TCMs to be approved into the Illinois SIP were approved in 1995 as part of the Vehicle Miles Travelled (VMT) offset SIP (60 FR 48896). The 127 TCMs which were approved included commuter parking, a rideshare program, new rapid transit service, traffic signal coordination projects, an improved vanpool program, and new transportation centers and train station reconstruction. Since that time, additional TCMs have been implemented and added to the SIP. Additional TCMs were approved into the SIP when the 9 percent post-1996 ROP plan was approved on December 18, 2000. The additional TCMs included improved public transit, such as fixed guideway transit and rail station improvements, traffic flow improvements, increased park and ride service, increased parking at transit stations, and bicycle and pedestrian programs.

CATS has prepared a series of reports which evaluated emissions control benefits for various TCMs and has reported on the implementation of TCMs in the Chicago area. The CATS reports are listed in our July 11, 2001 proposed rule (66 FR 36370, 36398). These reports have been submitted by the IEPA as part of the documentation of the SIP and are contained in the docket for this action.

We have concluded that, through the IEPA and CATS process of TCM evaluation and selection, Illinois has considered and implemented all reasonably available TCMs. As explained in the July 11, 2001 proposed rule (66 36370), any measures that have not been included in the SIP would provide only marginal air quality improvements at significantly greater expense or with other significant implementation barriers and would not advance attainment of the 1-hour ozone standard.

Comment 10

A commenter notes that a 1993 State and Territorial Air Pollution Program Administrators (STAPPA) report recommended adoption of a California or South Coast Air Quality Management

District (SCAQMD) controls or emission limits for various source categories. The commenter mentions further possible control measures as well, and notes that none of the States offered consideration of these emission control measures accompanied by reasoned explanations for their rejection.

Response 10

The State has completed the adoption of the ozone attainment demonstration and its associated emissions control strategy. We have determined that the SIP, as currently adopted by the State, addresses the implementation of RACM. Section 172(c)(1) of the CAA requires SIPs to contain RACM and provides for areas to attain as expeditiously as practicable. EPA has previously provided guidance interpreting the requirements of section 172(c)(1). See 57 FR 13498, 13560. In that guidance, EPA indicated its interpretation that potentially available measures that would not advance the attainment date for an area would not be considered to be RACM. EPA also indicated in that guidance that States should consider all potentially available emission control measures to determine whether they are potentially available for implementation in an area and whether they would advance the attainment date. Further, States should indicate in their SIPs whether emission control measures considered were reasonably available or not, and, if measures are reasonably available, they must be adopted by the States as RACM. Finally, EPA indicated that States could reject emission control measures as not being RACM because they would cause substantial widespread and long-term adverse impacts, or would be economically or technologically infeasible. This policy has been detailed in other comments addressing RACM and comments suggesting other measures that could have been considered for implementation.

As stated in the July 11, 2001 proposed rule (66 FR 36370), the State of Illinois, along with the other Lake Michigan Air Director Consortium (LADCO) states,[13] considered a wide range of measures for their reduction potential, cost, and ease of implementation. The State of Illinois has implemented measures which have met the required ROP reductions and have also been modeled in the attainment demonstration modeling which demonstrates that the Lake Michigan area can show attainment of the 1-hour ozone standard by the 2007 attainment date. Illinois relies in large part on emission reductions from outside of the Chicago nonattainment area resulting from EPA's NO_X SIP Call rule or section 126 NO_X rule (65 FR 2674, January 18, 2000) to reach attainment of the ozone standard. In the NO_X SIP Call (63 FR 57356), we concluded that NO_X emission reductions from various upwind States were necessary to provide for timely attainment of the 1-hour ozone standard in nonattainment areas in various downwind States, including Illinois on both counts. The NO_X SIP Call established requirements for control of sources of significant NO_X emissions in the relevant upwind States. These NO_X emission reductions are not expected to be fully implemented until May 2004. The ozone attainment demonstration for Illinois indicates that the ozone reduction benefit expected to be achieved from the regional NO_X emission reductions is substantial. We have seen no evidence for similar ozone benefits resulting from Illinois-specific emission controls not already adopted by the State that would significantly advance the attainment date for the Chicago-Gary-Lake County ozone nonattainment area. Therefore, EPA concludes, based on the available documentation, that the emission reductions from additional emission control measures will not advance attainment, and, thus, none of the possible additional emission control measure can be considered to be RACM for the purposes of section 172(c)(1) of the CAA.

It should be noted that Illinois, along with the other LADCO States, has considered a wide range of possible emission controls as part of the Lake Michigan Ozone Control Program. The States reviewed the emission controls being implemented elsewhere in the United States and considered possible source controls for source categories with significant VOC and NO_X emissions. This included emission controls recommended by STAPPA and implemented by SCAQMD and other States. Possible emission controls were evaluated in terms of ease of implementation and cost-effectiveness, possible timing for implementation, and public and industrial acceptability. This analysis led the individual LADCO States to give additional consideration to possible emission controls specifically applicable to their individual States (few possible emission controls had generally applicability to all LADCO States). The emission controls given favorable further consideration generally became parts of the States' ROP plans. The rejected emission controls would not be considered to be RACM under EPA policy as discussed above.

Comment 11

A commenter states that MVEBs in the state plans are by definition inadequate because the plans do not demonstrate timely attainment or contain the emission reductions required for all RACM. The commenter asserts that the EPA may not find as adequate a MVEB that is derived from a SIP that is inadequate for the purposes for which it is submitted. The commenter believes that none of the MVEBs in the state plans addressed in the December 16, 1999 proposed rules are consistent with either the level of emissions achieved by implementation of all RACM, nor are they derived from SIPs that provide for attainment.

Response 11

As noted above and in the July 11, 2001 proposed rule (66 FR 36370), we have determined that the State's air quality plan, as submitted in December 2000, does reflect the adoption and implementation of RACM. The plan also contains MVEBs based on the plan's ozone attainment demonstration. Therefore, we disagree with the commenters assertion that we cannot approve the plan's MVEBs.

See the response to Comment 1 above.

Comment 12

A commenter notes that the CAA requires the SIPs to include a program to provide for the enforcement of the adopted control measures. Most plans address this requirement, however, none of the plans clearly set out programs to provide for enforcement of the various emission control strategies relied on for emission reduction credit.

Response 12

In general, state enforcement, personnel and funding program elements are contained in SIP revisions previously approved by EPA under obligations set forth in section 110(a)(2)(c) of the CAA. Once approved by the EPA, there is no need for states to readopt and resubmit these programs with each and every SIP revision generally required by other sections of the CAA. In addition, emission control regulations will also contain specific enforcement mechanisms, such as record keeping and reporting requirements, and may also provide for periodic state inspections and reviews of the affected sources. EPA's review of

[13] The Lake Michigan Air Directors Consortium was formed to seek solutions to ongoing ozone air quality problems in the Lake Michigan region, and is made up of representatives of the State of Illinois, Indiana, Michigan, and Wisconsin.

these regulations includes review of the enforceability of the regulations. Rules that are not enforceable are generally not approved by the EPA. To the extent that the ozone attainment demonstration and ROP plan depend on specific state emission control regulations, these individual regulations have undergone review by the EPA in past or separate approval actions. Note that the Chicago attainment demonstration and post-1999 ROP plan do not depend on the implementation of State emission control regulations that have not already been approved by the EPA or that need further review by the EPA (the State's NO_X rules, as discussed elsewhere in this final rule, have been approved through sign-off by the EPA and are undergoing separate rulemaking).

Comment 13

A commenter notes that the States were required by the CAA to have SIPs in place by 1994 containing all RACM and providing for attainment as expeditiously as practicable. If additional control measures are required, those measures must be adopted and included in the SIP now. Deferred adoption and submittal of these control measures is not consistent with the statutory mandates and is not consistent with the CAA's demand that all SIPs contain enforceable measures, and approval of this approach exceeds EPA's authority to approve a SIP if a portion of the SIP is not adequate to meet all tests for approval. Therefore, for all of the forgoing reasons, EPA must disapprove the attainment demonstrations for serious and severe nonattainment area ozone SIPs.

Response 13

See the response to Comment 1 above. We have determined that the Illinois SIP provides for the implementation of RACM. In addition, the attainment demonstration and post-1999 ROP plan are supported by State-adopted emission control measures as well as Federal emission control measures.

Comment 14

A commenter alleges that the April 1998 Illinois SIP submittal and the changes proposed by the State at the January 18, 2000 hearing fall short of completing the attainment demonstration SIP for the 1-hour ozone standard.

Response 14

As noted in the July 11, 2001 proposed rule (66 FR 36370), Illinois has completed the adoption and submittal of the ozone attainment demonstration for the Chicago nonattainment area.

Comment 15

A commenter believes that Illinois has not selected or adopted a final emissions control strategy that is consistent with a modeled attainment demonstration, as required by the CAA.

Response 15

We agree that, at the time of the preparation of the December 16, 1999 proposed rule, Illinois had not completed adoption of an emissions control strategy supported by an ozone attainment demonstration. This was stated in that proposed rule. This problem has been corrected with Illinois' submittal of the attainment demonstration supplement in December 2000. The final attainment demonstration and its associated emissions control strategy were addressed in the July 11, 2000 proposed rule (66 FR 36370). It is noted that Illinois has adopted the emissions control strategy that supports the ozone attainment demonstration and has adopted all emission control rules required to implement this emissions control strategy.

Comment 16

A commenter believes that the IEPA relied on numerous assumptions about boundary conditions with regard to future NO_X emission reductions and inaccurate WOE analyses to rationalize an acceptable ozone attainment demonstration. After submittal of the plan in April 1998, IEPA subsequently learned that the 1999 VOC emission reductions in the Chicago area were overestimated due to mistakes and deferred emission control strategies. Thus, the modeling on which the State relied is inaccurate and ozone improvements are overestimated. Additionally, the State has taken advantage of EPA's flawed NO_X substitution policy to hide shortfalls in VOC emission reductions.

Response 16

When the IEPA prepared the ozone attainment demonstration reviewed in the December 16, 1999 proposed rule (64 FR 70496), the State followed EPA's guidance, as outlined in that proposed rule, in making certain assumptions about future boundary conditions expected to be impacted by EPA's NO_X SIP Call. The State of Illinois (and the other LADCO States) tested a number of different scenarios for future reductions in regional NO_X emissions. Since the State could not select and adopt a specific scenario for future NO_X emission reductions at that time (at the time of the April 1998 submittal), the State elected to submit the modeling results for the range of regional NO_X emission reduction scenarios considered without adopting a specific emissions control strategy.

The State realized that additional analyses would have to be conducted after EPA and the courts had resolved legal challenges to EPA's NO_X SIP Call. As part of the followup to the April 1998 submittal and to meet EPA's requirements for approval of the ozone attainment demonstration (see 64 FR 70496), Illinois and the other LADCO States reassessed the projected local and regional VOC and NO_X emission reductions. The subsequent December 2000 ozone attainment demonstration modeling reflects the corrected VOC and NO_X emission reduction estimates. Therefore, the problems identified by the commenter have been corrected in the subsequent SIP submittal.

With regard to substitution of NO_X emission controls for VOC emission controls, this is an issue relevant to ROP plans and not to ozone attainment demonstrations. The CAA authorizes the States to select a mixture of VOC and NO_X emission controls to attain the ozone standard (see section 182(b)(1)(A)(i) of the CAA). The CAA does not restrict the State to only VOC emission controls to attain the ozone standard. The use of the photochemical dispersion models can address the relative merits of VOC versus NO_X emission controls and the relative merits of local versus regional emission controls for both categories of these pollutants.

With regard to the substitution of NO_X emission controls for VOC emission control to achieve ROP requirements, you are referred to Comment 29 and our response to that comment below.

Comment 17

A commenter notes that the proposed conditional approval of Illinois' ozone attainment demonstration allows Illinois to submit a completely different emissions control strategy, motor vehicle emissions budget, and photochemical modeling by December 2000 to demonstrate attainment and avoid disapproval of the ozone attainment demonstration. EPA, however, wants the emissions controls strategy and motor vehicle emissions budget that is consistent with the attainment demonstration to make an adequacy decision by May 31, 2000. In the commenter's opinion, Illinois is not in a position to provide an MVEB with its current modeling (at the time the commenter prepared this comment in

February 2000), and promises to create these products and/or emissions reductions in the future are not acceptable. Final conditional approval of the attainment SIP is not warranted, nor is an adequacy finding for the emissions control strategy or motor vehicle emissions budget without significant improvements.

Response 17

The States of Illinois, Indiana, and Wisconsin submitted attainment demonstration SIP revisions in April 1998 in response to EPA requirements. At the time, there was no final EPA decision on the level of NO_X SIP Call emission reductions that EPA would require these States to achieve. The April 1998 Illinois submittals reflected this uncertainty by demonstrating that various levels of local emission controls could provide for attainment of the 1-hour ozone standard depending on the amount of upwind NO_X emission reductions assumed to result from the NO_X SIP Call. Although no specific emissions control strategy was selected, the submittals did provide for attainment of the 1-hour ozone standard in the Lake Michigan area given the available information. Consequently, EPA determined that the 1998 Illinois submittal could be approved, but only on the condition that it be supplemented by updated ozone modeling and additional emission control rules supporting and implementing an adopted emissions control strategy, all to be submitted by December 2000. In the meantime (until the submittal of the final ozone attainment demonstration in December 2000), the emissions control strategy and the MVEB conistent with the 1998 submittal were assumed to be adequate on an interim basis for purposes of making conformity determinations. The EPA recognized that the State was obligated to submit a final attainment demonstration and associated MVEB by December 2000 (December 16, 1999 proposed rule (64 FR 70496)). The commenter provides no convincing basis for concluding that the EPA erred in its December 16, 1999 proposed conditional approval. The proposed conditional approval correctly recognized that the State had not completed the emission control strategy adoption process due to uncertainty over regional NO_X emission reduction requirements, the selection and adoption of which was affected by an uncertain situation beyond the control of the State.

Note that the December 2000 submittal included a final, adopted emissions control strategy and a revised adopted MVEB which replaced the interim versions. This submittal moots the commenter's prior concern.

Comment 18

The State notes (in response to the December 16, 1999 proposed rule) that it has committed on several occasions to adopt the control measures, including NO_X emission reductions, necessary to attain the 1-hour ozone standard.

Response 18

The State has satisfied its commitment to adopt the emission control measures in the December 2000 attainment demonstration and post-1999 ROP plan submittal and through the adoption of NO_X emission control regulations for major Electrcial Generating Units (EGUs), major non-EGU boilers and turbines, and major cement kilns.

Comment 19

The State notes that it has committed to perform a MCR as necessary and appropriate as part of a recent amendment to the SIP, but believes that the timing of the MCR is incompatible with the ozone standard and with EPA's rules regarding the submission of quality assured data. The State observes that a MCR following the ozone season in 2003 will reflect only one season where regional controls of NO_X emissions have been implemented. One season's ozone levels are insufficient to provide a trend analysis. Review of the impacts of the implementation of the emissions control strategy would be heavily reliant on the weather conditions of that particular ozone season.

The State notes that a MCR following the 2003 ozone season does not reflect the form of the ozone standard, which is essentially a 3-year standard. The State will not be able to credibly determine whether additional emissions control measures are necessary after only one season during which the control measures identified in the ozone attainment demonstration have been implemented.

The State believes that the EPA determined that the MCR should be performed in 2003 to accommodate ozone nonattainment areas classified as serious, whose attainment dates are 2005. The State has no opinion regarding the appropriateness of a MCR in 2003 for those areas. The State, however, believes that there is available time for nonattainment areas with attainment dates of 2007 to perform a more meaningful MCR in 2004 or 2005, after emission controls identified in the SIP supplement to be submitted at the end of 2000 have been in place for two or three ozone seasons. (This comment and other State comments on the timing of the MCR discussed here were submitted in response to the December 16, 1999 proposed rule. Even though the EPA subsequently changed its policy regarding the timing of the MCR and the State subsequently revised the committed timing for the MCR to 2004 making these comments generally moot, they are addressed for purposes of completeness.)

The State believes that EPA's ozone draft guidance recognizes that a MCR in 2004 or 2005 would be more robust and would require fewer manipulations of data and much less speculation regarding the future impact of the emission control measures implemented in 2003 (the NO_X SIP Call rules) as well as the need for additional emission control measures.

The State asserts that, for the purposes of the MCR, it is not realistic for EPA to expect states to provide quality assured ozone data between the end of the ozone season and the end of the calendar year. EPA's rules allow 90 days for a state to quality assure and submit data to the Aerometric Information Retrieval System (AIRS), but EPA is requiring a submittal of the data and an analysis of the data before the end of the 90 day period. This could significantly impact the States' approaches to attainment within that same 90 day period. Although the IEPA does not believe that emission reductions beyond those that will be included in the final SIP will be necessary for Illinois to attain the 1-hour ozone standard, IEPA believes that they can provide EPA with an analysis, if not by December 31, 2003, then shortly thereafter. Nevertheless, the timing of EPA's requirement for a MCR is contrary to its own rules regarding submission of quality assured data, and, therefore, is inappropriate.

Response 19

EPA understands the issue of timing. However, the timing issue involves balancing two critical factors. On the one hand, for a MCR to be useful in flagging the need to make changes to an emissions control strategy in time to affect attainment by the attainment date (by November 15, 2007 for the Chicago nonattainment area), it needs to be done sufficiently in advance of the attainment date. On the other hand, the MCR would be able to discern more accurately whether progress is being made if there were sufficient emission reductions that occurred in the time period between the attainment demonstration modeling and the time the MCR is performed. Thus, in

reviewing a state's commitment regarding the performance of a MCR for any specific area, EPA must appropriately accommodate these two factors. In general, EPA believes that the states should perform the MCR for ozone nonattainment areas within the NO_X SIP Call region (which includes Illinois) immediately following the first ozone season (April 15 through October 15 for the Chicago nonattainment area) during which sources are required to comply with the state's NO_X SIP. Because the Court extended the source compliance deadline for the NO_X SIP Call until May 31, 2004, EPA generally believes that for areas in the Eastern United States, the most appropriate time to perform the MCR would be following the 2004 ozone season.

The December 16, 1999 NPRs for the ten serious and severe ozone nonattainment areas noted that, for serious areas with an attainment date extension to 2005 or earlier, it would be impracticable to perform a mid-course review per se. The NPRs asked the states to commit instead to an early assessment of whether attainment will be achieved. See for example 64 FR 70319 at 70325 (NPR for the Western Massachusetts ozone nonattainment area). Thus, EPA did not base its recommendation for the MCR in 2003 on the assumption that the 18 to 24 month period between completion of the MCR and November 2005 would be a sufficient period to ensure attainment for serious nonattainment areas by 2005. EPA, however, continues to believe that for areas with an attainment date of 2007, the best balance in terms of timing for the MCR is to ensure that the area has several years between completion of the MCR and its attainment date in order for the state and EPA to assess the need for the state (or perhaps upwind states) to adopt and implement additional controls. Due to the court-ordered delay in the mandatory source compliance date under the NO_X SIP Call, EPA believes that performing the MCR by the end of 2004 best accommodates the need for emission controls to be implemented and the need for EPA and states to have time to take action in response to the MCR.

With regard to the timing of the MCR for severe nonattainment areas versus serious nonattainment areas, as noted above, we conceptually agree with the commenter. Performing the MCR after the implementation of significant emission controls and after assessing the ozone data for the time period following the implementation of these emission controls would provide a more robust MCR with fewer assumptions regarding the impacts of the emission controls on ozone levels. Nonetheless, to allow for sufficient time to prepare and implement supplemental emission controls, if needed, prior to the ozone standard attainment deadline, the MCR must be conducted several years prior to the attainment deadline. A sufficient lead time of 2 to 3 years is believed to be reasonable. Therefore, for a severe ozone nonattainment area with a 2007 attainment deadline, the MCR should be conducted no later than late 2004. Illinois' commitment to conduct the MCR by the end of 2004 meets this recommendation.

Please note from the July 11, 2001 proposed rule (66 FR 36370) that we are proposing to approve Illinois' commitment to conduct the MCR by the end of 2004, after the implementation of the State's NO_X emission control rules in compliance with EPA's NO_X SIP Call. This timing may not allow the State to collect and quality assure ozone data from the entire 2004 ozone season (the State is allowed up to 90 days following a calendar quarter to quality assure the ozone data and submit the data to the EPA) following ''normal'' quality assurance schedules and to include all of these data in the 2004 MCR. The State may have to expedite the quality assurance of the 2004 ozone data to include as many of the 2004 ozone data as possible in the MCR. On the other hand, the State should be able to project the impacts of the NO_X emission control rules using new or available ozone modeling and the 2001–2003 ozone data to draw some MCR conclusions.

Conducting a MCR by the end of 2004 will make it difficult for the State to fully quality assure and incorporate the ozone season ozone data for 2004 into the MCR while still allowing time for preparation of the MCR and public review and input into this process. Nonetheless, as noted above, the use of current ozone data is only one metric that may be taken into consideration in this process. In addition, the State will be able to take into consideration ozone data through 2003 which should be quality assured well before the production of the MCR. The State may also choose to pursue expedited quality assurance of the 2004 data if the State considers that to be an overwhelming need for the purposes of preparing the MCR, although such data use is not required by the EPA.

We assume that the State will use all available data in the preparation of the MCR. To the extent 2004 data are available, the state is encouraged to make use of such data.

Comment 20

A commenter notes that a majority of the States that belong to the Ozone Transport Region (OTR) were given until October 31, 2001 to submit their regional NO_X strategy that demonstrates attainment of the 1-hour ozone standard, while Illinois is required to submit a fully adopted attainment strategy, including any regional emission reductions, by December 2000. Equity requires that EPA grant Illinois and other Lake Michigan States the same amount of time to submit a regional strategy as has been granted the OTR States.

The commenter notes that the EPA states that the basis for extending the deadline for the OTR States is section 184 of the CAA, which creates a Congressionally recognized ozone transport region, and that the OTR needs additional time to make the necessary agreements to adopt a regional strategy. Section 184 of the CAA, however, does not explicitly extend for States in the OTR any attainment deadlines.

The commenter believes that the OTR being recognized by Congress has no bearing on the ability of multiple states to address regional NO_X controls. States not located in the OTR may encounter more barriers in arriving at a regional approach, yet the resulting product will be as beneficial to air quality as the product of the OTR.

EPA's call for NO_X SIPs, calling for regional NO_X emission reductions, explicitly recognized that Illinois needs reductions in its boundary conditions in order to attain the 1-hour ozone standard, as do the States of Indiana, Michigan, and Wisconsin. To this end, Illinois and the other Lake Michigan States, as well as the upwind neighboring States of Missouri, Kentucky, Iowa, and Tennessee, are currently working cooperatively to model and to develop a regional ozone strategy. Hence, the same or greater complexities that apply to the OTR States also apply to the efforts of these Midwestern States to develop a regional control strategy.

The commenter notes that Illinois has the same or later 1-hour ozone standard attainment date as the ozone nonattainment areas included in the OTR, and should, therefore be granted until October 31, 2001 to develop the regional portion of the ozone attainment strategy.

Response 20

As an initial matter, this issue is moot. Illinois, along with Indiana and Wisconsin, submitted SIP revisions with

fully adopted rules, and EPA is fully approving those SIP revisions today. Thus, there is no shortfall (as exists for many of the OTR States) for either the Chicago or Milwaukee areas, and these States do not need additional time to submit more SIP revisions relative to attainment of the 1-hour ozone standard.

Moreover, the circumstances that existed at the time of the proposed actions in December 1999 differed substantially between the States in the Northeast and those in the Midwest. At the time of EPA's proposals in December 1999, the States in the Northeast submitted SIP revisions that they believed fully complied with what was required to be submitted by December 2000—i.e., completed ozone modeling and fully adopted emission control measures. In contrast, at the same time the Midwestern States encompassing the Chicago-Gary-Lake County and Milwaukee-Racine ozone nonattainment areas had not yet identified a specific emission control strategy to attain the ozone standard and had not yet submitted SIP revisions with fully adopted emission control measures, and had existing commitments to submit the adopted measures by December 2000. Upon review of the SIP revisions for the Northeastern ozone nonattainment areas, EPA concluded that each area needed additional emission reductions in order to have a fully approvable SIP (to eliminate shortfalls in their adopted emission control strategies). At the time of the proposed actions, EPA was unable to determine if there would be shortfalls for the Midwest areas because they had not identified final emission control strategies to attain the ozone NAAQS.

In considering how EPA should allow the States to adopt emission control measures to fill the shortfalls, EPA considered that these areas (the Northeastern nonattainment areas) were located in the Ozone Transport Region (OTR) and that EPA should provide the OTR States with time to develop recommended emission control measures to achieve emission reductions to fill the shortfalls. Thus, EPA provided in the proposed actions to give these areas until October 31, 2001 to complete the OTR process and to adopt measures sufficient to fill the shortfalls. Because the Midwest States were on track to identify a final emissions control strategy and to submit adopted measures by December 2000, EPA saw no need—and neither the States nor any other interested party identified a need—to extend the time period for submission of the final plans.

The commenter claims that the Northeast States were given a longer time to adopt ''regional'' emission control measures. EPA notes that, with respect to EPA's regional NO_X SIP Call, all States were required to submit NO_X emission control rules by October 30, 2000 and to implement the rules by May 31, 2004. The Northeast States were not provided a longer time than the Midwest States to either submit or implement these rules.

Comment 21

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

Response 21

EPA met with the commenter and discussed the technology described in the comment. Since the HFC–152a is VOC exempt, its use would give a VOC reduction compared to the use of VOCs, such a pentane or butane, as blowing agents. EPA, however, has not studied this technology exhaustively. It is each State's prerogative to specify which measures it will adopt in order to achieve the additional VOC reductions it needs. In evaluating the use of HFC–152a, States may want to consider claims that products made with this blowing agent are comparable in quality to products made with other blowing agents. Also, the question of the over-all long term environmental effect of encouraging emissions of fluorine compounds would be relevant to consider. This is a technology which States may want to consider, but ultimately, the decision of whether to require this particular technology to achieve the necessary VOC emissions reductions must be made by each affected State. Finally, EPA notes that under the Significant New Alternatives Policy (SNAP) program, created under CAA section 612, EPA has identified acceptable foam blowing agents, many of which are not VOCs (http://www.epa.gov/ozone/title6/snap/).

Comment 22

The State generally supports the proposed rule, and concurs with the EPA that the NO_X waiver should remain in place for RACT, NSR, and certain requirements of I/M and transportation and general conformity.

Response 22

No response is required for this concurrence with the proposed rule.

Comment 23

A commenter asserts that the State's air quality modeling based on additional NO_X emissions from 10 peaker[14] facilities in the Chicago area and 30 peaker facilities in the State of Illinois, as addressed in the State's December 2000 submittal, significantly underestimates the potential number of peaker units and their resulting NO_X emissions and ozone impacts in these areas. The commenter supports this comment by listing the additional peakers (not considered in the State's analysis) seeking source permits in Illinois. In addition, due to the existing NO_X waiver in the Chicago ozone nonattainment area, there is nothing to prevent the unchecked proliferation of new NO_X sources in this source category. Therefore, the commenter believes that IEPA's ozone modeling and ozone projections are inadequate, and do not form a credible basis for the proposed approval of the State's ozone attainment demonstration and our proposed rule on the NO_X waiver petition.

The commenter notes that the State's analysis failed to include a number of peaker units now under consideration for source permitting by the State. This conclusion is based on a review of publicly available Illinois permit records for natural gas-fired electrical generating units in the Chicago ozone nonattainment area, which shows potential NO_X sources not included in Illinois' prior ozone modeling. Illinois' inability to correctly project NO_X emissions from new permitted peaker units is a direct consequence of the proliferation of this new generation of NO_X sources. This is a direct consequence of maintaining the NO_X waiver for new sources.

Response 23

It is true that Illinois' modeling directly considered only the additional NO_X and VOC emissions from newly permitted peakers (permitted prior to the December 2000 SIP revision submittal), and did not estimate the emissions and ozone impacts resulting from other sources seeking permits or that may seek permits prior to 2007.

[14] A peaker is a en electrical generating unit designed for rapid startup and use on a limited number of days with a high demand for electricity generation.

However, potential emissions from new facilities were considered in two ways. First, Illinois, along with the other LADCO States, made reasonable projections of source growth in the core attainment demonstration (the attainment demonstration supported by the LADCO technical support documentation). The SIP makes assumptions that new sources will be constructed and that existing sources may be modified resulting in increased NO_X emissions. Under the NO_X SIP Call, which was modeled by the LADCO States, these sources would fall under a statewide NO_X emissions cap established for the State in the NO_X SIP Call rule. Thus, the State has adequately demonstrated attainment of the ozone standard given the data available at the time of the SIP revision submittal. Second, the State, as a test of the modeling/attainment demonstration sensitivity to increased NO_X emissions, added the NO_X emissions from newly permitted peakers to the NO_X emissions already projected for 2007 in the ozone attainment demonstration and conducted supplemental ozone modeling. This supplemental modeling showed increased peak ozone levels, but within acceptable limits still demonstrating future attainment of the ozone standard.

The commenter's concerns over undocumented/unmodeled new NO_X sources are inconsequential or unfounded for the following reasons. First, the modeled 2007 NO_X emissions, documented in the LADCO September 27, 2000 report ''Technical Support Document—Midwest Subregional Modeling: Emissions Inventory,'' (the main technical support document for the State's ozone attainment demonstration) included NO_X emission growth estimates reflecting the assumed source growth in Illinois' NO_X emissions budget established under EPA's NO_X SIP Call. In adding the NO_X emissions from permitted peakers explicitly to the future (2007) NO_X emissions as a test of source growth impacts conducted for the December 2000 submittal, Illinois effectively ''double counted'' NO_X emissions growth resulting from new peakers since some of the NO_X emissions growth had already been accounted for in the modeling reflected in the September 27, 2000 report. Therefore, the State took a conservative approach to modeling new source impacts.

Second, any utility seeking a new source permit will be required to comply with Illinois' Electrical Generating Unit (EGU) NO_X rule developed and adopted by the State to comply with EPA's NO_X SIP Call. Review of the NO_X source data supplied by the Chicago Legal Clinic (CLC) and the American Lung Association (ALA) coupled with a review of the State's EGU NO_X rule (signed by the EPA for final approval on September 25, 2001 and undergoing separate rulemaking) shows that all of the new generating units undergoing permit review will be subject to the requirements of the State's EGU NO_X rule. The NO_X emission totals from these new sources will not increase unconstrained, and Illinois' statewide NO_X emissions, following the 2004 implementation of the State's EGU NO_X rule, will not be allowed to increase above the NO_X emissions budget level specified in EPA's NO_X SIP Call.[15] The new peaker units will be given a limited number of emission allowances compatible with the State's NO_X emissions budget, and will have to further control their emissions or will have to purchase available emission allowances from other sources, thus reducing NO_X emissions from existing sources.

Third, it is not clear that Illinois' approach has significantly underestimated the additional NO_X emissions resulting from the ''new'' utilities. Several of the new utilities considered by the IEPA have dropped plans for construction. A number of other utilities given permits and considered by Illinois have yet to initiate construction. It is quite possible that some of these facilities will be replaced by other facilities that are now pursuing source permits and that were not considered in the IEPA analysis. In addition, Illinois made the assumption that all of the modeled new utilities would be operating simultaneously at 100 percent capacity. This assumption is overly conservative since these units would not actually be operating at 100 percent capacity all of the time, leading to an overestimation of the modeled NO_X emissions.

Given the current flux in electrical power generation and the changes in electricity demand, it is generally impossible for the State to project the growth in NO_X emissions resulting from the new utilities with complete certainty. One way to mitigate this problem is to occasionally reassess the projected NO_X emissions against changing historical source emission records. This is the function of the MCR, that the State has committed to perform in 2004 after the implementation of the rules required by EPA's NO_X SIP Call. Projections of 2007 emissions can be reassessed with up-to-date information at that time and any adjustments that are necessary can be made to the SIP. However, based on the information now available to the State, EPA believes that potential growth in emissions from these peaker units was adequately accounted for in the submitted attainment demonstration.

Comment 24

A commenter states that Illinois' ozone modeling fails to address serious and substantial omissions in Illinois-issued source permits for peaker startup periods, when the NO_X emission rates for the peakers are at their highest levels. Consequently, the commenter asserts that IEPA's ozone modeling is inadequate and cannot form a credible basis for the proposed SIP revisions. The commenter further points out that startup emissions from peakers are inadequately regulated under Illinois' permit process and existing emission control regulations. Therefore, peaker emission rates and peak ozone projections are underestimated. Review of the source permit records shows that startup emissions have not been included in the source emissions to be permitted and are not expected to be monitored for a number of the NO_X sources undergoing permit review for the Chicago area. Thirteen out of the eighteen construction permit records reviewed did not contain language providing for startup emissions to be included in the sources' annual emission totals.

The commenter notes that IEPA's handling of permits for peakers is inconsistent in the treatment of startup emissions. Some sources have been given permits regulating startup emissions and other sources have been given permits not addressing startup emissions. This inconsistent treatment of startup emissions is of particular concern with respect to ''synthetic minor'' sources, which are held to less stringent emissions control standards based on emissions estimates in individual permits. These factors, combined with the NO_X waiver, indicate that IEPA's current permitting procedures may not be sufficient to ensure attainment of the ozone standard in the Chicago area.

The commenter cites the case of *Michigan* v. *Browner*, 230 F.3d 181 (6th Cir. 2000) as providing insight on whether the IEPA must require enforceable standards regarding excess

[15] Although interstate NO_X emissions allowance trading is allowed under the NO_X SIP Call, most NO_X SIP Call States will need to seek significant NO_X emission reductions from their own sources. Interstate NO_X emission allowance trades will probably be kept to a minimum because available emission reduction allowances are expected to be in short supply and most States are expected to encourage intra-state trades.

startup emissions in peaker plant permits. In that case, the Court upheld EPA's rejection of revisions to Michigan's SIP based, in part, on a February 15, 1983 EPA memorandum by Kathleen Bennett, then Assistant Administrator for Air, Noise, and Radiation at the EPA (a copy of this memorandum was attached to the commenter's letter). The memorandum clarified EPA's position on excess emissions during startup, shutdown, maintenance, and malfunctions.

The commenter notes that the construction permits reviewed for the Chicago nonattainment area reveal gaps in regulating peaker plants. Specific provisions in the permits regarding startup emissions are inconsistent, and reflect no clear standard for ensuring that peaker plants are permitted according to current law. The language used by the IEPA for regulating startup emissions appears to violate the law according to *Michigan* v. *Browner*, which requires regulatory agencies to maintain enforcement discretion regarding excess emissions at startup and shutdown. The commenter notes that this fact, combined with the NO_X waiver, shows that IEPA's current permitting procedures may not be sufficient to ensure that attainment of the ozone standard will occur in the Chicago area.

Response 24

The commenter appears to make three general points. First, the commenter raises the concern that the ozone modeling does not account for emissions from peaker units during start-up. Second, the commenter raises the concern that the State is treating different peaker units in different manners during the permitting process—placing limits on some source regarding start-up emissions, but not on others. Finally, the commenter claims that, under EPA policy, it is improper to allow start-up emissions to exceed the otherwise applicable emission limits.

It seems appropriate to first address the commenter's second concern about the State's implementation of its new source permitting rules. This comment is outside of the scope of EPA's current action. EPA has previously approved the permitting program that the State is operating under and has not re-opened that approval here. The commenter seems concerned either that there is a flaw in the approved program or that the State is implementing the permitting program in a manner which is inconsistent with the approved SIP. In either case, the commenter should work with the State and/or EPA outside the context of this rulemaking to ensure that the program is either appropriately modified or implemented in a manner consistent with the approved plan. However, EPA notes that review of the data supplied by the commenter shows that the State has generally regulated startup emissions from larger units and units that generally use fuels other than natural gas. Because these types of units would have significantly and proportionately higher startup emissions occurring over larger time periods than natural gas-fired peaker units, the State's different treatment of these sources does not seem inappropriate.

With respect to the commenter's third concern, including its analysis of EPA's policy on startup emissions and its summary of the *Michigan* case, EPA disagrees with the commenter. In the *Michigan* case, the Court upheld EPA's disapproval of a SIP rule which provided ''broad exclusions from compliance with emission limitations during [startup, shutdowns, and malfunction] periods * * *'' 230 F.3d at 185. In so doing, the Court ratified EPA's interpretation of section 110 of the CAA, as expressed in the Agency's long-standing policy (which we reiterated in 1999).[16] The commenter does not assert that the Illinois SIP contains such a provision. EPA's policy further provides that, as an enforcement matter, emissions in excess of otherwise applicable SIP limits should be considered violations, unless (as is relevant here) such emissions are provided for in the SIP and their impact on attainment is considered. To the extent that this policy is relevant to EPA's action on Illinois' ozone attainment demonstration, the commenter's first concern will be addressed—did the State consider whether these excess emissions would impair the area's ability to attain the ozone standard? We believe that the State did consider these emissions.

In order to provide a better explanation of the analysis performed by the State, we held a conference call with representatives of the IEPA on August 23, 2000. Discussed below are several important factors that were identified during the call and that demonstrate the State considered the potential significance of these excess emissions. Furthermore, as explained in the previous response, the State generally considered both new source growth—which would include new or modified peaker units—and modeled NO_X emissions consistent with an emissions ''cap'' that would apply to these and other sources.

(1) The startup periods for natural gas-fired peakers are relatively short, ranging from 6 to 30 minutes and typically on the order of 15 minutes. During the startups, NO_X emissions are somewhat higher because fuels are typically heated before combustion. Nonetheless, increases in NO_X emissions during startups for peakers using natural gas (most peakers are fired using natural gas, but some combined cycle systems do use other fuels) are proportionately smaller and of shorter duration than those for utility boilers fired with other fuels also undergoing startup.

(2) Peakers undergoing startup are not operating at peak loads; they generally are operating at 60 percent or lower loads versus higher loads during stable operation periods.

(3) Not all peakers would be undergoing startup at the same time, minimizing simultaneous buildups of NO_X emissions resulting from startup at many peakers.

(4) Although the NO_X emissions may be higher in concentration within stack emission plumes (higher in parts per million concentration [ppm]) during startup, the NO_X emissions, when viewed as an hourly emissions rate, are not significantly higher during startup than during stable operation, particularly when compared to hourly NO_X emission rates during peak loads at stable operation.[17]

(5) Excess emissions during startup are factored into each source's seasonal NO_X emissions allowances under the NO_X SIP Call emission control regulations (during the high ozone

[16] On September 20, 1999, EPA issued a policy updating and clarifying the 1983 Bennett memoranda referenced by the commenter, entitled ''State Implementation Plans (SIPs): Policy Regarding Excess Emissions During Malfunctions, Start-up, and Shutdown.''

[17] Based on information addressed in ''In the Matter of: Natural Gas-Fired Peak-Load Electrical Power Generating Faciliites (Peaker Plants) Docket No. R01–10: Companion Report to the Illinois Pollution Control Board's Informational Order of December 21, 2000'' (incorporated into the docket for this final rule), pages 12 through 14, peaker NO_X emissions during startup can reach a concentration of 200 ppm (when the peakers operate at less than 50 percent load capacity). Compare this to NO_X emission concentrations of 10 to 30 ppm during full-load stable operation. The IEPA, however, notes that, in terms of hourly emission rates, the startup NO_X emissions are not significantly higher than stable operation NO_X emissions due to lower heat input during startups (due to lower system loads). For example, Continuous Emissions Monitoring Systems (CEMS) data for the Elwood Energy peaker unit show NO_X emissions of 0.05 to 0.055 pounds per million Btu of heat input during stable operation versus 0.1 to 0.115 pounds per million Btu of heat input during startups and shutdowns. Due to the lower heat input rate during startups (the hourly Btu input rate during startups are half of that during full load under stable operations), the hourly NO_X emission rates are virtually identical for both startups and stable operation modes for this facility.

season, June through August, emissions are capped). The modeled NO_X emissions rates took these NO_X emissions allowances into account, and, therefore, have incorporated the effects of excess startup emissions.

(6) Through permit provisions, IEPA requires peaker plants to implement measures to minimize emissions associated with the startup and shutdown.[18]

The suggestion that the State needs to model these emissions is not supported by EPA policy and available ozone modeling data. EPA's policy does not provide that a State needs to model startup emissions in order to consider their effect on attainment of the ozone standard. The modeling information available to the State and EPA indicates that it is not likely that the ozone modeling would recognize the impacts of short-term, localized startup emissions. Reviewing the available modeling data supplied by LADCO and the States, it is clear that the spatially graphed formats show very few recognizable ''ozone plumes'' despite the existence of a number of localized large NO_X sources, such as major utilities. If these large sources fail to cause a recognizable ''ozone signature,'' it is highly unlikely that localized, temporary excess NO_X emissions would produce a significant ozone signature. Thus, because startup emissions are not expected to produce discernable ozone signatures relative to the cumulative impacts of local and regional NO_X emissions from all utilities, it was appropriate to conclude that modeling would not reliably indicate the effect of these startup emissions on attainment of the standard.

The State did consider the peaker emissions as part of its attainment analysis in two ways. As provided in more detail in the previous response, startup emissions must be factored in the sources' compliance with the State's NO_X emission control regulations in compliance with the NO_X SIP Call, i.e., the seasonal emission allowances under the State's NO_X emissions cap. Startup emissions that cause the source to exceed its emission cap must be compensated for and mitigated by the source through the purchase of additional emission allowances from other sources or through additional emission controls at the sources themselves. Statewide emissions during the ozone season will not be allowed to exceed the emissions cap. The modeling system correctly reflects the existence of this emissions cap, and translates this emissions limit into typical weekday NO_X emission rates.

Also, new source growth was considered as part of the attainment analysis. To estimate future, attainment year emissions, the LADCO States included estimated source growth factors based on available source forecasting data along with estimated source control factors to calculate future emissions. This included growth estimates for NO_X sources, including source growth for electrical generating units. In addition, Illinois modeled the NO_X emission impacts of peakers already granted emission permits at the time of the preparation of the December 2000 attainment demonstration submittal. As noted elsewhere in this final rule, this approach provided a conservative estimate of the ozone impacts resulting from source growth in this source sector.

All of these observations together lead us to the conclusion that startup emissions from peakers will not result in a failure of the State to attain the 1–hour ozone standard by the attainment date. The State has not significantly underestimated future NO_X emissions based on a failure to specifically consider peaker startup emissions.

Comment 25

A commenter notes that IEPA's permitting practices are of particular concern with respect to ''synthetic minor'' sources, which are held to lower emission control standards based on emissions estimates in individual permits. IEPA's current permitting procedures may not be sufficient to ensure that attainment of the ozone standard will be met in the Chicago area.

Response 25

As an initial matter, the State's emission growth estimates, which are considered in the ozone attainment demonstration, consider emission growth from all sources, not just those subject to nonattainment NSR review, major new sources or major modifications. Moreover, since all of these ''synthetic minor'' sources are, nonetheless, subject to the NO_X emission control requirements of Illinois' EGU NO_X rule, and since the total NO_X emissions in Illinois are capped by EPA's NO_X SIP Call, the fact that these sources are treated as ''synthetic minors'' is of no consequence for the ozone attainment demonstration. The attainment demonstration assumed that the NO_X emissions in Illinois would be at the cap-allowed levels under the NO_X SIP Call. Assuming that future NO_X emissions are at these levels, even the new ''synthetic minor'' NO_X sources subject to the State's NO_X rules would have to obtain NO_X emission allowances from existing sources through trades, and NO_X emissions in total in Illinois would not increase. Therefore, emissions from these smaller sources do not jeopardize the ozone attainment demonstration.

Comment 26

A commenter believes that the Illinois Pollution Control Board (IPCB) agrees that peaker plants in Illinois are inadequately regulated. The commenter asserts that, even if the NO_X waiver is not revised to remove the NSR exemption, it should be amended to incorporate the IPCB's recommendations for NO_X emission controls on peaker units. To support this comment, the commenter notes that, in December 2000, the IPCB issued an informational order in which it described its findings with respect to the regulation of peaker plants (the commenter attached a copy of the IPCB informational Order to their comment letter). The commenter requests the incorporation of the entire IPCB docket for this December 2000 informational order into the record for this rulemaking.

The commenter notes that the IPCB found that peaker plants are unique. They emit most of their permitted annual amount of emissions during a concentrated period of time, which generally coincides with the summer months when the ozone risk is the greatest. The IPCB recommended the development of Best Available Control Technology (BACT) standards for all new peaking units. The IPCB noted that this level of emissions control was appropriate to prevent violations of the air quality standards. The IPCB also concluded that new gas turbines with readily available, reliable emission control technology can routinely achieve very low emission rates. These emission rates are much lower than the applicable technology-based emission limitation now in effect for most new peakers in Illinois, which the IPCB characterized as ''potentially outdated NSPS'' (New Source Performance Standards). The IPCB recommended that IEPA develop a rulemaking proposal to implement BACT for peaker plants in Illinois. To date, this recommendation has been ignored by the IEPA.

Based on these and other observations, the commenter asserts that the revocation of the NO_X waiver for all new sources (or for peaking units

[18] ''In the Matter of: Natural Gas-Fired, Peak-Load Electrical Power Generating Facilities (Peaker Plants) Docket No. R01–10: Companion Report to the Illinois Pollution Control Board's Informational Order of December 21, 2000,'' page 14.

specifically) is the best means to accomplish attainment of the NAAQS. As an alternative, however, the commenter requests the EPA to require Illinois to take any and all steps necessary to fulfill the recommendations of the IPCB for BACT emission controls on peaking units. This can be accomplished by changing EPA's proposed revision to the NO_X waiver to incorporate the IPCB's BACT recommendation.

Response 26

The IPCB peaker hearing docket website referenced by the commenter was reviewed for relevant documents. Many documents referenced on this website have no bearing on the issue at hand, the approvability of Illinois' ozone attainment demonstration and the validity of the existing NO_X waiver. Therefore, we are not including all of the IPCB hearing record documents in the docket for this final rule as requested by the commenter. Two documents, however, are relevant to this final rule and are incorporated into the docket for this final rule. These two documents have been downloaded from the IPCB website, and are the following: (1) The December 21, 2000 Informational Order of the Board In the Matter Of: Natural Gas-Fired, Peak-Load Electrical Power Generating Facilities (Peaker Plants), IPCB Docket No. R01–10; and (2) the ''Companion Report to the Illinois Pollution Control Board's Informational Order of December 21, 2000: In the Matter Of: Natural Gas-Fired, Peak-Load Electrical Power Generating Facilities (Peaker Plants) Docket No. R01–10.'' The first document specifies the IPCB's conclusions regarding peakers, and the second document summarizes public comments and IEPA responses collected during a series of State hearings concerning peakers.

As noted by the commenter, the IPCB has recommended that the IEPA pursue new source permitting regulation variations to require BACT emission controls for all peakers seeking new source permits. In addition, the IPCB found that peakers do emit most of their ozone precursor (VOC and NO_X) emissions during relatively short periods that coincide with the high ozone periods of each year. With regard to peaker air emissions, only NO_X emissions are considered to be significant. Most peaker plants are being sited as ''minor'' sources, with annual NO_X below 250 tons per year. Information contained in the Companion Document supports the IPCB's conclusions.

The information provided in these documents may support a revision of permitting requirements for these sources. This information, however, is generally not relevant to a decision on the State's ozone attainment demonstration, at issue here, or is not of a sufficient nature to cause us to reverse our approval of the ozone attainment demonstration. The information provided in the IPCB documents do not support a case that future NO_X emissions will increase above projected attainment levels contained in the State's ozone attainment demonstration. It is again noted here, as elsewhere in this final rule, that the peakers at issue here will be subject to the State's EGU NO_X rule. Therefore, the total NO_X emissions from these sources will be constrained by source-specific NO_X emission limits specified by the State under the State's NO_X emissions cap. Since this emissions cap has been factored into the State's ozone attainment demonstration, the State's current source permitting practices for peakers does not jeopardize the State's ozone attainment demonstration as approved in this final rule.

With regard to the NO_X waiver, based on the State's cap on NO_X emissions and the incorporation of this emissions cap in the modeled emissions in the ozone attainment demonstration, it must be concluded that the NO_X waiver, as it currently stands, should be continued based on section 182(f)(2) of the CAA. As noted elsewhere in this final rule, this section of the CAA provides for a NO_X waiver based on a prevention of ''excess'' NO_X emission controls. The conclusion that the current permitting practices for peakers does not threaten the ozone attainment demonstration approved here supports the continuance of the existing NO_X waiver, and we see no basis, given the information provided in the IPCB hearing documents reviewed here, that the NSR portion of the NO_X waiver should be discontinued.

Comment 27

A commenter notes that the EPA proposed rule never directly addressed the scientific credibility of the NO_X waiver in light of the subsequently issued Ozone Transport Assessment Group (OTAG) findings. (OTAG, made up of representatives of the States in the eastern half of the United States, EPA, industry, academia, and environmental organizations, was created to consider the causes of ozone transport. EPA relied on many of the OTAG findings in issuing the NO_X SIP Call.) The OTAG findings appear to discredit the scientific basis for the NO_X waiver. More specifically, among the conclusions reached by OTAG are that:

1. Regional NO_X reductions are effective in producing ozone benefits;
2. The more NO_X emissions reduced the greater the ozone benefit;
3. Ozone benefits are greatest in the subregions where emissions reductions are made;
4. Although decreased with distance, there are also ozone benefits outside of the subregions where emission reductions are made;
5. Both tall stack and low-level NO_X emission reductions are effective;
6. Air quality data indicate that ozone is pervasive, is transported and, once aloft, is carried over and transported from one day to the next;
7. The range of transport is generally longer in the North; and
8. NO_X controls on utilities are recommended for states in much of the OTAG region (which includes the Chicago-Gary-Lake County ozone nonattainment area).

As EPA itself acknowledged in the framing of the NO_X SIP Call, the OTAG findings are especially critical in analyzing the regional impacts of NO_X transport. Both the NO_X SIP Call and the OTAG findings underscore the importance and cost-effectiveness of NO_X emission reductions as an attainment strategy, especially when compared and contrasted to VOC-based strategies, which tend to be more expensive and local in their impact. Both the OTAG findings and the NO_X SIP Call were made without the reference to the unchecked proliferation of the new NO_X sources. Therefore, there is a compelling basis for the EPA to reconsider the NO_X waiver it conditionally granted in 1996.

The commenter asserts that, in light of the OTAG findings, the NO_X waiver cannot survive any good faith effort by the EPA to measure the scientific basis of the NO_X waiver. The commenter requests the EPA to conduct this analysis as part of its final review of the NO_X waiver petition and its SIP revisions.

Response 27

OTAG concluded that reduction of regional NO_X emissions would reduce downwind ozone concentrations on a regional basis. The OTAG results, however, also noted that NO_X emission reductions have a mixed impact on local ozone concentrations. They concluded that, due to ozone scavenging by NO_X, controlling NO_X emissions can be locally beneficial or dis-beneficial. Review of the available OTAG data shows the lower Lake Michigan area as having the most significant ozone dis-

benefits as a result of possible NO_X emission reductions (ozone benefits were modeled on some days under some NO_X reduction scenarios, but greater ozone dis-benefits were noted on locally higher ozone days).

Nonetheless, it should be noted that the July 11, 2001 proposed rule (66 FR 36396) proposed to change the basis for the continuance of the NO_X waiver from an ozone benefit/dis-benefit basis to an avoidance of excess NO_X emissions reduction basis under section 182(f)(2) of the CAA. Since the State has demonstrated attainment of the 1-hour ozone standard without the use of all possible NO_X emission controls, the State, under section 182(f)(2) of the CAA, qualifies for a NO_X emissions control waiver for those NO_X controls not relied on in the ozone attainment demonstration. Since the State does not rely on NO_X emission reductions from NO_X RACT, NO_X NSR, and certain mobile source emission controls under I/M and conformity in the ozone attainment demonstration (assuming the attainment demonstration is approved, as discussed below) for the Chicago-Gary-Lake County ozone nonattainment area, the area qualifies for a waiver of these NO_X emission controls. A NO_X emissions control waiver under this basis is independent of the ozone impacts of these controls provided that the State can demonstrate attainment of the ozone standard without the use of these emission controls. Therefore, even if ozone control benefits are achievable from some of these NO_X controls, this is not a basis for denying or withdrawing the NO_X waiver for these emission control measures.

Comment 28

A commenter asserts that the Clean Air Act specifically designates the EPA Administrator as being responsible to respond to NO_X waiver petitions. The commenter questions what authority, if any, the Regional Administrator has to issue a decision on the NO_X waiver petition? The commenter requests the EPA to identify the authority by which the section 182(f)(3) NO_X waiver petition is being decided by anyone other the Administrator. In the absence of this authority, the commenter contends that the decision of the Regional Administrator on the NO_X waiver petition is invalid on its face.

Response 28

On October 10, 2001, Administrator, Christine Todd Whitman, delegated authority to Deputy Regional Administrator David A. Ullrich, Region 5 of the EPA, to sign final rulemakings concerning revision of NO_X waivers and responding to NO_X waiver petitions for Illinois, Indiana, and Wisconsin in today's actions.

Comment 29

A commenter expresses concerns about substitution of NO_X emission reductions to meet VOC emission reduction requirements in Rate-Of-Progress (ROP) plans. The commenter asserts that the CAA expressly forbids the use of NO_X substitution for ROP VOC emission reduction requirements. The commenter references an April 3, 2000 letter sent by the commenter to the EPA regarding this issue.

Response 29

On March 3, 2000, we published a proposed rule (65 FR 11525) regarding Illinois' post-1996 ROP plan for the Chicago portion of the Chicago-Gary-Lake County ozone nonattainment area. The April 3, 2000 letter referenced by the commenter was submitted as a response to the March 3, 2000 proposed rule. We addressed the commenter's comments in a December 18, 2000 final rule (65 FR 78961) on the post-1996 ROP plan. To elaborate on the new comment summarized here and for the purpose of interpreting and responding to the commenter's concerns, some of the commenter's prior arguments regarding this issue are summarized and again responded to here (the commenter did not elaborate on the exact basis for their comment in the more current comment letter addressed here).

In their April 3, 2000 comment letter, the commenter noted that they believe that the CAA prohibits NO_X reductions from outside of the Chicago ozone nonattainment area from being claimed as creditable ROP emission reductions under the post-1996 ROP plan.[19] The commenter notes that section 182(c)(2)(B) of the CAA states that the post-1996 ROP plan shall reduce by 9 percent ''baseline emissions,'' as described in section 182(b)(1)(B) of the CAA. Section 182(b)(1)(B) of the CAA, in turn, defines ''baseline emissions'' to mean the total amount of actual VOC or NO_X emissions from all anthropogenic sources in the nonattainment area during 1990, excluding emissions reduced by pre-1990 vehicle emissions regulations and 1990 gasoline volatility regulations. Based on section 182(b)(1)(B), the commenter asserts that, since baseline emissions under the CAA's definition reflect only VOC or NO_X emissions within the ozone nonattainment area, and an ROP plan is to reduce emissions relative to the emission baseline, Illinois is prohibited from claiming NO_X emission reductions from outside of the nonattainment area. We assume that the commenter is trying to express this same concern with regard to the post-1999 ROP plan, which also relies on NO_X emission reductions from outside of the Chicago ozone nonattainment area.

As noted in the December 18, 2000 final rule (65 FR 78970), we disagree with the commenter. Claiming credit for NO_X emission reductions occurring outside of the Chicago ozone nonattainment area is consistent with the CAA's requirements concerning ROP plans and NO_X substitution.

The CAA's provision for NO_X substitution in ROP plans is separate from the sections of the CAA focused on by the commenter. Section 182(c)(2)(B) of the CAA discusses the reduction of VOC emissions by a post-1996 ROP plan (and a post-1999 ROP plan). Section 182(c)(2)(C) of the CAA provides that NO_X emission reductions can be substituted for or combined with VOC emission reductions to meet the ROP requirements under section 182(c)(2)(B). Section 182(c)(2)(C) does not state that such NO_X emission reductions must come from ''baseline emissions'' as defined under section 182(b)(1)(B). Rather, section 182(c)(2)(C) defers to the EPA Administrator to determine ''the conditions under which NO_X emissions control may be substituted for VOC emissions control or may be combined with VOC emissions control in order to maximize the reduction in ozone air pollution.'' The only caveat to NO_X substitution under section 182(c)(2)(C) is that NO_X emission reductions claimed in the ROP plan, in combination with VOC emission reductions, ''would result in a reduction in ozone concentrations at least equivalent to that which would result from the amount of VOC emission reduction required under section 182(c)(2)(B).'' Accordingly, the CAA directs us to use our technical judgment to determine what types of NO_X emissions control would be suitable for NO_X substitution strategies under section 182(c)(2)(C).

As discussed in the December 18, 2000 (65 FR 78970) final rule on the

[19] Since the post-1999 ROP plan addressed in the July 11, 2001 proposed rule (66 FR 36370) was developed under the same CAA requirements and EPA policy covering the post-1996 ROP plan as addressed in the March 3, 2000 proposed rule, it is assumed that the commenter is trying to extend their prior comments on the post-1996 ROP plan and the associated March 3, 2000 proposed rule to the post-1999 ROP plan and the associated July 11, 2001 proposed rule. Both the post-1996 ROP plan and the post-1999 ROP plan rely on the substitution of NO_X emission reductions from outside of the Chicago ozone nonattainment area, but within Illinois, to meet part of the VOC emission reduction requirements for the ROP plans. It is this substitution to which the commenter refers.

post-1996 ROP plan, we have made the technical determination that, for areas within the Ozone Transport Assessment Group (OTAG) fine grid modeling domain, which includes the Chicago ozone nonattainment area, upwind NO_X emission reductions can result in reductions in ozone concentrations that are equivalent to results achievable from local VOC emission reductions. As discussed in the December 18, 2000 (65 FR 78970) final rule, we provided Illinois with guidance on how to establish VOC/ NO_X emission reduction equivalency with respect to upwind NO_X emission reductions, and the State appropriately followed that guidance in the preparation of both the post-1996 ROP plan and the post-1999 ROP plan. The State ozone modeling, reviewed in the July 11, 2001 proposed rule (66 FR 36370), shows that upwind NO_X emissions significantly contribute to high ozone concentrations in the Chicago area. The available modeling supporting the attainment demonstration shows that, even if the Chicago area reduces VOC emissions significantly beyond current levels, the area would not achieve modeled attainment of the 1-hour ozone standard without reduction of upwind NO_X emissions. These findings are consistent with the results of OTAG's study of the impact of regional NO_X emissions on ozone nonattainment areas. Moreover, the State submitted, in conjunction with the post-1999 ROP plan and the associated ozone attainment demonstration, modeling results from LADCO and from OTAG to demonstrate that upwind NO_X emission reductions do reduce ozone concentrations in the Chicago area. All of this is consistent with guidance in an EPA December 29, 1997 policy, which explains the conditions under which a NO_X waivered area may claim ROP credit for upwind NO_X emission reductions. Therefore, ROP credit for upwind NO_X emission reductions is consistent with section 182(c)(2)(C) of the CAA.

Furthermore, where, as here, EPA is also approving a modeled attainment demonstration as providing for attainment of the ozone standard as expeditiously as practicable and is determining that the State has met its obligation to include in its SIP submittal all reasonably available control measures, the mix of NO_X and VOC controls relied upon to satisfy the ROP obligation is appropriate. With this action today, EPA is determining that there are no additional VOC controls that satisfy the criteria of RACM and that the plan submitted by the State provides for attainment as expeditiously as practicable. Consequently, the mix of NO_X and VOC measures relied upon by the State in its submittal will result in the reduction in ozone concentrations needed to attain the standard as expeditiously as practicable and is at least equivalent to any other mix of NO_X and VOC emission controls in terms of meeting that objective.

Comment 30

A commenter disagrees with the EPA assertion (in the July 11, 2001 proposed rule) that the Illinois submission adequately demonstrates attainment of the 1-hour ozone standard by November 15, 2007 within the Chicago ozone nonattainment area.

Response 30

This comment is indirectly responded to through our responses to the comments below. We find that none of the following comments or those from other commenters responded to in this final rule are sufficient in nature to cause us to reverse our decision to approve Illinois' ozone attainment demonstration for the Chicago ozone nonattainment area.

Comment 31

A commenter notes that EPA stated in the proposed rule that the ozone modeling system used by Illinois and other LADCO States seems to over-predict nighttime ozone concentrations and to under-predict daytime ozone concentrations, but performs within acceptable limits. At the monitoring sites with high measured ozone concentrations, the mid-afternoon modeled ozone concentrations are ''low.'' This means that the modeling system is under-predicting ozone levels precisely when public activity and actual exposure to ozone is at its greatest. The commenter notes that even LADCO has indicated that ''Given the model's tendency to underestimate peak concentrations, however, it should be understood that the modeled attainment demonstration provides no margin of safety.''

The fact that EPA recognizes that peak modeled ozone concentrations over Lake Michigan are underestimated should also be of concern.

Response 31

LADCO and EPA acknowledge that the modeling system does underestimate peak observed ozone concentrations on some selected episode days. It should be noted, however, that the modeling system also overestimates peak ozone concentrations on some of the modeled episode days. Review of Table 2 of LADCO's September 27, 2000 attainment demonstration documentation, titled ''Technical Support Document—Midwest Subregional Modeling: 1-Hour Attainment Demonstration for Lake Michigan Area,'' which is the main support document for Illinois' submitted attainment demonstration, shows that the modeling system's performance varies from day-to-day. This table clearly indicates the model's underestimation of peak ozone concentrations on certain days, but also shows that the model overestimates peak ozone concentrations on other days, including days with monitored ozone standard exceedances. For example, on July 20, 1991 (one of the critical days in the ozone attainment demonstration driving the selection of emission control measures), the modeling system overpredicts the peak ozone concentration by 20.9 percent.

Although the modeling system is not perfect in modeling observed ozone concentrations, the model is performing acceptably within EPA's recommended performance limits (also shown in Table 2 of LADCO's September 27, 2000 technical support document). As noted in the July 11, 2001 proposed rule (cite), the ozone modeling system passed EPA's recommended system performance statistics on the modeled episode days selected by LADCO, and, therefore, the modeling system is acceptable for use in demonstrating attainment of the ozone standard.

Comment 32

A commenter notes that Illinois failed to demonstrate attainment of the ozone standard based on the deterministic test, and had to rely on the statistical test to demonstrate attainment of the 1-hour ozone standard. The State modeled the ozone impacts of additional NO_X emissions to consider the possible ozone impacts of new EGUs already granted source permits. This pushed the predicted peak ozone concentrations to 130 parts per billion (ppb), the maximum allowed under the statistical test criteria for the modeled worst-case period. Given that the modeling system is likely to underestimate the peak ozone concentrations, this raises serious questions about the validity of the modeled attainment demonstration.

Response 32

As noted above, the modeling system has been determined to be performing acceptably based on EPA's recommended criteria. The modeling system, therefore, is acceptable for testing the impacts of various emission control strategies and the demonstration

of attainment. The model may be used without further adjustment or use of calibration factors.

As noted elsewhere in this final rule, the IEPA took a very conservative approach in adding the NO_X emissions for the newly permitted EGUs. Since these EGUs must meet the requirements of the State's EGU NO_X rule and the State must meet the requirements of EPA's NO_X SIP Call, the NO_X emissions from these new EGUs can not cause the NO_X emissions in Illinois to exceed the NO_X emissions budget assigned to Illinois under the NO_X SIP Call. The ozone attainment demonstration, prior to the addition of the NO_X emissions from the new EGUs, included the modeling of NO_X emissions meeting the NO_X SIP Call and included NO_X emission growth estimates through 2007. The addition of NO_X emissions for the new EGUs to the modeled NO_X emissions is conservative because some of the new NO_X emissions were already accounted for in the modeled emissions growth estimates. Despite this conservative approach, the State continued to model peak ozone concentrations within the acceptable limits of the statistical test. Therefore, attainment of the ozone standard continues to be modeled by the State. In addition, note that other WOE tests also support the adequacy of the modeled attainment demonstration.

Although the deterministic test was not passed by the selected emissions control strategy, the same control strategy did pass the statistical test. If either test is passed, the attainment demonstration is found to be acceptable based on EPA's current policy (discussed in detail in the July 11, 2001 proposed rule (66 FR 36370). Therefore, we continue to find Illinois' modeled attainment demonstration to be acceptable.

Comment 33

A commenter notes that the IEPA has failed to keep the EPA abreast of additional NO_X emissions not included in the submitted attainment ozone modeling that should be considered in evaluating whether the Chicago area will actually attain the ozone standard in 2007. The additional NO_X emissions from new sources will produce higher peak ozone levels than have already been predicted. To not include the additional known Illinois-permitted facilities, as well as emissions sources reasonably foreseen by the attainment year, provides a deliberate under-representation of expected attainment year emissions, and consequently, ozone levels.

Response 33

As noted elsewhere in this final rule, the new EGUs referred to by the commenter must comply with the requirements of the State's EGU NO_X rule and with the NO_X emissions budget specified for Illinois under EPA's NO_X SIP Call. By 2004 and later, these new sources will have to obtain sufficient NO_X emissions allowances, from the State's New Source Set Aside (NSSA) or from allowance trades from existing sources, to operate under Illinois' NO_X emissions budget.

Since the ozone attainment demonstration was developed to reflect the impacts of the NO_X SIP Call and the new sources must not cause Illinois NO_X emissions to exceed the State's NO_X emissions budget, it is concluded that the new EGUs will not cause total NO_X emissions in Illinois to exceed future NO_X emission levels supported in the State's modeled ozone attainment demonstration.

Also as noted elsewhere in this final rule, concerns about the impacts of new EGUs will be addressed to some extent when the State performs an MCR in 2004. By that time, the State will have a better idea about the likely NO_X emissions in 2007 and will be able to better address the impacts of the NO_X SIP Call. At that time, the State will be in a better position to assess the probable impact of new source growth on the attainment of the 1-hour standard by the attainment deadline of 2007, and will be able to take corrective actions if found to be necessary.

Comment 34

A commenter notes that EPA's conclusion that IEPA's modeling of additional NO_X emissions due to new permitted EGUs is conservative is contradicted by the IEPA's response to the public during hearings on the ozone attainment demonstration. The attainment demonstration implies that NO_X emission allocations to new sources will significantly exceed the NO_X allocations to be granted to new sources under the State's NO_X SIP Call emission control regulations. This implies that new sources will have to buy NO_X emission reduction credits from other States, leaving in-State NO_X emissions higher than anticipated in the modeling. The State has admitted during the public hearings that some electrical generators will have to purchase NO_X emission allowances from out-of-state sources.

To the commenter, it appears that the combination of Illinois deregulation of the electrical generating sector, the ease of siting new generation facilities relative to neighboring states, and the constraints on new generators based on the minimization of the NSSA component in the Illinois NO_X EGU rule is setting up a situation where significant numbers of NO_X emission allocations will be imported into the State.

Response 34

The premise of this comment is that new EGUs will be forced to seek traded NO_X emission allowances to comply with Illinois' EGU NO_X rule and that these sources will predominantly be forced to obtain these traded NO_X emission allowances from sources outside of the State of Illinois. We disagree with portions of this premise. Although some new EGUs may be forced to obtain NO_X emission allowances from existing sources, assuming that the NSSA is inadequate to accommodate all new EGU NO_X emissions, it is not clear that these sources will be forced to obtain all of these emission credits from outside of Illinois. It is just as likely that they will be able to obtain some of the needed NO_X emission allowances from sources within Illinois itself. To that extent, Illinois NO_X emissions will not rise above levels anticipated in the ozone attainment demonstration. In addition, if the sources obtain the NO_X emission allowances from States surrounding Illinois and upwind of Illinois (Alabama, Indiana, Kentucky, and Tennessee NO_X emissions were found to contribute to high ozone concentrations in the Chicago area in analyses supporting EPA's NO_X SIP Call), this will lead to lowered background ozone concentrations in the Chicago area. Note that it is a key conclusion of EPA's NO_X SIP Call that the lowering of regional, statewide NO_X emissions in certain States will lower ozone and precursor transport into downwind ozone nonattainment areas. Therefore, emission reduction trading between States may support attainment of the ozone standard in the Chicago area and in other ozone nonattainment areas.

It is difficult for Illinois or any other State to model the impacts of emissions allowance trading in the advance of the implementation of such trading, but there is no indication that emissions trading will significantly alter the modeled results. This problem will be resolved to some extent when the State conducts the MCR in 2004, after the implementation of the NO_X control rules under EPA's NO_X SIP Call. By that time, the State will be able to assess the impacts of NO_X allowance trading on emissions in Illinois and in surrounding States.

With regard to the ease of siting of new EGUs in Illinois versus in surrounding States, it is unclear what basis the commenter has to make such an assertion. Under the NO_X waiver, Illinois may apply the same major source NO_X emission cutoff (the new source emission level above which BACT is required) for new source review as applied in surrounding areas that are classified as attainment for ozone. Based on the ozone designations and classifications only, it is not clear that Illinois would present an easier placement area for new NO_X sources. The new source NO_X emissions cutoffs in Illinois and in the surrounding States, with the exception of the Metro East/St. Louis ozone nonattainment area, which has a tighter new source NO_X emissions cutoff, are identical since most of these surrounding areas are designated as attaining the 1-hour ozone standard. Therefore, on an air quality basis, Illinois is not necessarily an easier area for siting new sources.

It should also be noted that other States are also subject to the requirements of the NO_X SIP Call. NO_X sources in these States will also be subject to significant NO_X emission reduction requirements and may be allowed to meet these requirements by purchasing NO_X emission allowances from other sources. Some of these sources may seek out NO_X emission allowances from sources in Illinois, reducing NO_X emissions in Illinois itself.

Comment 35

A commenter notes that a number of EGUs not included in the submitted ozone modeling have been or may soon be granted emission permits. The potential additional generating capacity, excluding generating capacity for sources previously modeled that have dropped construction plans or have lost previously granted permits, is 13,238.6 megawatts (MW). This additional generating capacity within Illinois is equivalent to the 16,276 MW generating capacity that was modeled for potential new sources by Illinois in the submitted attainment demonstration, and that increased modeled peak ozone concentrations by 1 to 2 ppb during the worst-case modeled ozone period. In addition, it should be noted that the NO_X emissions from these sources, peaking units, are expected to occur during the ozone season, when electrical demand and wholesale electrical prices are the greatest.

The commenter concludes that the potential extra NO_X emissions from the expected new sources are sufficient to cause a failure of Benchmark 2 of the ozone attainment demonstration's statistical test. The expected peak ozone concentrations for July 20, 1991, a ''severe'' ozone day, would be 131 to 132 ppb, above the 130 ppb that has been determined to be allowable for this day under the statistical test.

Response 35

As noted elsewhere in this final rule, the State must comply with the NO_X emissions budget provided in EPA's NO_X SIP Call. This means that new NO_X sources required to comply with Illinois' NO_X rules must obtain sufficient NO_X emission allowances to allow the State to stay within the prescribed NO_X emissions budget. Provided that these new sources will have to comply with Illinois' NO_X EGU rule, their new emissions should not force statewide NO_X emissions to go above levels supported by the State's ozone attainment demonstration.

In addition, it has also been noted elsewhere in this final rule and in the July 11, 2001 proposed rule that the State took a conservative approach in assessing the ozone impacts of new EGUs. The State modeled the impacts of new NO_X emissions from the permitted EGUs that were already included to some extent in the source growth estimates of LADCO's ozone attainment demonstration modeling.

Comment 36

A commenter notes that, in the discussion of WOE, EPA notes that LADCO's additional test using the relative reduction factor approach finds a receptor with a derived ozone design value of 122 ppb. Considering that the UAM tends to underestimate 1-hour ozone concentrations, that, as EPA notes, the peak modeled ozone concentrations over Lake Michigan are underestimated on some days, and that there is significantly more electrical generating capacity and potential NO_X emissions than previously modeled should lead EPA to discount this example as a component of a WOE argument.

Response 36

The bases for concern about this WOE argument have been addressed in responses to other comments in this final rule. Because these concerns appear to not be founded given the current facts, we do not agree that we should discount this WOE factor.

Comment 37

A commenter states that, although EPA notes (in the proposed rule) that the State appears to have taken emissions growth into consideration in the post-1999 ROP plan, it is not at all clear that this has been done. The fact that more new source permits have been granted by the State would likely make the submission of additional documentation moot, as the increase in emissions would have increased the milestone emission totals. The fact that 17 permits for additional EGUs are in the permitting process by the State should be accounted for in future emissions growth estimates.

Response 37

The commenter is addressing the impacts of NO_X growth from new EGUs, primarily peakers. It is noted that Illinois has addressed such source growth in the ozone attainment demonstration as noted elsewhere in this final rule.

With regard to the post-1999 ROP plan, it is noted that the State has considered the impacts of the NO_X SIP Call NO_X regulations in the projected statewide NO_X emissions considered in the calculations for the substitution of NO_X emission reductions to satisfy part of the VOC emission reduction requirements. The State has primarily accounted for NO_X emissions that will meet the NO_X emissions cap under the State's NO_X regulations. Since new NO_X emisssions will not be allowed to cause the statewide NO_X emissions to exceed this cap, new source growth not already characterized will not be such that this emissions cap will be exceeded. The post-1999 ROP plan already accounts for all of the NO_X emissions that will be allowed for 2004 and later. Therefore, NO_X emission increases due to EGU growth after this time period is not an issue.

Comment 38

A commenter believes that a MCR should be conducted now rather than waiting for several years. EPA should also request that Illinois commit to adopt additional emission controls for the purposes of attainment if the results of the MCR show that more NO_X will be emitted in Illinois than the State NO_X emissions budget allows.

Response 38

As noted elsewhere in this final rule, the MCR will be more robust if the State waits for additional years to better assess the impacts of emission controls on ozone levels. This can only be carried out to the extent that the timing of the MCR does not jeopardize the possibility for implementing corrective emission controls prior to the ozone attainment date if such are determined to be necessary through the preparation or review of the MCR. Conducting an

MCR for the Chicago area now would be premature and of little value for correcting future shortfalls in the States emissions control strategy.

At this time, the EPA is only requesting the States to commit to conduct a MCR and not to include in this MCR specific corrective emission controls. It is impossible at this time to anticipate the shortfalls in the State's emissions control strategy and to determine the specific emission controls needed to eliminate these shortfalls. The State and the EPA will consider possible emission control measures after the State has prepared the MCR and the EPA has reviewed the submitted MCR and found that additional emission controls are needed to attain the 1-hour ozone standard by the attainment date.

Comment 39

Although the State has reduced emissions claimed from Transportation Control Measures (TCMs) in future years, the commenter fails to understand how TCM emission reduction credits can be claimed prospectively. Enforceable rules to ensure that the TCM-based emission reductions claimed are actually achieved are not in place. The State is asking the EPA to trust it to find and document the needed emission reductions at some later date. This approach is not acceptable.

Response 39

EPA agrees with the commenter that credit cannot be given for TCMs which are not specifically identified and adopted and are, thus, not enforceable. Illinois currently has a number of TCMs approved into the SIP. These TCMs were approved into the SIP in two separate rulemaking actions (see 62 FR 66279 and 65 FR 78961). In each case, the TCMs submitted by Illinois met the required elements for approval of TCMs. These elements are: (1) A complete description of each measure, and, if possible, its estimated emissions reduction benefits; (2) evidence that each measure was properly adopted by a jurisdiction with legal authority to execute the measure; (3) evidence that funding will be available to implement each measure; (4) evidence that all necessary approvals have been obtained from all appropriate government offices; (5) evidence that a complete schedule to plan, implement, and enforce each measure has been adopted by the implementing agencies; and (6) a description of any monitoring program to evaluate each measure's effectiveness and to allow for necessary in-place corrections and alterations.

The approved TCMs already in the SIP are credited with a total VOC emission reduction of 4 tons per day in 2002. These TCMs have already been implemented, and, thus, are already achieving the credited VOC emission reductions.

However, the projections of VOC emission reductions from ''future'' TCMs which are not yet selected cannot be approved as part of the SIP. Illinois has estimated that TCMs will continue to be implemented and that new TCMs will generate additional VOC emission reductions. In their December 2000 submittal, Illinois estimates these future VOC emission reductions as 1 ton per day in 2005 and 2 tons per day in 2007. These projected VOC emission reductions from future TCMs are not being approved into the SIP in this action and cannot be approved until Illinois meets all of the requirements for approval of the associated TCMs into the SIP.

The fact that EPA is not approving the TCM emission reduction credits estimated by Illinois for 2005 and 2007 in the ROP plan does not change or reverse our approval of the post-1999 ROP plan and the ozone attainment demonstration for the Chicago nonattainment area. Tables VI and VIII in our July 11, 2001 proposed rule (66 FR 36370, 36388) demonstrate the ROP emission target levels and emission reductions for VOC that Illinois has achieved, indicating an excess of VOC emissions reductions in 2005 and 2007 greater than the 1 ton per day and 2 tons per day shortfalls resulting from not crediting the non-adopted TCMs. Also, Figure II–2 in Illinois' December 2000 ozone attainment demonstration and ROP plan submittal demonstrates that Illinois has excess VOC emission reductions in all ROP milestone years (2002, 2005, and 2007), sometimes in excess of 100 tons per day. The 1 ton per day and 2 ton per day of VOC emission reductions estimated for future, non-adopted TCMs which are not being credited for the SIP are more than compensated for by the ''excess'' of VOC emission reductions expected to occur by the milestone years. It should also be noted that the implementation of TCMs was not included in the adopted ozone attainment strategy, implying that future TCMs were not included in the attainment demonstration modeling. Thus, both the Illinois post-1999 ROP plan and the ozone attainment dmonstration can be approved without these additional VOC emission reduction credits.

Comment 40

A commenter believes that there is double counting of TCM emission reduction credits in past ROP submissions. The State has claimed the same emission reductions as off-model credits and as modeled credits. As part of the transportation modeling, rail improvements would displace automobile traffic and improve traffic flow, hence reducing emissions from mobile sources within the transportation model. These emissions reductions have also been credited as off-model credits from implemented projects.

Response 40

In the ROP, Illinois does not double count the TCM reduction credits. This is because the vehicle miles of travel are estimated in the ROP submittal based on historical trends and ground counts from the Illinois highway monitoring system. The transportation model does, as the commenter noted, include the effects of new and improved rail travel and, thus some of the TCMs are included in the transportation network model. However, because the transportation network model is not used for the ROP estimates, the TCM emission reduction credits are not included in the ROP calculations and it is appropriate to deduct the TCM reduction credits as Illinois has done in the ROP plan.

Comment 41

A commenter asserts that, although the ethanol industry claims that the oxygen in ethanol helps reduce emissions from older vehicles and off-road engines, the data are ambiguous regarding this benefit. The commenter opposes the 0.3 pounds per square inch (psi) vapor pressure waiver for reformulated gasoline (RFG) containing ethanol and believes that this waiver is not based on sound science.

Response 41

Overall, we continue to believe that the 2.0 percentage point adjustment to the VOC performance standard is appropriate for RFG with 10 volume percent ethanol sold in the Chicago-Gary-Lake County and Milwaukee-Racine ozone nonattainment areas. Because ethanol RFG constitutes virtually 100 percent of the RFG market in these areas, they are significantly different from other RFG areas. Accordingly, we are confident that, in the Chicago and Milwaukee areas, the adjusted VOC rule will not adversely impact air quality.

Regardless of whether the vapor pressure waiver for ethanol-based fuel is

based on sound science, this comment is moot with regard to the issue at hand, the approvability of Illinois' ozone attainment demonstration. It is noted that the State followed EPA guidance in establishing VOC emissions for this fuel type. Mobile source emissions, including fuel evaporative emissions were derived by the IEPA using EPA-supplied guidance and the MOBILE 5 emissions factor model. The State used this model with the reformulated gasoline flags set to true, thus acknowledging the use of ethanol gasoline blends. It is true that the MOBILE 5 model fails to estimate the extra VOC emissions resulting from the use of ethanol-based fuels. It also true, however, that the model also fails to account for the decreased carbon monoxide emissions resulting from the use of these fuel blends. Decreased carbon monoxide emissions lead to lower peak ozone concentrations downwind. Therefore, compensating errors have occurred in the modeling results, nullifying each other's effects on predicted ozone concentrations. Whether the scientific basis for the vapor pressure waiver is good or bad has no or little bearing on the validity of the ozone attainment demonstration.

Comment 42

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

Response 42

We have completed our review of the adequacy of these SIPs, and we have found the motor vehicle emissions budgets in all of these SIPs to be adequate. We responded to all comments related to adequacy when we issued our adequacy findings, and therefore we are not listing the individual comments or responding to them here. You may access our findings of adequacy and responses to comments at *www.epa.gov/otaq/traq* (once there, click on the ''conformity'' button). EPA regional contacts are identified on the web site.

Comment 43

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

Response 43

The Phase II attainment demonstrations that rely on Tier 2 emission reduction credit contain commitments to revise the motor vehicle emissions budgets after MOBILE6 is released. As noted elsewhere in this final rule, Illinois has committed to revising the motor vehicle emission budgets within two years after EPA releases the MOBILE6 emission factor model.

Comment 44

The revised budgets calculated using MOBILE6 will likely be submitted after EPA has approved the MOBILE5 budgets. EPA's policy is that submitted SIPs may not replace approved SIPs.

Response 44

This is the reason that EPA proposed in the July 28, 2000, Supplemental Notice of Proposed Rulemaking (65 FR 46383) that the approval of the MOBILE5 budgets for conformity purposes would last only until MOBILE6 budgets had been submitted and found adequate. In this way, the MOBILE6 budgets can apply for conformity purposes as soon as they are found adequate.

Comment 45

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

Response 45

EPA agrees. The motor vehicle emissions budgets in the Chicago nonattainment area attainment demonstration reflect the motor vehicle control measures in the attainment demonstration.

Comment 46

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

Response 46

EPA will not approve SIPs without motor vehicle emissions budgets that are explicitly quantified for conformity purposes. The Chicago area attainment demonstration contains explicitly quantified motor vehicle emissions budgets.

Comment 47

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

Response 47

If a state fails to meet its commitment, EPA could find a failure to implement the SIP, which would start a sanctions clock under section 179 of the Act.

Comment 48

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

Response 48

As EPA proposed in its December 16, 1999 notices, we will work with states on a case-by-case basis if the new emissions estimates raise issues about the sufficiency of the attainment demonstration.

Comment 49

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

Response 49

EPA agrees that if recalculation using MOBILE6 shows lower motor vehicle emissions than MOBILE5, then these motor vehicle emission reductions cannot be reallocated to other sources or assigned to the motor vehicle emissions budget as a safety margin unless the area reassesses the analysis in its attainment demonstration and shows that it will still attain. In other words, the area must assess how its original attainment demonstration is impacted by using MOBILE6 versus MOBILE5 before it reallocates any apparent motor vehicle emission reductions resulting from the use of MOBILE6. Since Illinois has committed to submit MOBILE6 budgets within two years of the model's release and EPA's approval of the MOBILE5 budgets is limited, the MOBILE5 budgets will not be retained once the MOBILE6 budgets have been found adequate.

Comment 50

We received a comment on whether the grace period before MOBILE6 is required in conformity determinations

will be consistent with the schedules for revising SIP motor vehicle emissions budgets (''budgets'') within one or two years of MOBILE6's release.

Response 50

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

Comment 51

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

Response 51

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

Comment 52

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

Response 52

EPA proposed the additional option to provide further flexibility in managing MOBILE6 budget revisions. The supplemental proposal did not change the original option to revise budgets within one year of MOBILE6's release. State and local governments may continue to use the one-year option, if desired, or submit a new commitment consistent with the alternative two-year option. EPA expects state and local agencies to consult on which option is appropriate, and consider the impact on future conformity determinations. Illinois has committed to revise its budgets within two years of MOBILE6's release.

VII. Final EPA Action

Consideration of the public comments on the December 16, 1999 and July 11, 2001 leads us to the conclusion that there are insufficient bases to reverse our proposed actions in the July 11, 2001 proposed rule. Therefore, we are taking the final actions as discussed below.

A. Ozone Attainment Demonstration

EPA is approving Illinois' ozone attainment demonstration SIP revision for the Chicago-Gary-Lake County ozone nonattainment area, which was submitted on December 26, 2000.

B. Post-1999 ROP Plan

EPA is approving Illinois' post-1999 ROP SIP revision for the Illinois portion of the Chicago-Gary-Lake County ozone nonattainment area as submitted by the State on December 26, 2000.

C. Contingency Measure Plan

EPA is approving Illinois' contingency measure plan for the ozone attainment demonstration and post-1999 ROP plan as submitted by the State on December 26, 2000.

D. Commitment to Conduct a Mid-Course Review

EPA is approving Illinois' commitment to conduct a mid-course review of the ozone attainment demonstration for the Chicago-Gary-Lake County ozone nonattainment area by the end of 2004.

E. Motor Vehicle Emission Budgets for VOC and NO_X

EPA is approving Illinois' motor vehicle VOC and NO_X emissions budgets for 2002, 2005, and 2007. EPA is also approving the State's commitments to revise the motor vehicle emission budgets within two years after EPA releases the MOBILE6 emission factor model.

F. RACM Analysis

EPA approves the Illinois SIP as demonstrating that the State has implemented RACM in the Chicago nonattainment area.

G. NO_X Emissions Control Waiver

EPA is revising the existing NO_X waiver for the Illinois portion of the Chicago-Gary-Lake County ozone nonattainment area to remove from the waiver NO_X emission controls for major EGUs, major non-EGU boilers and turbines, and major cement kilns as adopted by the State to comply with EPA's NO_X SIP Call and to achieve attainment of the ozone standard in this ozone nonattainment area. EPA is leaving the NO_X waiver in place in this ozone nonattainment area for NO_X emission controls due to the implementation of RACT, NSR, and certain requirements of I/M and transportation and general conformity. EPA is denying a related citizen petition for the termination of the NSR portion of the NO_X waiver.

VIII. Administrative Requirements

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

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the 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 Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective December 13, 2001.

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 January 14, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Integovernmental relations, Nitrogen Oxides, Ozone, Volatile Organic Compounds.

Dated: October 15, 2001.

David A. Ullrich,

Deputy Regional Administrator, Region 5.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart O—Illinois

2. Section 52.726 is amended by adding paragraph (dd) to read as follows:

§ 52.726 Control Strategy: Ozone

* * * * *

(dd) Chicago Ozone Attainment Demonstration Approval—On December 26, 2000, Illinois submitted a one-hour ozone attainment demonstration plan as a requested revision to the Illinois State Implementation Plan. This plan includes: A modeled demonstration of attainment and associated attainment year conformity emission budgets; a plan to reduce ozone precursor emissions by 3 percent per year from 2000 to 2007 (a post-1999 rate-of-progress plan), and associated conformity emission budgets; a contingency measures plan for both the ozone attainment demonstration and the post-1999 rate-of-progress plan; a commitment to conduct a Mid-Course Review of the ozone attainment demonstration by the end of 2004; a demonstration that Illinois has implemented all reasonably available control measures; and a commitment to revise motor vehicle emission budgets within two years after the U.S. Environmental Protection Agency officially releases the MOBILE6 emission factor model.

[FR Doc. 01–27720 Filed 11–9–01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI108–7338; FRL–7094–3]

Approval and Promulgation of Air Quality Plans; Wisconsin; Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving the revisions submitted by the Wisconsin Department of Natural Resources (WDNR or state) to its State Implementation Plan (SIP) for the Milwaukee-Racine area for attainment of the one-hour ozone standard and is approving the SIP as fully meeting the attainment demonstration requirement of the Clean Air Act (Act). The revision was submitted to EPA on December 27, 2000. EPA is approving the air quality modeling, rules to reduce emissions of ozone forming pollutants (i.e., nitrogen oxides (NO_X) and volatile organic compounds (VOC)), a plan demonstrating how progress in emission reductions will be achieved through the area's attainment date of 2007 (i.e., Rate of Progress Plan (ROP)), a reasonably available control measure (RACM) analysis, NO_X waiver revisions, transportation conformity budgets, and commitments to complete a mid-course review and to recalculate the attainment year budget using MOBILE6. On July 2, 2001, we proposed approval of these SIP revision elements and the SIP as a whole as meeting the attainment demonstration requirement of the Act.

DATES: This final rule is effective December 13, 2001.

ADDRESSES: You can access copies of the SIP revision request and the Technical Support Document (TSD) for the proposed rulemaking on the SIP revision request at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone Randy Robinson at (312) 353–6713 before visiting the Region 5 Office).

FOR FURTHER INFORMATION CONTACT: Randy Robinson, Regulation Development Section 2, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone number (312) 353–6713, robinson.randall@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever

''we,'' ''us,'' or ''our'' are used, we mean EPA.

The supplemental information is organized in the following order:

I. What Is EPA Approving In This Action?
I.a. Additional Information on Approval Elements.
II. Are There Related Elements that Need to be Federally Approved?
III. Did We Receive Public Comments on the Proposed Approval of Wisconsin's One-Hour Ozone Attainment Demonstration?
IV. Final Rulemaking Action.
V. Administrative Requirements.

I. What Is EPA Approving in This Action?

We are approving (1) the modeled attainment demonstration, (2) the NO_X reduction rule, (3) the revision to the NO_X waiver, (4) the rule to control VOCs from industrial solvent cleaning operations, (5) the rule requiring VOC controls at plastic parts coating operations, (6) the SIP order requiring VOC control for Flint Ink, (7) the conformity budgets for the 2007 attainment year and the ROP milestone years of 2002 and 2005, along with the state's commitment to revise the budgets within one year of the formal release of MOBILE6, (8) the RACM analysis, (9) the commitment to conduct a mid-course review of the attainment status of the Lake Michigan area, and (10) the post-1999 ROP plan. Today's action finalizes approval of these elements of Wisconsin's one-hour ozone attainment demonstration SIP revision and fully approves the Wisconsin SIP as meeting the attainment demonstration requirements of sections 182(c)(2) and (d). Below are additional details on the SIP revisions and our rulemaking. Further information is available in the July 2, 2001 proposed rulemaking (66 FR 34878).

I.a. Additional Information on Approval Elements

The July 2, 2001 notice proposed approval of a draft plastic parts rule. The proposal stated that in order to proceed with a final approval, the state must submit a final plastic parts rule that is not significantly different than the draft rule. WDNR submitted a final rule, with no changes, on August 29, 2001, and today's notice finalizes our approval of the state's plastic parts rule. The July notice also proposed approval of a rule to control VOC emissions from industrial solvent cleaning operations in the six-county Milwaukee-Racine severe area, and a revision to the SIP to establish RACT requirements for the Flint Ink facility located in Milwaukee. We are finalizing both of the proposed approvals in today's notice.

In this notice we are approving the transportation conformity budgets submitted with both the post-1999 ROP and the attainment demonstration. The motor vehicle emission budgets for 2002, 2005, and the attainment year 2007 are identified in Table 1 below.

TABLE 1.—MOTOR VEHICLE EMISSION BUDGETS

AREA	2002 ROP		2005 ROP		2007 ROP/attainment	
	VOC (tpd)	NO_X (tpd)	VOC (tpd)	NO_X (tpd)	VOC (tpd)	NO_X (tpd)
Milwaukee	43.5	103.5	36.7	84.1	32.2	71.4
Manitowoc	5.4	10.0	5.2	8.8	5.2	8.3
Sheboygan	4.5	9.4	3.7	7.4	3.3	6.4

We are approving the ROP milestone and attainment year motor vehicle emissions budgets until such time that the state submits a revised budget adequate for conformity purposes, as called for by the state in its commitment to recalculate and apply a revised budget for conformity within one year of the formal release of MOBILE6. The current MVEB's were determined to be adequate effective September 4, 2001 (66 FR 43255).

As we proposed on July 28, 2000, in the supplemental notice of proposed rulemaking (65 FR 46383), the final approval action we are taking today will be effective for conformity purposes only until the state submits revised motor vehicle emissions budgets that we find adequate. We are limiting the duration of our approval in this manner because we are only approving the attainment demonstrations and their budgets because the states have committed to revise them. The revised budgets, once confirmed as adequate, will be more appropriate than the budgets we are approving today.

The Act requires nonattainment areas designated serious or above to use photochemical grid modeling or an analytical method judged by EPA to be as effective. The modeled attainment demonstration approved in this notice uses a photochemical grid model (Urban Airshed Model-Variable Version, UAM–V) and follows the EPA modeling guidance in predicting ozone concentrations in the attainment year throughout the Lake Michigan region.

We are approving the state's NO_X reduction rules. These rules achieve staged reductions from 2002 through 2007 from sources in southeast Wisconsin. The reductions are accounted for in the attainment demonstration as well as the post-1999 ROP plan.

We are approving the ROP plan, which provides for a nine-percent reduction in emissions (VOC and/or NO_X) in each of the successive three-year periods from November 1999 through November 2000.

On January 26, 1996, EPA promulgated a NO_X waiver under section 182(f) of the Act for the Lake Michigan ozone nonattainment areas (61 FR 2428). The rulemaking granted exemptions from the Reasonably Available Control Technology (RACT) and New Source Review (NSR) requirements for major stationary sources of NO_X, and from certain vehicle inspection and maintenance (I/M) and general and transportation conformity requirements for ozone nonattainment areas within the Lake Michigan area modeling domain. EPA granted this waiver based on air quality modeling indicating that NO_X reductions in the area do not contribute to attainment of the ozone standard. The waiver is now being revised to reflect the emission reductions from the state NO_X rule and the I/M program, which are relied on in the modeled attainment demonstration (On October 10, 2001, Administrator Christine Todd Whitman delegated authority to Region 5's Deputy Regional Administrator, David A. Ullrich, to sign final rulemakings concerning revision of NO_X waivers and responding to NO_X waiver petitions for Illinois, Indiana, and Wisconsin). The modeling demonstrates that the ozone standard will be attained with the implementation of these controls. Any additional NO_X requirements beyond those described above are considered ''excess reductions'', since they would

be in excess of the reductions needed to attain the ozone standard.

The state committed, in a letter dated February 22, 2000, to perform a mid-course review (MCR) of the attainment status of the one-hour ozone nonattainment area by December 31, 2003. The state also reiterated, in a July 31, 2001 comment letter, that the MCR will likely not be completed until the end of 2004. We are finalizing approval of the state's commitment, yet recognize that circumstances, discussed later in this notice, may lead to the state submitting a MCR in 2004. The state's commitment and the MCR are discussed in more detail in a later section.

Section 172(c)(1) of the Act requires SIPs to contain Reasonably Available Control Measures (RACM) as necessary to provide for attainment as expeditiously as practicable. On June 6, 2001, Wisconsin supplemented its December 2000 attainment demonstration submittal with a RACM analysis. This analysis was discussed, along with information added by EPA, in the July 2, 2001, proposed approval of the Wisconsin submittal. We did not receive any comments on the analysis. We are finalizing the approval of the RACM analysis as meeting the requirements of the Act.

II. Are There Other Elements That Need To Be Federally Approved?

In addition to the elements mentioned above, there are related items on which EPA has recently taken final action or on which EPA is taking final action in other rulemakings. Two items that must be addressed concurrent with this rulemaking are (1) the post-1996 ROP plan, proposed for approval on June 22, 2001 (66 FR 33495) with a final approval signed by the Regional Administrator on September 26, 2001; and (2) revisions to the state's inspection and maintenance program. We conditionally approved Wisconsin's motor vehicle inspection and maintenance (I/M) program SIP on January 12, 1995 (60 FR 2881) with a subsequent revision submitted on December 30, 1998. We published a direct final approval of Wisconsin's I/M SIP on August 16, 2001 (66 FR 42949). Comments on the notice were due September 17, 2001. No comments were submitted. Therefore, the I/M SIP becomes effective on October 15, 2001.

III. Did We Receive Public Comments on the Proposed Approval of Wisconsin's One-Hour Ozone Attainment Demonstration?

On July 2, 2001, we published a proposed approval of the Wisconsin one-hour ozone attainment demonstration SIP revision the state had submitted on December 22, 2000 (66 FR 34878). The public comment period closed on August 1, 2001. We received one comment letter on the proposed rulemaking, from the Wisconsin Department of Natural Resources. A closely related rulemaking was published on December 16, 1999 (64 FR 70531). In that notice, we proposed conditional approval of an earlier one-hour ozone attainment demonstration, submitted by Wisconsin on April 30, 1998. The December 1999 proposal was published concurrent with proposed actions on attainment demonstrations for nine other serious and severe ozone nonattainment areas across the eastern part of the United States. EPA received a number of comments on the December 1999 proposed rulemakings. The one-hour ozone attainment demonstration SIP revision package submitted by Wisconsin in December 2000 essentially replaced its earlier 1998 submittal. In this final rulemaking, we will address the relevant comments received on our December 1999 proposed conditional approval rulemaking as well as the comments received on the recent proposed approval.

A summary of comments received on the December 16, 1999 proposed conditional approval and a summary of the comments received on the July 2001 proposal and our responses are set forth below. The comments and responses include those that were more general in nature, applying to all or several of the proposed actions issued on December 16, 1999, as well as comments and responses specific to the attainment demonstration for the Milwaukee-Racine nonattainment area.

A. Reliance on NO_X SIP Call and Tier II Modeling

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

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

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

Finally, contrary to the commenter's conclusions, EPA's modeling to determine the region-wide impacts of the NO_X SIP call clearly shows that regional transport of ozone and its

precursors is impacting nonattainment areas several states away. This analysis was upheld by the court in *Michigan.*

B. Reasonably Available Control Measures (RACM)

Comment: Several commenters have stated that there is no evidence in several states that they have adopted reasonably available control measures (RACM) or that the SIPs have provided for attainment as expeditiously as practicable. Specifically, the lack of transportation control measures (TCMs) was cited in several comments, but commenters also raised concerns about potential stationary source controls. One commenter stated that mobile source emission budgets in the plans are by definition inadequate because the SIPs do not demonstrate timely attainment or contain the emissions reductions required for all RACM. That commenter claims that EPA may not find adequate a motor vehicle emission budget (MVEB) that is derived from a SIP that is inadequate for the purpose for which it is submitted. The commenter alleges that none of the MVEBs submitted by the states that EPA is considering for adequacy is consistent with the level of emissions achieved by implementation of all RACM, nor are the MVEBs derived from SIPs that provide for attainment. Some commenters stated that for measures that are not adopted into the SIP, the state must justify why it determined the measures are not RACM.

Response: The EPA reviewed the initial SIP submittals for the Milwaukee-Racine nonattainment area and determined that they did not include sufficient documentation concerning available RACM measures. For all of the severe areas for which EPA proposed approval in December 1999, EPA consequently issued a policy guidance memorandum requiring these states to address the RACM requirement through an additional SIP submittal. (Memorandum of December 14, 2000, from John S. Seitz, Director, Office of Air Quality Planning and Standards, Re: ''Additional Submission on RACM from states with Severe 1-hour Ozone Nonattainment Area SIPs.''

The State of Wisconsin supplemented its original SIP with an analysis of RACM on June 6, 2001. EPA proposed to approve this supplement to the SIP as meeting the RACM requirements on July 2, 2001 (66 FR 34878). Based on this SIP supplement, and additional information derived from attainment demonstration modeling, EPA concluded that the SIP for the Milwaukee-Racine nonattainment area meets the requirement for adopting RACM.

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

The July 2, 2001 proposed approval discusses the state's RACM analysis, focusing on both additional transportation control measures and additional stationary source control measures. The state concludes that there are no control measures, above and beyond what the state is already implementing, that would advance the Act's specified attainment date of 2007. We received no comments on the proposed approval.

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

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

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

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

C. Adequacy of Motor Vehicle Emissions Budgets

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

Response: We have completed our review of the adequacy of these SIPs, and we have found the motor vehicle emissions budgets in all of these SIPs to be adequate. We responded to all comments related to adequacy when we issued our adequacy findings, and

therefore we are not listing the individual comments or responding to them here. You may access our findings of adequacy and responses to comments at *www.epa.gov/otaq/traq* (once there, click on the ''conformity'' button). EPA regional contacts are identified on the web site.

D. Attainment Demonstration and Rate of Progress Motor Vehicle Emission Inventories

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

Response: All of the SIPs on which we are taking final action are based on the most recent vehicle registration data available at the time the SIP was submitted. The SIPs use the same vehicle fleet characteristics used in the most recent periodic inventory update. The fleet mix for the Wisconsin submittal was derived from 1995–1997 registration data, and was supplemented with 1998 registration data for the December 2000 submittal. EPA requires using the most recent available data, but we do not require updating it on a specific schedule. Therefore, different SIPs base their fleet mix on different years of data. Our guidance does not suggest disapproving SIPs on this basis. Nevertheless, we do expect that revisions to these SIPs that use MOBILE6 (as required in those cases where the SIP relies on emissions reductions from the Tier 2 standards) will use updated vehicle registration data appropriate for use with MOBILE6, whether it is updated local data or the updated national default data that will be part of MOBILE6.

E. MOBILE6 and Motor Vehicle Emissions Budgets

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

Response: The Phase II attainment demonstrations that rely on Tier 2 emission reduction credit contain commitments to revise the motor vehicle emissions budgets after MOBILE6 is released.

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

Response: This is the reason that EPA proposed in the July 28, 2000, Supplemental Notice of Proposed Rulemaking (65 FR 46383) that the approval of the MOBILE5 budgets for conformity purposes would last only until MOBILE6 budgets had been submitted and found adequate. In this way, the MOBILE6 budgets can apply for conformity purposes as soon as they are found adequate.

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

Response: EPA agrees. The motor vehicle emissions budgets in the Milwaukee-Racine area attainment demonstration reflect the motor vehicle control measures in the attainment demonstration.

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

Response: EPA will not approve SIPs without motor vehicle emissions budgets that are explicitly quantified for conformity purposes. The Milwaukee area attainment demonstration contains explicitly quantified motor vehicle emissions budgets.

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

Response: If a state fails to meet its commitment, EPA could find a failure to implement the SIP, which would start a sanctions clock under section 179 of the Act.

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

Response: As EPA proposed in its December 16, 1999 notices, we will work with states on a case-by-case basis if the new emissions estimates raise issues about the sufficiency of the attainment demonstration.

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

Response: EPA agrees that if recalculation using MOBILE6 shows lower motor vehicle emissions than MOBILE5, then these motor vehicle emission reductions cannot be reallocated to other sources or assigned to the motor vehicle emissions budget as a safety margin unless the area reassesses the analysis in its attainment demonstration and shows that it will still attain. In other words, the area must assess how its original attainment demonstration is impacted by using MOBILE6 vs. MOBILE5 before it reallocates any apparent motor vehicle emission reductions resulting from the use of MOBILE6. Since Wisconsin has committed to submit MOBILE6 budgets within one year of the model's release and EPA's approval of the MOBILE5 budgets is limited, the MOBILE5 budgets will not be retained once the MOBILE6 budgets have been found adequate.

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

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

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

Response: This comment is not germane to this rulemaking. However, it is important to note that EPA intends to clarify its policy for implementing MOBILE6 in conformity determinations when we release the final MOBILE6

model. EPA believes that MOBILE6 should be used in conformity determinations once new MOBILE6 budgets are found adequate.

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

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

F. Credit for Measures Not Fully Implemented

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

Response: Architectural and Industrial Maintenance (AIM) Coatings: On March 22, 1995 EPA issued a memorandum [1] that provided that states could claim a 20% reduction in VOC emissions from the AIM coatings category in ROP and attainment plans based on the anticipated promulgation of a national AIM coatings rule. In developing the attainment and ROP SIPs for their nonattainment areas, states relied on this memorandum to estimate emission reductions from the anticipated national AIM rule. EPA promulgated the final AIM rule in September 1998, codified at 40 CFR Part 59, Subpart D. In the preamble to EPA's final AIM coatings regulation, EPA estimated that the regulation will result in 20% reduction of nationwide VOC emissions from AIM coatings categories (63 FR 48855). The estimated VOC reductions from the final AIM rule resulted in the same level as those estimated in the March 1995 EPA policy memorandum. In accordance with EPA's final regulation, states have assumed a 20% reduction from AIM coatings source categories in their attainment and ROP plans. AIM coatings manufacturers were required to comply with the final regulation within one year of promulgation, except for certain pesticide formulations, which were given an additional year to comply. Thus all manufacturers were required to comply, at the latest, by September 2000. Industry confirmed in comments on the proposed AIM rule that 12 months between the issuance of the final rule and the compliance deadline would be sufficient to ''use up existing label stock'' and ''adjust inventories'' to conform to the rule. 63 FR 48848 (September 11, 1998). In addition, EPA determined that, after the compliance date, the volume of nonconforming products would be very low (less than one percent) and would be withdrawn from retail shelves anyway. Therefore, EPA believes that compliant coatings were in use by the fall of 1999 with full reductions by September 2000, and that it was appropriate for the states to take credit for a 20% emission reduction in their SIPs.

Autobody Refinish Coatings Rule: Consistent with a November 27, 1994 EPA policy [2], many states claimed a 37% reduction from this source category based on a proposed rule. However, EPA's final rule, ''National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings,'' published on September 11, 1998 (63 FR 48806), did not regulate lacquer topcoats and will result in a smaller emission reduction of around 33% overall nationwide. The 37% emission reduction from EPA's proposed rule was an estimate of the total nationwide emission reduction. Since this number is an overall national average, the actual reduction achieved in any particular area could vary depending on the level of control which already existed in the area. For example, in California the reduction from the national rule is zero because California's rules are more stringent than the national rule. In the proposed rule, the estimated percentage reduction for areas that were unregulated before the national rule was about 40%. However as a result of the lacquer topcoat exemption added between proposal and final rule, the reduction is now estimated to be 36% for previously unregulated areas. Thus, most previously unregulated areas will need to make up the approximately 1% difference between the 37% estimate of reductions assumed by states, following EPA guidance based on the proposal, and the 36% reduction actually achieved by the final rule for previously unregulated areas. EPA's best estimate of the reduction potential of the final rule was set forth in a September 19, 1996 memorandum entitled ''Emissions Calculations for the Automobile Refinish Coatings Final Rule'' from Mark Morris to Docket No. A–95–18.

Consumer Products Rule: Consistent with a June 22, 1995 EPA guidance [3], states claimed a 20% reduction from this source category based on EPA's proposed rule. The final rule, ''National Volatile Organic Compound Emission Standards for Consumer Products,'' (63 FR 48819), published on September 11, 1998, has resulted in a 20% reduction after the December 10, 1998 compliance date. Moreover, these reductions largely occurred by the fall of 1999. In the consumer products rule, EPA determined and the consumer products industry concurred, that a significant proportion of subject products have been reformulated in response to state regulations and in anticipation of the final rule. 63 FR 48819. That is, industry reformulated the products covered by the consumer products rule in advance of the final rule. Therefore, EPA believes that complying products in accordance with the rule were in use by the fall of 1999. It was appropriate for the states to take credit for a 20% emission reduction for the consumer products rule in their SIPs.

G. Enforcement of Control Programs

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

Response: In general, state enforcement, personnel and funding program elements are contained in SIP revisions previously approved by EPA under obligations set forth in section 110(a)(2)(c) of the Clean Air Act. Once approved by the EPA, there is no need for states to readopt and resubmit these programs with each and every SIP revision generally required by other sections of the Act. In addition, emission control regulations will also contain specific enforcement mechanisms, such as record keeping

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

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

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

and reporting requirements, and may also provide for periodic state inspections and reviews of the affected sources. EPA's review of these regulations includes review of the enforceability of the regulations. Rules that are not enforceable are generally not approved by the EPA. To the extent that the ozone attainment demonstration and ROP plan depend on specific state emission control regulations these individual regulations have undergone review by the EPA in past approval actions or, to the extent they are being approved through this action, have undergone review in the current rulemaking.

H. Attainment Demonstrations—Weight of Evidence

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

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

The flexibility granted to EPA under section 182(c)(2)(A) is reflected in the regulations EPA promulgated for modeled attainment demonstrations. These regulations provide, ''The adequacy of a control strategy shall be demonstrated by means of applicable air quality models, data bases, and other requirements specified in [40 CFR part 51 Appendix W] (Guideline on Air Quality Models).'' [4] 40 CFR 51.112(a)(1). However, the regulations further provide, ''Where an air quality model specified in appendix W * * * is inappropriate, the model may be modified or another model substituted [with approval by EPA, and after] notice and opportunity for public comment * * *.'' Appendix W, in turn, provides that, ''The Urban Airshed Model (UAM) is recommended for photochemical or reactive pollutant modeling applications involving entire urban areas,'' but further refers to EPA's modeling guidance for data requirements and procedures for operating the model. 40 CFR 51 App. W section 6.2.1.a. The modeling guidance discusses the data requirements and operating procedures, as well as interpretation of model results as they relate to the attainment demonstration. This provision references guidance published in 1991, but EPA envisioned the guidance would change as we gained experience with model applications, which is why the guidance is referenced, but does not appear, in Appendix W. With updates in 1996 and 1999, the evolution of EPA's guidance has led us to use both the photochemical grid model, and additional analytical methods approved by EPA.

The modeled attainment test compares model predicted 1-hour daily maximum ozone concentrations in all grid cells for the attainment year to the level of the NAAQS. The results may be interpreted through either of two modeled attainment or exceedance tests: The deterministic test or the statistical test. Under the deterministic test, a predicted concentration above 0.124 parts per million (ppm) ozone indicates that the area is expected to exceed the standard in the attainment year and a prediction at or below 0.124 ppm indicates that the area is expected to not exceed the standard. Under the statistical test, attainment is demonstrated when all predicted (i.e., modeled) 1-hour ozone concentrations inside the modeling domain are at, or below, an acceptable upper limit above the NAAQS permitted under certain conditions (depending on the severity of the episode modeled).[5]

In 1996, EPA issued guidance [6] to update the 1991 guidance referenced in 40 CFR 50 App. W, to make the modeled attainment test more closely reflect the form of the NAAQS (i.e., the statistical test described above), to consider the area's ozone design value and the meteorological conditions accompanying observed exceedances, and to allow consideration of other evidence to address uncertainties in the modeling databases and application. When the modeling does not conclusively demonstrate attainment, EPA has concluded that additional analyses may be presented to help determine whether the area will attain the standard. As with other predictive tools, there are inherent uncertainties associated with air quality modeling and its results. The inherent imprecision of the model means that it may be inappropriate to view the specific numerical result of the model as the only determinant of whether the SIP controls are likely to lead to attainment. The EPA's guidance recognizes these limitations, and provides a means for considering other evidence to help assess whether attainment of the NAAQS is likely to be achieved. The process by which this is done is called a weight of evidence (WOE) determination. Under a WOE determination, the state may rely on, and EPA will consider in addition to the results of the modeled attainment test, other factors such as other modeled output (e.g., changes in the predicted frequency and pervasiveness of 1-hour ozone NAAQS exceedances, and predicted change in the ozone design value); actual observed air quality trends (i.e. analyses of monitored air quality data); estimated emissions trends; and the responsiveness of the model predictions to further controls.

In 1999, EPA issued additional guidance [7] that makes further use of model results for base case and future emission estimates to predict a future design value. This guidance describes the use of an additional component of the WOE determination, which requires, under certain circumstances, additional emission reductions that are or will be

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

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

[6] Ibid.

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

approved into the SIP, but that were not included in the modeling analysis, that will further reduce the modeled design value. An area is considered to monitor attainment if each monitor site has air quality observed ozone design values (4th highest daily maximum ozone using the three most recent consecutive years of data) at or below the level of the standard. Therefore, it is appropriate for EPA, when making a determination that a control strategy will provide for attainment, to determine whether or not the model predicted future design value is expected to be at or below the level of the standard. Since the form of the 1-hour NAAQS allows exceedances, it did not seem appropriate for EPA to require the test for attainment to be ''no exceedances'' in the future model predictions. The method outlined in EPA's 1999 guidance uses the highest measured design value across all sites in the nonattainment area for each of three years. These three ''design values'' represent the air quality observed during the time period used to predict ozone for the base emissions. This is appropriate because the model is predicting the change in ozone from the base period to the future attainment date. The three yearly design values (highest across the area) are averaged to account for annual fluctuations in meteorology. The result is an estimate of an area's base year design value. The base year design value is multiplied by a ratio of the peak model predicted ozone concentrations in the attainment year (i.e., average of daily maximum concentrations from all days modeled) to the peak model predicted ozone concentrations in the base year (i.e., average of daily maximum concentrations from all days modeled). The result is an attainment year design value based on the relative change in peak model predicted ozone concentrations from the base year to the attainment year. Modeling results also show that emission control strategies designed to reduce areas of peak ozone concentrations generally result in similar ozone reductions in all core areas of the modeling domain, thereby providing some assurance of attainment at all monitors.

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

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

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

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

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

A commenter further criticized EPA's technique for estimating the ambient impact of additional emissions reductions not modeled on grounds that EPA employed a rollback modeling technique that, according to the commenter, is precluded under EPA regulations. The commenter explained that 40 CFR 51 App. W section 6.2.1.e. provides, ''Proportional (rollback/forward) modeling is not an acceptable procedure for evaluating ozone control strategies.'' Section 14.0 of appendix W

defines ''rollback'' as ''a simple model that assumes that if emissions from each source affecting a given receptor are decreased by the same percentage, ambient air quality concentrations decrease proportionately.'' Under this approach if 20% improvement in ozone is needed for the area to reach attainment, it is assumed a 20% reduction in VOC would be required. There was no approach for identifying NO_X reductions. The ''proportional rollback'' approach is based on a purely empirically/mathematically derived relationship. EPA did not rely on this approach in its evaluation of the attainment demonstrations. The prohibition in Appendix W applies using a rollback method which is empirically/mathematically derived and independent of model estimates or observed air quality and emissions changes as the sole method for evaluating control strategies. For the demonstrations under proposal, EPA used a locally derived (as determined by the model and/or observed changes in air quality) ratio of change in emissions to change in ozone to estimate additional emission reductions to achieve an additional increment of ambient improvement in ozone. For example, if monitoring or modeling results indicate that ozone was reduced by 25 ppb during a particular period, and that VOC and NO_X emissions fell by 20 tons per day and 10 tons per day respectively during that period, EPA developed a ratio of ozone improvement related to reductions in VOC and NO_X. This formula assumes a linear relationship between the precursors and ozone for a small amount of ozone improvement, but it is not a ''proportional rollback'' technique. Further, EPA uses these locally derived adjustment factors as a component to estimate the extent to which additional emissions reductions—not the core control strategies—would reduce ozone levels and thereby strengthen the weight of evidence test. EPA uses the UAM to evaluate the core control strategies. This limited use of adjustment factors is more technically sound than the unacceptable use of proportional rollback to determine the ambient impact of the entire set of emissions reductions required under the attainment SIP. The limited use of adjustment factors is acceptable for practical reasons: it obviates the need to expend more time and resources to perform additional modeling. In addition, the adjustment factor is a locally derived relationship between ozone and its precursors based on air quality observations and/or modeling which is more consistent with recommendations referenced to in Appendix W and does not assume a direct proportional relationship between ozone and its precursors. In addition, the requirement that areas perform a mid-course review (a check of progress toward attainment) provides a margin of safety.

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

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

As another WOE factor, for areas within the NO_X SIP call domain, results from the EPA regional modeling for NO_X controls as well as the Tier2/Low Sulfur program were considered. Also, for all of the areas, EPA considered recent changes in air quality and emissions. For some areas, this was helpful because there were emission reductions in the most recent years that could be related to observed changes in air quality, while for other areas there appeared to be little change in either air quality or emissions. For areas in which air quality trends, associated with changes in emissions levels, could be discerned, these observed changes were used to help decide whether or not the emission controls in the plan would provide progress towards attainment.

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

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

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

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

I. Additional VOC Reduction Technology

Comment: For states that need additional VOC reductions, this commenter recommends a process to achieve these reductions, that involves the use of HFC–152a (1,1 difluoroethane) as the blowing agent in manufacturing of polystyrene foam products such as food trays and egg cartons. HFC–152a could be used instead of hydrocarbons, a known pollutant, as a blowing agent. Use of HFC–151a, which is classified as ''VOC exempt'', would eliminate nationwide the entire 25,000 tons/year of VOC emissions from this industry.

Response: EPA has met with the commenter and has discussed the technology described by the company to reduce VOC emissions from polystyrene foam blowing through the use of HFC–152a (1,1 difluoroethane), which is a excluded as a VOC under 40 CFR 50.100(s).[8] Since the HFC–152a is not regulated as a VOC for purposes of the ozone NAAQS, its use in place of VOCs such a pentane or butane would result in a reduction of VOC levels. However, EPA cannot mandate that states adopt any specific control program to meet the NAAQS. It is each state's prerogative to specify which measures it will adopt in order to achieve the additional VOC reductions it needs. In evaluating the use of HFC–152a, states may want to consider claims regarding the comparability of the quality of products made with this blowing agent with the quality of products made with other blowing agents. Also the question of the over-all long term environmental effect of encouraging emissions of fluorine compounds would be relevant to consider. This is a technology that states may want to consider, but, ultimately, each state must make the decision whether to require this particular technology to achieve the necessary VOC emissions reductions.

J. Impact of SIP Call on Wisconsin

Comment: A commenter stated that recent modeling of the impact of the SIP call reductions on Wisconsin shows that the state can attain the one-hour ozone standard in all the current nonattainment areas by 2007 without any additional controls. Therefore, the state should not be subjected to further Reasonably Available Control Technology (RACT) or Reasonable Further Progress requirements.

Response: Section 182(c)(2) of the Act requires that any ozone nonattainment area classified as serious and above submit a SIP that includes, among other things, (1) an attainment demonstration, based on photochemical grid modeling, that provides for attainment of the one-hour ozone standard by the area's applicable attainment date, and (2) a demonstration that the plan will achieve volatile organic compound emission reductions (NO_X reductions may be substituted) from the 1990 baseline that equal at least three percent per year averaged over each consecutive three-year period from 1996, until the area's attainment date and (3) RACT for all major stationary sources and any source subject to a Control Technique Guideline (CTG). Requirements (1), (2), and (3) above are independent even though a state may be able to demonstrate modeled attainment with a set of measures less than those needed to meet RACT or requirements. As discussed earlier, the area has a waiver granting exemptions from the NO_X RACT requirements. However, even though a state may be able to demonstrate modeled attainment with a certain group of measures, the state must adopt and implement applicable VOC RACT and, if needed, additional measures to achieve the separate rate-of-progress requirement.

K. Mid-Course Review

Comment: Several commenters stated that the timing of the mid-course review (MCR) is too accelerated and incompatible with the ozone standard and with EPA's rules regarding the submission of quality-assured data. Also, one commenter believes that EPA's draft guidance recognizes that a mid-course review in 2004 or 2005 would be far more robust and would require less data manipulation and much less speculation regarding the future effect on air quality of the control measures in place in 2003, and thus the need for additional control measures to attain by the attainment date.

Response: EPA understands the issue of timing. However, the timing issue involves balancing two critical factors. On the one hand, for a mid-course review to be useful in flagging the need to make changes to a control strategy in time to affect attainment by the attainment date, it must be sufficiently in advance of the attainment date. On the other hand, the MCR could discern more accurately whether progress is being made if there were sufficient emission reductions that occurred in the time period between the attainment demonstration modeling and the MCR. Thus, in reviewing a state's commitment regarding the performance of the mid-course review for any specific area, EPA will determine if the timing appropriately accommodates these two factors. In general, EPA believes that the states should perform the MCR for nonattainment areas within the SIP call region immediately following the first

[8] EPA has excluded from regulation as a VOC, for purposes of the ozone NAAQS, compounds with very low reactivity.

ozone season during which sources must comply with the state's SIP in response to EPA's SIP call. Because the court in the SIP call case extended the compliance deadline for the SIP call until May 2004, EPA generally believes that for areas in the eastern United States, the most appropriate time to perform the MCR would be following the 2004 ozone season. However, EPA also recognizes that for areas with an attainment date of November 2005 or earlier, it may be difficult to ensure that the MCR would be completed in time for the state and EPA to react in a manner sufficient to affect the area's ability to attain by its attainment date. In these instances, EPA considers the MCR more of an ''early attainment assessment'', which—if the MCR predicts that an area will not attain by its attainment date—will work to put the state back on track before the regulatory process that would be initiated after the attainment date.

Comment: Several commenters noted that a mid-course review following the ozone season in 2003 will reflect only one season during which regional and other controls of NO_X emissions will have been implemented. One season's ozone levels are insufficient to provide a trend analysis. It would be heavily reliant upon the weather conditions of that particular season.

Response: The commenter points out one weakness with performing the MCR soon after ozone control measures have taken effect—i.e., that it won't provide the most reliable information in terms of a trends analysis. However, ozone levels are only one metric that will probably be employed in EPA's recommended MCR method. EPA has been working with the states and local governments to develop MCR guidance and in that process is considering a range of metrics such as those discussed during meetings of the Federal Advisory Committee Act Subcommittee for Ozone, Particulate Matter and Regional Haze Implementation Programs. For instance, EPA is considering how to account for meteorology in detecting a trend line. EPA is also considering how to use ambient ozone precursor data (e.g., from the Photochemical Assessment Monitoring Stations (PAMS) sites that are located in the severe areas) in the methodology. Also, EPA will consider ''administrative'' metrics, such as the level of implementation of the emission reduction measures. Thus, EPA believes that there will be sufficient tools available for the states to make good use of the information performed by an MCR even if some of the most significant ozone reductions have not been in place long.

Again, as stated above, in determining the timing for the MCR, the states and EPA need to balance the need for implementation of additional control measures before performing the MCR with ensuring that the MCR is completed in time such that the information it provides may be useful in ensuring that an area reaches attainment by its attainment date. In general, EPA believes that the states should perform the MCR for nonattainment areas within the SIP call region immediately following the first ozone season during which sources are required to comply with the state's SIP in response to EPA's SIP call. Because the court in the SIP Call case extended the compliance deadline for the SIP call until May 2004, EPA generally believes that for areas in the eastern United States, the most appropriate time to perform the MCR would be following the 2004 ozone season.

EPA agrees with the commenter that accounting for the influence of meteorology on air quality observations is challenging, critical, and must be taken into consideration when discerning the level of air quality improvement being observed. Therefore, the draft MCR technical guidance, under review, recommends several methods for accounting for meteorology in the review process. The Agency is also developing, as part of the PM2.5 and visibility assessments underway, new tools for interpreting meteorological influences on formation and transport of pollutants. Much of these analyses incorporate regression analysis of specific meteorological parameters, along with ozone and PM2.5 observed concentrations. We encourage scientists and analysts involved with air quality issues to work with EPA to develop and test these methods.

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

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

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

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

M. Attainment and Post '99 Rate of Progress Demonstrations

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

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

Response: Under no condition is EPA waiving the statutory requirement for 3% annual emission reductions. For many areas, EPA did not propose approval of the post-99 ROP demonstrations at the same time as EPA

proposed action on the area's attainment demonstration. However, for the Milwaukee-Racine area, we are finalizing the approval of both in this notice. Moreover, EPA has not provided that area's may rely on upwind reductions for purposes of meeting the ROP requirements. Rather, states are relying on in-state NO_X and VOC measures for meeting the ROP requirement.

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

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

With respect to the commitments from Texas for the Houston-Galveston Area, the commenters contend that the 56 tpd gap must be closed now. The commenters are concerned that Texas has proposed a process that will take three more years—until at 2004—to develop and adopt the final control measures needed for attainment. Deferred adoption and submittal are not consistent with the statutory mandates and are not consistent with the CAA's demand that all SIPs contain enforceable measures. EPA does not have authority to approve a SIP if part of the SIP is not adequate to meet all tests for approval. Because the submittal consists in part of commitments, Texas has not adopted rules implementing final control strategies, and the plan includes insufficient reduction strategies to meet the emission reduction goals established by the TNRCC. Thus, Texas has failed to adopt a SIP with sufficient adopted and enforceable measures to achieve attainment. For these reasons, the submittal also does not meet the NRDC's consent decree definition of a ''full attainment demonstration SIP,'' which obligates EPA to propose a federal implementation plan if it does not approve the Houston-Galveston SIP. For these reasons, EPA should reject the Houston-Galveston SIP and impose sanctions on the area and publish a proposed FIP no later than October 15, 2001.

Response: While at the time the comment was submitted, Wisconsin had not yet adopted and submitted all control measures necessary to demonstrate attainment, the state has now adopted and EPA has approved all measures relied upon in the attainment demonstration. These measures will be implemented sufficiently in advance of the area's attainment date. Thus, the commenter's concern has been addressed.

Comments received in response to the July 2, 2001 proposed approval.

We received the comments below in response to the July 2, 2001 proposed approval of Wisconsin's one-hour attainment demonstration SIP revision.

O. Clarification of State's MOBILE6 Commitment

Comment: The proposed approval contains language regarding the commitment to recalculate motor vehicle emission budgets within one year from the formal release of the MOBILE6 emissions model. The state clarified in its comment letter that it has committed to recalculate only the attainment year (2007) emission budget and not the interim rate-of-progress years (2002 and 2005).

Response: EPA concurs with the state's clarification.

P. Mid-Course Review

Comment: The commenter restated the need for MCRs to be conducted and submitted in 2004, after the NO_X SIPs have been implemented and also reiterated the state's commitment to conduct the MCR based on attainment year emissions calculated using the new MOBILE6 emission model.

Response: EPA concurs with both aspects of the comment. See related response to comment K above.

IV. Final Rulemaking Action.

In this rulemaking action, we are approving Wisconsin's one-hour ozone attainment demonstration SIP revision and the related elements submitted on December 27, 2001, supplemented on May 28, 2001, and on June 6, 2001. Specifically, we are approving (1) the modeled attainment demonstration, (2) the NO_X reduction rule, (3) the revision to the NO_X waiver, (4) the rule to control VOCs from industrial solvent cleaning operations, (5) the rule requiring VOC controls from plastic parts coating operations, (6) the SIP order requiring VOC control for Flint Ink, (7) the conformity budgets for the 2007 attainment year, until such time that a revised budget is submitted and found adequate for conformity purposes as called for by the state in its commitment to recalculate and apply a revised budget for conformity within one year of the formal release of MOBILE6, (8) the RACM analysis, (9) the commitment to conduct a mid-course review of the attainment status of the Lake Michigan area, and (10) the post-1999 ROP plan. We are fully approving the attainment demonstration as meeting the requirements of sections 182(c)(2) and (d) of the Act.

V. Administrative Requirements

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

and responsibilities established by the Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 15 U.S.C. 272 note, requires federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a SIP submission for failure to meet such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a SIP submission that otherwise satisfies the provisions of the Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective December 13, 2001.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 14, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen Oxides, Ozone, Volatile Organic Compounds.

Dated: October 15, 2001.

David A. Ullrich,

Deputy Regional Administrator, Region 5.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart YY—Wisconsin

2. Section 52.2570 is amended by adding paragraph (c)(103) to read as follows.

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(103) On December 27, 2000, Wisconsin submitted a one-hour ozone attainment demonstration plan as a revision to the Wisconsin State Implementation Plan (SIP). Supplements to the December 27, 2001 plan were submitted on May 28, 2001, June 6, 2001, and August 29, 2001.

(i) Incorporation by reference.

(A) NR 400.02 as published in the (Wisconsin) Register, January 15, 2001, No. 541 and effective February 1, 2001.

(B) NR 422.02 as published in the (Wisconsin) Register, August 2001, No. 548 and effective September 1, 2001.

(C) NR 422.04 as published in the (Wisconsin) Register, August 2001, No. 548 and effective September 1, 2001.

(D) NR 422.083 as published in the (Wisconsin) Register, August 2001, No. 548 and effective September 1, 2001.

(E) NR 422.135 as published in the (Wisconsin) Register, August 2001, No. 548 and effective September 1, 2001.

(F) NR 423.02 as published in the (Wisconsin) Register, January 15, 2001, No. 541 and effective February 1, 2001.

(G) NR 423.035 as published in the (Wisconsin) Register, January 15, 2001, No. 541 and effective February 1, 2001.

(H) NR 428.01 as published in the (Wisconsin) Register, January 15, 2001, No. 541 and effective February 1, 2001.

(I) NR 428.02 as published in the (Wisconsin) Register, January 15, 2001, No. 541 and effective February 1, 2001.

(J) NR 428.04 as published in the (Wisconsin) Register, January 15, 2001, No. 541 and effective February 1, 2001.

(K) NR 428.05 as published in the (Wisconsin) Register, January 15, 2001, No. 541 and effective February 1, 2001.

(L) NR 428.07 as published in the (Wisconsin) Register, January 15, 2001, No. 541 and effective February 1, 2001.

(M) NR 428.08 as published in the (Wisconsin) Register, January 15, 2001, No. 541 and effective February 1, 2001.

(N) NR 428.09 as published in the (Wisconsin) Register, January 15, 2001, No. 541 and effective February 1, 2001.

(O) NR 428.10 as published in the (Wisconsin) Register, January 15, 2001, No. 541 and effective February 1, 2001.

(P) NR 428.11 as published in the (Wisconsin) Register, January 15, 2001, No. 541 and effective February 1, 2001.

(Q) NR 439.04(5)(a) as published in the (Wisconsin) Register, August 2001, No. 548 and effective September 1, 2001.

(R) NR 439.096 as published in the (Wisconsin) Register, January 15, 2001, No. 541 and effective February 1, 2001.

(S) NR 484.04 as published in the (Wisconsin) Register, August 2001, No. 548 and effective September 1, 2001.

(T) A Consent Order, No. AM–00–01, signed and effective September 7, 2000. The Order, issued by the Wisconsin Department of Natural Resources, establishes Reasonably Available Control Requirements for ink manufacturing operations at Flint Ink, located in Milwaukee.

(ii) Additional material.

(A) A letter from Lloyd Eagan, to Cheryl Newton dated May 28, 2001, providing clarifications and a commitment relative to the state's one-hour ozone SIP revision submittal.

(B) A letter and attachments from Lloyd Eagan to David Ullrich, dated June 6, 2001 providing supplemental information for the state's reasonably available control measures analysis.

3. Section 52.2585 is amended by adding paragraph (p) to read as follows:

§ 52.2585 Control strategy: Ozone.

* * * * *

(p) Approval—On December 27, 2000, Wisconsin submitted a one-hour ozone attainment demonstration plan as a revision to the Wisconsin State Implementation Plan (SIP). Supplements to the December 27, 2001 plan were submitted on May 28, 2001, June 6, 2001, and August 29, 2001. This plan includes a modeled demonstration of attainment, rules for the reduction of ozone precursor emissions, a plan to reduce ozone precursor emissions by three percent per year from 2000 to 2007, an analysis of reasonably achievable control measures, an analysis of transportation conformity budgets, a revision of the waiver for emission of oxides of nitrogen, and commitments to conduct a mid-course review of the area's attainment status and to use the new MOBILE6 emissions model.

[FR Doc. 01–27721 Filed 11–9–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN136–2; FRL–7088–5]

Approval and Promulgation of Air Quality Plans; Indiana; Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is fully approving State Implementation Plan (SIP) revisions submitted by the Indiana Department of Environmental Management (IDEM) for attainment of the 1-hour ozone standard in the Chicago-Gary-Lake County ozone nonattainment area. These SIP revisions are required by Section 182 of the Clean Air Act. This action approves the following: An ozone attainment demonstration; a plan demonstrating how progress in emission reductions will be achieved by specified milestone years through the area's attainment date of 2007 (i.e. a post-1999 Rate of Progress Plan (ROP)); a contingency measures plan for both the ozone attainment demonstration and the post-1999 ROP plan; a reasonably available control measure (RACM) analysis; NO_X waiver revisions; motor vehicle emissions budgets; and commitments to complete a mid-course review and to recalculate the motor vehicle emissions budgets using MOBILE6. Also, EPA is incorporating into the SIP a portion of an agreed order between U.S. Steel (currently USX Corporation) and the IDEM to establish a coke plant process water treatment plant at its Gary Works. We proposed approval of these SIP revision elements on August 3, 2001 (66 FR 40802).

DATES: This final rule is effective December 13, 2001.

ADDRESSES: You can access copies of the SIP revision request and documents relevant to this rulemaking at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone Patricia Morris at (312) 353–8656 before visiting the Region 5 Office).

FOR FURTHER INFORMATION CONTACT: Patricia Morris, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone number (312) 353–8656, morris.patricia@epa.gov.

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

The supplemental information is organized in the following order:

I. What Is EPA Approving In This Action?
II. What Previous Action Has Been Taken Or Proposed On This SIP Revision?
III. Are There Related Elements that Need to be Federally Approved?
IV. What Public Comments were Received on the Proposed Approval of Indiana's 1-hour Ozone Attainment Demonstration?
A. Comments on the August 3, 2001, proposal.
B. Comments on the December 16, 1999, proposed conditional approval.
V. Final Rulemaking Action.
VI. Administrative Requirements.

I. What Is EPA Approving in This Action?

The EPA is approving SIP revisions submitted by the State of Indiana on December 21, 2000, for purposes of attainment of the 1-hour ozone standard in the Chicago-Gary-Lake County ozone nonattainment area (the Indiana portion of this bi-state ozone nonattainment area includes Lake and Porter Counties, Indiana). We are approving (1) an ozone attainment demonstration demonstrating attainment by 2007, (2) a post-1999 ozone ROP plan with associated ROP conformity budgets, (3) a revision to the NO_X waiver, (4) a contingency measures plan for both the ozone attainment demonstration and the post-1999 ROP plan, (5) the motor vehicle emissions budgets for the 2007 attainment year, until such time that a revised budget is submitted and found adequate for conformity purposes as called for by the state in its commitment to recalculate and apply a revised budget for conformity within two years of the formal release of MOBILE6, (6) a RACM analysis, (7) a commitment to conduct a mid-course review of the ozone attainment plan, and (8) an agreed order between U.S. Steel (currently USX Corporation) and the IDEM signed by IDEM on March 22, 1996, which requires U.S. Steel to establish a coke plant process water treatment plant at its Gary Works. Today's action finalizes full approval of Indiana's 1-hour ozone attainment demonstration SIP revision as meeting the requirements of sections 182(c)(2) and (d) of the Clean Air Act (CAA).

II. What Previous Action Has Been Taken or Proposed on This SIP Revision?

EPA published a Notice of Proposed Rulemaking (NPR) for the Indiana ozone attainment demonstration SIP for the Lake and Porter Counties portion of the Chicago ozone nonattainment area on December 16, 1999 (64 FR 70514). In that NPR, we proposed to conditionally approve the 1-hour ozone attainment demonstration SIP revision submitted by Indiana on April 30, 1998. This proposed conditional approval was based on the State's submitted ozone modeling analysis and the State's commitments to adopt and submit a final ozone attainment demonstration and a post-1999 ROP plan, including the necessary State air pollution control regulations, by December 31, 2000. We proposed, in the alternative, to disapprove this attainment demonstration plan, if, by December 31, 1999, the State did not select an emissions control strategy associated with its submitted ozone modeling analysis and submit adequate motor vehicle emissions budgets for VOC and NO_X for the ozone nonattainment area that complied with EPA's conformity regulations and that supported attainment of the 1-hour ozone standard. We also provided that the State should submit, by December 31, 1999, an enforceable commitment to conduct a mid-course review of the ozone attainment plan in 2003.

The State met the submittal requirements of the proposed conditional approval, and submitted a final ozone attainment demonstration and post-1999 ROP plan on December 21, 2000.

Since the State largely replaced the April 30, 1998 ozone attainment demonstration in the December 21, 2000 submittal, the August 3, 2001 NPR primarily focused on the more recent ozone attainment demonstration. As such, this final rule also focuses on the December 21, 2000 version of the ozone

attainment demonstration and the comments received on EPA's August 3, 2001 proposal. This notice of final rulemaking (NFR), however, also addresses the public comments received with regard to the December 16, 1999 NPR.

The attainment demonstration we are approving today demonstrates attainment of the 1-hour ozone standard by the 2007 attainment year.

III. Are There Related Elements That Need To Be Federally Approved?

There are a number of related elements which are part of the ROP and attainment demonstration. These related elements are detailed in this section along with the citations for approval. Several elements have been acted upon in final form by EPA in previous notices and several are being acted upon in today's notice.

The attainment demonstration SIP revision depends significantly on the new NO_X emission reductions resulting from the implementation of NO_X emission control regulations for major EGUs, major non-EGU boilers and turbines, and major cement kilns. Other State emission control regulations, applicable in Lake and Porter Counties, affecting the attainment of the ozone standard and the post-1999 ROP in the ozone nonattainment area have previously been adopted by the State and approved by the EPA.

On September 27, 2001 EPA signed the final rule approving Indiana's NO_X emission control regulations for major EGUs, major non-EGU boilers and turbines, and major cement kilns. The approval of these State NO_X control rules is being addressed in a separate rulemaking action.

In the September 14, 2001 **Federal Register** (66 FR 47887) EPA approved Indiana's Cold Cleaner Degreasing rule (326 IAC 8–3–8). This rule and the reductions from this rule are part of the ROP and contingency measure reductions. The approval was effective on October 15, 2001.

In today's notice EPA is taking final action on the post-1999 ROP plan. EPA is also taking final action on all outstanding contingency plan requirements. As proposed in the August 3, 2001 notice, the current ROP plan is adequate to cover the prior contingency requirements. The post-1999 ROP plan meets all outstanding contingency plan requirements, and the State has met all contingency planning requirements. As noted in the August proposal, the post-1999 ROP plan contains excess emission reductions sufficient to provide contingency measures for the 15 percent and post-1996 ROP plans. It is therefore not necessary for the State to revisit the contingency plans for the 15 percent ROP plan and the post-1996 ROP plan. In this action EPA is approving contingency requirements for those plans as effectively being met by the current ROP and contingency plans.

Other related SIP actions are being acted upon in this final notice. These include the Mid-Course Review Commitment from IDEM, and the commitment to recalculate the mobile source transportation conformity budgets within one or two years after MOBILE6 is officially released.

Indiana committed to revise within two years after the official release of MOBILE6, the 2007 attainment demonstration budgets and to revise the ROP conformity budgets. The State air agency (IDEM) has discussed the commitment with the transportation community and has discussed the fact that no new conformity determinations can be made in the second year of the commitment without an adequate MOIBLE6 budget. As we proposed on July 28, 2000 (65 FR 46383), the final approval action we are taking today on the 2007 attainment demonstration budgets will be effective for conformity purposes only until revised motor vehicle emissions budgets are submitted and we have found them adequate. In other words, the budgets we are approving today as part of the attainment demonstration will apply for conformity purposes only until there are new, adequate budgets consistent with the States' commitments to revise the budgets. The revised budgets will apply for conformity purposes as soon as we find them adequate.

We are limiting the duration of our approval in this manner because the States have committed to revise them. Therefore, once we have confirmed that the revised budgets are adequate, they will be more appropriate than the budgets we are approving for conformity purposes now. If the revised budgets raise issues about the sufficiency of the attainment demonstration, EPA will work with States on a case-by-case basis.

In this notice EPA is approving the mobile source emissions budgets submitted with both the post-1999 ROP and the attainment demonstration. The budgets for the 2007 attainment year are 9.4 TPD of VOC and 24.29 TPD of NO_X. The VOC budget for the ROP for 2002 is 13.13 TPD and the VOC budget for 2005 is 10.99 TPD. These budgets were found adequate effective June 13, 2001, as posted on the EPA website at www.epa.gov/otaq/traq (once there, click on the ''conformity'' button).

The Mid-Course Review commitment and MOBILE6 commitment are discussed in detail in the August 3, 2001, proposed rulemaking. In today's action, EPA is approving the commitments to conduct a Mid-Course Review and to revise the motor vehicle emissions budgets.

All required State emission control regulations and related SIP elements needed to support the ozone attainment demonstration and the post-1999 ROP plan have been approved by the EPA.

IV. Did We Receive Public Comments on the Proposed Approval of Indiana's 1-Hour Ozone Attainment Demonstration?

We published a proposed approval of Indiana's 1-hour ozone attainment demonstration SIP revision on August 3, 2001 (66 FR 40802). The public comment period closed on September 4, 2001. We received one set of comments on the proposed rulemaking. Although the comments were not sent to the person listed in the **Federal Register** notice as the one to receive comments, we determined that the commenter intended to submit them in respect to the proposal and, thus are responding to the comments here. A closely related rulemaking was published on December 16, 1999 (64 FR 70514). In that notice, we proposed conditional approval of an earlier 1-hour ozone attainment demonstration, submitted by Indiana on April 30, 1998. We received a number of comments on the December 1999 proposed rulemaking. The 1-hour ozone attainment demonstration SIP revision package submitted by Indiana in December 2000 essentially replaced their earlier 1998 submittal. However, in this final rulemaking, we also address the relevant comments received on our December 1999 proposed conditional approval.

A. Comments on the August 3, 2001 Proposal

Comment: The commenter states that the plan represents a very important step forward for improving air quality in Lake and Porter Counties, Indiana and that they have long advocated that LaPorte County (to the east of Porter County) should also be designated as nonattainment and included in the SIP.

Response: The USEPA agrees that the attainment demonstration plan represents an important step forward for improving air quality in Lake and Porter Counties and indeed for improving air quality in the entire Lake Michigan basin.

The commenter's statement that LaPorte County should be designated nonattainment is outside the scope of

this rulemaking. This rulemaking addresses the approvability of the 1-hour ozone attainment demonstration for the existing nonattainment area and does not address redesignating existing areas. Although LaPorte County has experienced exceedances of the 1-hour standard, it is not monitoring nonattainment for the 1-hour ozone standard. During the past three years (1998 through 2000) the monitoring in LaPorte County recorded only one exceedance day. LaPorte County would need to experience more than three exceedance days over a three-year period to violate the 1-hour ozone standard. Nor does the preliminary 2001 ozone monitoring data indicate a violation of the 1-hour standard. Therefore, the monitoring data does not indicate that LaPorte County should be designated nonattainment for the 1-hour standard. Moreover, EPA sees no need to include LaPorte County as part of the Chicago nonattainment area. It is important to note that LaPorte County is part of the Lake Michigan modeling domain which has been modeled as part of the Chicago-Gary-Lake County attainment demonstration modeling. Thus, the ozone modeling for the Chicago and Milwaukee nonattainment areas (Indiana, Illinois and Wisconsin) indicates that the SIPs for these areas are expected to reduce emissions to an extent that the entire domain will be attaining the 1-hour ozone standard.

Comment: A commenter has been an active participant in the Indiana NO_X rulemaking which will provide important contributions to meeting the 1-hour ozone standard. The commenter would like to be notified if EPA does not approve the rules or if they are approved with conditions.

Response: The NO_X SIP rules submitted by Indiana in final form on August 20, 2000, were proposed for approval by the EPA on July 2, 2001, (66 FR 34864). The final rule approving these State rules was signed by the EPA on September 27, 2001 and will be published in a separate rulemaking action.

Comment: The commenter urges the EPA to recommend that Indiana use the deterministic test for the required ozone attainment demonstration. The commenter also urges both EPA and IDEM to provide for adequate, local public information and opportunity for comment on the mid-course review now promised for the end of 2004.

Response: As noted in the August 3, 2001 NPR (66 FR 40802), Indiana has demonstrated attainment of the 1-hour ozone standard using the UAM. Indiana used UAM data and a statistical approach, as defined in EPA's June 1996 Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS (EPA–454/B–95–007), to demonstrate attainment of the 1-hour ozone standard in the Chicago-Gary-Lake County nonattainment area by November 15, 2007.

The commenter is objecting to the State demonstrating attainment of the 1-hour ozone standard via procedures differing from the deterministic test as discussed in the June 1996 guidance. However, as discussed in more detail in the June 1996 guidance and elsewhere in this final rule, the deterministic test is not the only attainment demonstration test supported by the attainment demonstration requirements of the CAA. The CAA is not prescriptive as to the specific nature of the attainment demonstration, other than that the use of a photochemical dispersion model, such as UAM, is required for serious and above ozone nonattainment areas. The CAA does not prevent the consideration of additional data to support the attainment demonstration. In addition, the EPA has found that the simple use of the photochemical dispersion model through only the deterministic test may not be appropriate for some areas.

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

In 1996, EPA issued guidance[2] to update the 1991 guidance referenced in 40 CFR 50 App. W, to make the modeled attainment test more closely reflect the form of the NAAQS (i.e., the statistical test described above), to consider the area's ozone design value and the meteorological conditions accompanying observed exceedances, and to allow consideration of other evidence to address uncertainties in the modeling databases and application. When the modeling does not conclusively demonstrate attainment, EPA has concluded that additional analyses may be presented to help determine whether the area will attain the standard. As with other predictive tools, there are inherent uncertainties associated with air quality modeling and its results. The inherent imprecision of the model means that it may be inappropriate to view the specific numerical result of the model as the only determinant of whether the SIP controls are likely to lead to attainment. The EPA's guidance recognizes these limitations, and provides a means for considering other evidence to help assess whether attainment of the NAAQS is likely to be achieved. The process by which this is done is called a weight of evidence (WOE) determination. Under a WOE determination, the state can rely on, and EPA will consider in addition to the results of the modeled attainment test, other factors such as other modeled output (e.g., changes in the predicted frequency and pervasiveness of 1-hour ozone NAAQS exceedances, and predicted change in the ozone design value); actual observed air quality trends (i.e. analyses of monitored air quality data); estimated emissions trends; and the responsiveness of the model predictions to further controls.

EPA has applied WOE determinations to all of the current demonstrations under proposal, although except for the Chicago-Gary-Lake County and Milwaukee attainment demonstrations, the modeling results submitted do not pass the recommended ''modeled attainment test.'' These determinations were made based on EPA's best understanding of the problem and relied on a qualitative assessment as well as quantitative assessments of the available information.

With regard to the commitment for a Mid-Course Review and public input on the MCR, EPA intends to issue guidance to the States on the MCR. We appreciate the commenter's concern that the public remain informed including the opportunity for comment on the mid-course review. We will consider your request as the guidance to the States is drafted and finalized.

Comment: A commenter agrees with EPA's decision to revisit the existing NO_X waiver. That waiver was strenuously objected to by a number of local and regional organizations. The commenter urges EPA to remove the waiver for Reasonably Available Control Technology (RACT), New Source

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

[2] Ibid.

Review (NSR), transportation and general conformity and Inspection and Maintenance (I/M) for Lake and Porter Counties.

Response: EPA has carefully reconsidered the basis for the NO_X waiver for the Chicago-Gary-Lake County area both in the notice which proposed approval of the attainment demonstration and also in this notice. It should be noted that the August 3, 2001 proposed rule (66 FR 40802) proposed to change the basis for the continuance of the NO_X waiver from an ozone benefit/dis-benefit basis to an avoidance of excess NO_X emissions reduction basis under section 182(f)(2) of the CAA. Since the State has demonstrated attainment of the 1-hour ozone standard without the use of all possible NO_X emission controls, the State, under section 182(f)(2) of the CAA qualifies for a NO_X emissions control waiver for those NO_X controls not relied on in the ozone attainment demonstration. Since the State does not rely on NO_X emission reductions from NO_X RACT, NO_X NSR, and certain mobile source emission controls under I/M and conformity in the ozone attainment demonstration for the Chicago-Gary-Lake County ozone nonattainment area, the area qualifies for a NO_X waiver of these NO_X emission controls. The determination that certain control measures are ''excess'' is based on the attainment demonstration and is independent of the ozone impacts of the control measures subject to the NO_X waiver. Therefore, even if ozone control benefits are achievable from some of these NO_X controls, this is not a basis for denying or withdrawing the NO_X waiver for these emission control measures.

B. Comments Received on the December 16, 1999, Proposed Conditional Approval

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

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

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

Response: Although the 8-hour ozone standard has been adopted by the EPA, implementation of this standard has been delayed while certain aspects of the standard remain before the United States Circuit Court of Appeals. The States and the EPA have yet to define the 8-hour ozone nonattainment areas and the EPA has yet to issue guidance and requirements for the implementation of the 8-hour ozone standard. In the meantime, it is assumed by the EPA that emission controls implemented to attain the 1-hour ozone standard will be beneficial towards attainment of the 8-hour ozone standard as well. This is particularly true regarding the implementation of NO_X emission controls resulting from EPA's NO_X SIP call.

Comment: A commenter asks that EPA require full compliance with regulatory requirements now in place that govern the development of attainment strategies, and rigorous implementation of statutory requirements for RACT and RACM.

Response: As noted in responses to other comments in this final rule and in the August 3, 2001 proposed rule, the Indiana SIP meets the CAA requirements for the implementation of RACM. In addition, it is noted that the State of Indiana has implemented all required RACT controls for VOC sources in the ozone nonattainment areas in Indiana. As noted elsewhere in this final rule and in the August 3, 2001 proposed rule, the Chicago-Gary-Lake County nonattaiment area is currently covered by a waiver from NO_X RACT controls.

Section 172(c)(1) of the CAA requires SIPs to contain RACM and provides for areas to attain as expeditiously as practicable. EPA has previously provided guidance interpreting the requirements of section 172(c)(1). See 57 FR 13498, 13560. In that guidance, EPA indicated its interpretation that potentially available measures that would not advance the attainment date for an area would not be considered to be RACM. EPA also indicated in that guidance that States should consider all potentially available emission control measures to determine whether they are potentially available for implementation in an area and whether they would advance the attainment date. Further, States should indicate in their SIPs whether emission control measures considered were reasonably available or not, and, if measures are reasonably available, they must be adopted by the States as RACM. Finally, EPA indicated that States could reject emission control measures as not being RACM because they would cause substantial widespread and long-term adverse impacts, or would be economically or technologically infeasible. The EPA also issued a recent memorandum re-confirming the principles in the earlier guidance. The newer memorandum is titled, '' Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas,'' from John S. Seitz, Director, Office of Air Quality Planning and Standards. November 30, 1999. Web site Planning and Standards. November 30, 1999. Web site: *http://www.epa.gov/ttn/oarpg/tlpgm.html.*

As noted in the August 3, 2001 proposed rule, the State's SIP has addressed the implementation of RACM, and we have determined that the SIP adequately meets the RACM requirements of the CAA. We addressed the implementation of emission control measures in the Lake and Porter County area for both mobile and stationary sources. We determined that the State could not significantly advance the 1-hour ozone standard attainment date through the implementation of emission controls not already adopted by the State. In addition, as we noted in the August 3, 2001 proposed rule, although we encourage areas to implement available RACM as potentially cost-effective methods to achieve emission reductions in the short term, we do not believe that section 172(c)(1) of the CAA requires implementation of potential RACM measures that either needlessly require costly implementation efforts or produce relatively small emissions reductions that will not be sufficient to allow an area to achieve attainment in advance of full implementation of all other required measures.

In addition to emission control measures already implemented locally, Indiana relies in large part on emission reductions from outside of the area resulting from EPA's NO_X SIP call rule or section 126 NO_X rule (65 FR 2674, January 18, 2000) to reach attainment of the ozone standard. In the NO_X SIP call (63 FR 57356), we concluded that NO_X emission reductions from various upwind States were necessary to

provide for timely attainment of the 1-hour ozone standard in nonattainment areas in various downwind States, including Indiana on both counts. The NO_X SIP call established requirements for control of sources of significant emissions in the relevant upwind States. These NO_X emission reductions are not expected to be fully implemented until May 2004.

The ozone attainment demonstration for Indiana indicates that the ozone reduction benefit expected to be achieved from the regional NO_X emission reductions is substantial. We have seen no evidence for similar ozone benefits resulting from Indiana-specific emission controls not already adopted by the State that would significantly advance the attainment date for the Chicago-Gary-Lake County ozone nonattainment area earlier than 2007. Therefore, EPA concludes, based on the available documentation, that the emission reductions from additional emission control measures will not advance attainment, and, thus, none of the possible additional emission control measures can be considered to be RACM for the purposes of section 172(c)(1) of the CCA.

Given the above, it is concluded that Indiana has met the requirements for RACT and RACM as requested by the commenter.

Comment: The commenter states that none of the air quality plans for severe ozone nonattainment areas demonstrate attainment in the manner required by section 182(c)(2)(A) of the CAA. Each State's photochemical grid modeling clearly predicts continued nonattainment of the 1-hour ozone standard, with predicted ozone peak concentrations well above the NAAQS. The Weight-Of-Evidence (WOE) approach does not satisfy the CAA's mandate to assure attainment of the ozone standard by the deadline, nor does it comply with the requirement of a modeled demonstration of attainment. EPA may not lawfully approve SIPs based on modeling that has been expressly prohibited by the rule.

Note that a number of commenters made related comments on the ozone attainment demonstrations (including those from states other than Indiana) reviewed in the December 16, 1999 proposed rules. These related comments are also addressed here.

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

The flexibility granted to EPA under section 182(c)(2)(A) of the CAA is reflected in the regulations EPA promulgated for modeled attainment demonstrations. These regulations provide, ''The adequacy of a control strategy shall be demonstrated by means of applicable air quality models, data bases, and other requirements specified in [40 CFR part 51 Appendix W] (Guideline on Air Quality Models).'' [3] 40 CFR 51.112(a)(1). However, the regulations further provide, ''Where an air quality model specified in appendix W * * * is inappropriate, the model may be modified or another model substituted [with approval by EPA, and after] notice and opportunity for public comment * * *.'' Appendix W, in turn, provides that, ''The Urban Airshed Model (UAM) is recommended for photochemical or reactive pollutant modeling applications involving entire urban areas,'' but further refers to EPA's modeling guidance for data requirements and procedures for operating the model. 40 CFR 51 App. W section 6.2.1.a. The modeling guidance discusses the data requirements and operating procedures, as well as interpretation of model results as they relate to the attainment demonstration. This provision references guidance published in 1991, but EPA envisioned the guidance would change as we gained experience with model applications, which is why the guidance is referenced, but does not appear, in Appendix W. With updates in 1996 and 1999, the evolution of EPA's guidance has led us to use both the photochemical grid model, and additional analytical methods approved by EPA.

The modeled attainment test compares model predicted 1-hour daily maximum ozone concentrations in all grid cells for the attainment year to the level of the NAAQS. The results may be interpreted through either of two modeled attainment or exceedance tests: the deterministic test or the statistical test. Under the deterministic test, a predicted (attainment year, 2007 for the Chicago-Gary-Lake County ozone nonattainment area) 1-hour ozone concentration above 0.124 parts per million (ppm) indicates that the area is expected to exceed the standard in the attainment year and a prediction at or below 0.124 ppm indicates that the area is expected to not exceed the standard. Under the statistical test, attainment is demonstrated when all predicted (i.e., modeled) 1-hour ozone concentrations inside the modeling domain are at, or below, an acceptable upper limit above the NAAQS permitted under certain conditions (depending on the severity of the episode modeled).[4]

In 1996, EPA issued guidance [5] to update the 1991 guidance referenced in 40 CFR 50 App. W, to make the modeled attainment test more closely reflect the form of the NAAQS (i.e., the statistical test described above), to consider the area's ozone design value and the meteorological conditions accompanying observed exceedances, and to allow consideration of other evidence to address uncertainties in the modeling databases and application. When the modeling does not conclusively demonstrate attainment, EPA has concluded that additional analyses may be presented to help determine whether the area will attain the standard. As with other predictive tools, there are inherent uncertainties associated with air quality modeling and its results. The inherent imprecision of the model means that it may be inappropriate to view the specific numerical result of the model as the only determinant of whether the SIP controls are likely to lead to attainment. The EPA's guidance recognizes these limitations, and provides a means for

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

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

[5] Ibid.

considering other evidence to help assess whether attainment of the NAAQS is likely to be achieved. The process by which this is done is called a Weight-Of-Evidence (WOE) determination. Under a WOE determination, the state can rely on, and EPA will consider in addition to the results of the modeled attainment test, other factors such as other modeled output (e.g., changes in the predicted frequency and pervasiveness of 1-hour ozone NAAQS exceedances, and predicted change in the ozone design value); actual observed air quality trends (i.e., analyses of monitored air quality data); estimated emissions trends; and the responsiveness of the model predictions to further emission controls.

In 1999, EPA issued additional guidance [6] that makes further use of model results for base case and future emission estimates to predict a future design value. This guidance describes the use of an additional component of the WOE determination, which requires, under certain circumstances, additional emission reductions that are or will be approved into the SIP, but that were not included in the modeling analysis, that will further reduce the modeled ozone design value. An area is considered to monitor attainment if each monitor site has air quality observed ozone design values (4th highest daily maximum ozone using the three most recent consecutive years of data) at or below the level of the standard. Therefore, it is appropriate for EPA, when making a determination that a control strategy will provide for attainment, to determine whether or not the model predicted future design value is expected to be at or below the level of the standard. Since the form of the 1-hour NAAQS allows exceedances, it did not seem appropriate for EPA to require the test for attainment to be ''no exceedances'' in the future model predictions. The method outlined in EPA's 1999 guidance uses the highest measured design value across all sites in the nonattainment area for each of three years. These three ''design values'' represent the air quality observed during the time period used to predict ozone for the base emissions. This is appropriate because the model predicts the change in ozone from the base period to the future attainment date. The three yearly design values (highest across the area) are averaged to account for annual fluctuations in meteorology. The result is an estimate of an area's base year design value. The base year design value is multiplied by a ratio of the peak model predicted ozone concentrations in the attainment year (i.e., average of daily maximum concentrations from all days modeled) to the peak model predicted ozone concentrations in the base year (i.e., average of daily maximum concentrations from all days modeled). The result is an attainment year design value based on the relative change in peak model predicted ozone concentrations from the base year to the attainment year. Modeling results also show that emission control strategies designed to reduce areas of peak ozone concentrations generally result in similar ozone reductions in all core areas of the modeling domain, thereby providing some assurance of attainment at all monitors.

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

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

A commenter on our December 1999 proposed ozone rules criticized the component of this WOE factor that estimates ambient improvement because it does not incorporate complete modeling of the additional emissions reductions. However, the regulations do not mandate, nor does EPA guidance suggest, that States must model all control measures being implemented. Moreover, a component of this technique—the estimation of the future ozone design value—should be considered a model predicted estimate. Therefore, results from this technique are an extension of ''photochemical grid'' modeling and are consistent with Section 182(c)(2)(A). Also, a commenter believes EPA has not provided sufficient opportunity to evaluate the calculations used to estimate additional emission reductions. EPA provided a full 60-day period for comment on all aspects of the proposed rules. EPA has received several comments on the technical aspects of the approach and the results of its application, as discussed above and in the responses to the individual SIPs.

A commenter states that application of the method of attainment analysis in the December 16, 1999 guidance will yield a lower control estimate than if we relied entirely on reducing maximum predictions in every grid cell to less than or equal to 124 ppb on every modeled day. However, the commenter's approach may overestimate needed emission controls because the form of the standard allows

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

up to 3 exceedances in 3 years at every monitoring site, and, therefore, in every grid cell. If the model over-predicts observed concentrations, predicted controls may be further overestimated. EPA has considered other evidence, as described above through the weight of evidence determination.

When reviewing a SIP, the EPA must make a determination that the control measures adopted are reasonably likely to lead to attainment. Reliance on the WOE factors allows EPA to make this determination based on a greater body of information presented by the States and available to EPA. EPA's decision was further strengthened by each State's commitment to check progress towards attainment in a mid-course review and to adopt additional measures, if the anticipated progress is not being made.

A commenter further criticized EPA's technique for estimating the ambient impact of additional emissions reductions not modeled on grounds that EPA employed a rollback modeling technique that, according to the commenter, is precluded under EPA regulations. The commenter explained that 40 CFR 51 App. W section 6.2.1.e. provides, ''Proportional (rollback/forward) modeling is not an acceptable procedure for evaluating ozone control strategies.'' Section 14.0 of appendix W defines ''rollback'' as ''a simple model that assumes that if emissions from each source affecting a given receptor are decreased by the same percentage, ambient air quality concentrations decrease proportionately.'' Under this approach if 20 percent improvement in ozone is needed for the area to reach attainment, it is assumed a 20 percent reduction in VOC emissions would be required. There was no approach for identifying NO_X reductions. The ''proportional rollback'' approach is based on a purely empirically/mathematically derived relationship. EPA did not rely on this approach in its evaluation of the attainment demonstrations. The prohibition in Appendix W applies to the use of a rollback method which is empirically/mathematically derived and independent of model estimates or observed air quality and emissions changes as the sole method for evaluating control strategies. For the demonstrations under proposal, EPA used a locally derived (as determined by the model and/or observed changes in air quality) ratio of change in emissions to change in ozone to estimate additional emission reductions to achieve an additional increment of ambient improvement in ozone. For example, if monitoring or modeling results indicate that ozone was reduced by 25 ppb during a particular period, and that VOC and NO_X emissions fell by 20 tons per day and 10 tons per day respectively during that period, EPA developed a ratio of ozone improvement related to reductions in VOC and NO_X. This formula assumes a linear relationship between the precursors and ozone for a small amount of ozone improvement, but it is not a ''proportional rollback'' technique. Further, EPA uses these locally derived adjustment factors as a component to estimate the extent to which additional emissions reductions [7]—not the core control strategies—would reduce ozone levels and thereby strengthen the weight of evidence test. EPA uses the UAM to evaluate the core control strategies. This limited use of adjustment factors is more technically sound than the unacceptable use of proportional rollback to determine the ambient impact of the entire set of emissions reductions required under the attainment SIP. The limited use of adjustment factors is acceptable for practical reasons: It obviates the need to expend more time and resources to perform additional modeling. In addition, the adjustment factor is a locally derived relationship between ozone and its precursors based on air quality observations and/or modeling which is more consistent with recommendations referenced to in Appendix W and does not assume a direct proportional relationship between ozone and its precursors. In addition, the requirement that areas perform a mid-course review (a check of progress toward attainment) provides a margin of safety.

A commenter expressed concerns that EPA used a modeling technique (proportional rollback) that was expressly prohibited by 40 CFR part 51 Appendix W without expressly proposing to do so in a notice of proposed rulemaking. However, the commenter is mistaken. As explained above, EPA did not use or rely on a proportional rollback technique in the relevant rulemaking [8] but used UAM to evaluate the core control strategies and then applied its WOE guidance. Therefore, because EPA did not use an ''alternative model'' to UAM, it did not trigger an obligation to modify Appendix W. Furthermore, EPA did propose to use the November 1999 guidance, ''Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled,'' in the December 16, 1999 NPR and has responded to all comments received on that guidance elsewhere in this final rule.

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

As another WOE factor, for areas within the NO_X SIP Call domain, results from the EPA regional modeling for NO_X controls as well as the Tier2/Low Sulfur program were considered. Also, for all of the areas, EPA considered recent changes in air quality and emissions. For some areas, this was helpful because there were emission

[1] Not applicable to the Chicago area ozone attainment demonstration addressed in this final rule, but applicable for other ozone nonattainment areas for which EPA is also publishing final rules.

[8] The rulemaking referred to here is not a proposed rule covering the ozone attainment demonstration for the Chicago-Gary-Lake County nonattainment area. Rather, the rulemaking referred to here is a proposed rule for an area found to have a shortfall in a state's ozone attainment demonstration. This type of proposed rule generally applied to one of the Northeastern States. This paragraph of the response is not applicable to the Indiana ozone attainment demonstration.

reductions in the most recent years that could be related to observed changes in air quality, while for other areas there appeared to be little change in either air quality or emissions. For areas in which air quality trends, associated with changes in emissions levels, could be discerned, these observed changes were used to help decide whether or not the emission controls in the plan would provide progress towards attainment.

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

A commenter further criticized EPA's application of the WOE determination on grounds that EPA ignores evidence indicating that continued nonattainment is likely, such as, according to the commenter, monitoring data indicating that ozone levels in many cities during 1999 continue to exceed the NAAQS by margins as wide or wider than those predicted by the UAM. EPA has reviewed the evidence provided by the commenter. The 1999 monitor values do not constitute substantial evidence indicating that the SIPs will not provide for attainment. These values do not reflect either the local or regional control programs which are scheduled for implementation in the next several years. Once implemented, these controls are expected to lower emissions and thereby lower ozone values. Moreover, there is little evidence to support the statement that ozone levels in many cities during 1999 continue to exceed the NAAQS by margins as wide or wider than those predicted by the UAM. Since areas did not model 1999 ozone levels using 1999 meteorology and 1999 emissions which reflect emission reductions anticipated for control measures that are or will be approved into the SIP, there is no way to determine how the UAM predictions for 1999 compare to the 1999 air quality. Therefore, we can not determine whether the monitor values exceed the NAAQS by a wider margin than the UAM predictions for 1999. In summary, there is little evidence to support the conclusion that high exceedances in 1999 will continue to occur after adopted control measures are implemented.

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

Comment: A commenter notes that the SIP revisions addressed in the December 16, 1999 proposed rules claim emission reduction credits from relatively recent national EPA rulemakings for surface coatings and consumer products. In most cases, the emission reduction credit claimed is based on EPA estimates of emission reductions from proposed versions of these rules. The final versions of these rules, however, are weaker than the proposed rules in a number of key respects. Therefore, the emission credits claimed for these national rules must be recalculated to reflect only the actual emission reductions that can be expected under the EPA rules as finally adopted.

Response: We respond to this comment by addressing each of EPA's rules for surface coatings and consumer products.

Architectural and Industrial Maintenance (AIM) Coatings

EPA's March 22, 1995 memorandum [9] allowed States to claim a 20 percent reduction in VOC emissions from the AIM coatings category in ROP and attainment plans based on the anticipated promulgation of a national AIM coatings rule. In developing the attainment and ROP SIPs for their nonattainment areas, States relied on this memorandum to estimate emission reductions from the anticipated national AIM rule. EPA promulgated the final AIM rule in September 1998, codified at 40 CFR Part 59 Subpart D. In the preamble to EPA's final AIM coatings regulation, EPA estimated that the regulation will result in 20 percent reduction of nationwide VOC emissions from AIM coatings categories (63 FR 48855). The estimated VOC reductions from the final AIM rule resulted in the same level as those estimated in the March 1995 EPA policy memorandum. In accordance with EPA's final regulation, States have assumed a 20 percent reduction from AIM coatings source categories in its attainment and ROP plans. AIM coatings manufacturers were required to be in compliance with the final regulation within one year of promulgation, except for certain pesticide formulations which were given an additional year to comply. Thus all manufacturers were required to comply, at the latest, by September 2000. EPA believes that all emission reductions from the AIM coatings national regulation will occur by 2002, and, therefore, are creditable in the attainment and ROP plans.

Autobody Refinish Coatings Rule

According to EPA's guidance [10] and proposed national rule, many States have claimed a 37 percent VOC emission reduction from this source category based on a proposed rule. However, EPA's final rule, ''National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings,'' published on September 11, 1998 (63 FR 48806), did not regulate lacquer topcoats and will result in a smaller emission reduction of around 33 percent overall nationwide. The 37 percent emission reduction from EPA's

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

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

proposed rule was an estimate of the total nationwide emission reduction. Since this number was an overall average, it was not applicable to any specific area. For example, in California the reduction from the national rule is zero because its rules are more stringent than the national rule. In the proposed rule, the estimated percentage reduction for areas that were unregulated before the national rule was about 40 percent. If an area were unregulated before the national rule, the 40 percent emission reduction would be our estimate except for one rule change made between proposal and final: The exemption of lacquer topcoats. As a result of that exemption, the estimated percentage reduction for previously unregulated areas is about 36 percent. Therefore, most areas will need to make up the approximately 1 percent difference in the reductions to be achieved from the final program and those assumed based on the proposed program. This emission reduction shortfall, is not considered to be the basis for disapproval of the current ozone attainment demonstration and post-1999 ROP plan, which contain total emission reduction surpluses exceeding this shortfall.

Consumer Products Rule

According to EPA's guidance [11] and proposed national rule, States have claimed a 20-percent VOC emission reduction from this source category. The final rule, ''National Volatile Organic Compound Emission Standards for Consumer Products,'' (63 FR 48819), published on September 11, 1998, will result in a 20-percent emission reduction. Therefore, the reductions obtained by States from the final national rule are consistent with the emission reduction credit which was claimed.

Comment: A commenter states that the attainment and ROP demonstrations in most States are flawed because they assume a vehicle fleet mix that does not accurately reflect the growing proportion of sport utility vehicles (SUVs) and gasoline trucks, which pollute more than conventional cars. EPA and the States have not followed a consistent practice in updating ozone modeling to account for changes in vehicle fleets. The underestimation of emissions from this can be significant. Therefore, if the motor vehicle emissions inventory has not been updated to prepare the current SIP submission, the SIP should be disapproved.

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

Comment: A commenter (as well as other commenters responding to EPA's December 16, 1999 ozone proposed rules) notes that the CAA requires nonattainment plans to provide for implementation of all RACM as expeditiously as practicable. The SIPs at issue in the December 16, 1999 proposed rules do not meet these requirements. The plans contain only a limited set of emission control measures, and fail to offer any justification for the States' failure to adopt numerous available measures that were specifically identified by EPA and others. In addition, the SIPs contain no demonstration or claim that the emission control schedules are the earliest practicable ones.

The commenter notes that the Phase II NO_X limits agreed to by Ozone Transport Commission States are clearly RACM, as they are widely in effect. States that have adopted such measures have not adopted enforceable NO_X RACT limits for all relevant facilities within their jurisdiction. It is not sufficient for States to assert that they will adopt additional NO_X emission controls if needed. The CAA requires each SIP to include all RACM now, and to show that such measures have been adopted in legally enforceable forms.

Response: Section 172(c)(1) of the CAA requires SIPs to contain RACM as necessary to provide for attainment as expeditiously as practicable. EPA has previously provided guidance interpreting the RACM requirements of 172(c)(1). See 57 FR 13498, 13560. In that guidance, EPA indicated its interpretation that potentially available measures that would not advance the attainment date for an area would not be considered RACM. EPA concluded that a measure would not be reasonably available if it would not advance attainment. EPA also indicated in that guidance that states should consider all potentially available measures to determine whether they were reasonably available for implementation in the area, and whether they would advance the attainment date. Further, states should indicate in their SIP submittals whether measures considered were reasonably available or not, and if measures are reasonably available they must be adopted as RACM. Finally, EPA indicated that states could reject potential RACM measures either because they would not advance the attainment date, would cause substantial widespread and long-term adverse impacts, or for various reasons related to local conditions, such as economics or implementation concerns. The EPA also issued a recent memorandum on this topic, ''Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas.'' John S. Seitz, Director, Office of Air Quality Planning and Standards. November 30, 1999. Web site: http://www.epa.gov/ttn/oarpg/t1pgm.html.

More specifically with respect to the Chicago-Gary-Lake County nonattainment area, as noted elsewhere in this final rule and in the August 3, 2001 proposed rule, we have determined that the Indiana SIP does provide for the implementation of RACM. The State has been granted a waiver from adopting and implementing NO_X RACT requirements in the nonattainment area. Therefore, these emission controls are not RACM for this area. Finally, the State has adopted and is implementing regional NO_X controls, which have been demonstrated to support the attainment of the ozone standard.

Although EPA encourages areas to implement available RACM measures as potentially cost effective methods to achieve emissions reductions in the short term, EPA does not believe that section 172(c)(1) requires implementation of potential RACM measures that either require costly implementation efforts or produce relatively small emissions reductions that will not be sufficient to allow any of the four areas to achieve attainment in advance of full implementation of all other required measures. Because we believe that additional control measures

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

are not reasonably available for the Lake and Porter Counties nonattainment area, EPA believes that the attainment date proposed for approval is as expeditious as practicable.

Comment: A commenter states that the air quality plans are deficient with respect to Transportation Control Measures (TCMs). The plans contain no or few serious new measures to reduce growth in vehicle travel. Most plans do not seriously consider the possibility of major expansion of transit service, reduced or zero transit fares, pricing strategies, etc. There is also substantial evidence that significant air quality benefits can be achieved by modifying land development patterns to limit urban sprawl and to facilitate transit use. The commenter cites several examples that would apply to this issue. The States have generally not included any of these types of measures in their SIPs, and have have offered no justification for the failure to do so.

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

The EPA's approach toward TCMs as RACM and the RACM requirement is grounded in the language of the Clean Air Act. Section 172(c)(1) states that a SIP for a nonattainment area must meet the following requirement, ''In general.—Such plan provisions shall provide for the implementation of 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.'' [Emphasis added.] The EPA interprets this language as tying the RACM requirement to the requirement for attainment of the national primary ambient air quality standard. The CAA provides that the attainment date shall be ''as expeditiously as practicable but no later than * * * the deadlines specified in the CAA. EPA believes that the use of the same terminology in conjunction with the RACM requirement serves the purpose of specifying RACM as the way of expediting attainment of the NAAQS in advance of the deadline specified in the CAA. As stated in the ''General Preamble'' (57 FR 13498 at 13560, April 16, 1992), ''The EPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in the area as components of the area's attainment demonstration.'' [Emphasis added.] In other words, because of the construction of the RACM language in the CAA, EPA does not view the RACM requirement as separate from the attainment demonstration requirement. Therefore, EPA believes that the CAA supports its interpretation that measures may be determined to not be RACM if they do not advance the attainment date. In addition, EPA believes that it would not be reasonable to require implementation of measures that would not in fact advance attainment. See 57 FR 13560.

The term ''reasonably available control measure'' is not actually defined in the definitions in the CAA. Therefore, the EPA interpretation that potential measures may be determined not to be RACM if they require an intensive and costly effort for numerous small area sources is based on the common sense meaning of the phrase, ''reasonably available.'' A measure that is reasonably available is one that is technologically and economically feasible and that can be readily implemented. Ready implemention also includes consideration of whether emissions from small sources are relatively small and whether the administrative burden, to the States and regulated entities, of controlling such sources was likely to be considerable. As stated in the General Preamble, EPA believes that States can reject potential measures based on local conditions including cost. 57 FR 13561.

As described in the August 3, 2001 proposal, Indiana has considered a wide range of TCMs for the Lake and Porter County area. Indiana has implemented a number of TCMs using the Congestion Mitigation and Air Quality Program funds. These TCMs have not been included for credit in the SIP. Indiana has not included TCMs in the SIP, however, Indiana has met the ROP requirements and can meet the attainment demonstration requirements without taking credit for the generally small pollutant reductions from the implemented TCMs. The EPA has concluded that Indiana has considered and implemented all reasonably available TCMs. Any measures that have not been implemented and included would provide only marginal air quality improvements at significantly greater expense or with significant implementation barriers. All additional TCMs will not advance the attainment date because the TCMs will give only marginal improvements or are unreasonable because they are too difficult to implement.

Comment: A commenter noted that a 1993 STAPPA report recommended adoption of a California or South Coast Air Quality Management District (SCAQMD) controls or emission limits for various source categories. The commenter mentions further possible control measures as well, and notes that none of the States offered consideration of these emission control measures accompanied by reasoned explanations for their rejection.

Response: The State has completed the adoption of the ozone attainment demonstration and its associated emissions control strategy. We have determined that the SIP, as currently adopted by the State, addresses the implementation of RACM. Section 172(c)(1) of the CAA requires SIPs to contain RACM and provides for areas to attain as expeditiously as practicable. EPA has previously provided guidance interpreting the requirements of section 172(c)(1). See 57 FR 13498, 13560. In that guidance, EPA indicated its interpretation that potentially available measures that would not advance the attainment date for an area would not be considered to be RACM. EPA also indicated in that guidance that States should consider all potentially available emission control measures to determine whether they are potentially available for implementation in an area and whether they would advance the attainment date. Further, States should indicate in their SIPs whether emission control measures considered were

reasonably available or not, and, if measures are reasonably available, they must be adopted by the States as RACM. Finally, EPA indicated that States could reject emission control measures as not being RACM because they would cause substantial widespread and long-term adverse impacts, or would be economically or technologically infeasible. This policy has been detailed in other comments addressing RACM and comments suggesting other measures that could have been considered for implementation.

As stated in the August 3, 2001 proposal, the State of Indiana, along with the other Lake Michigan Air Directors Consortium (LADCO) states,[12] considered a wide range of measures for their reduction potential, cost and ease of implementation. The State of Indiana has implemented measures which have met the required ROP reductions and have also been modeled to achieve attainment of the 1-hour ozone standard in the attainment demonstration, which demonstrates that the Lake Michigan area can achieve attainment of the 1-hour ozone standard by the 2007 attainment date. Indiana relies in large part on emission reductions from outside of the Lake and Porter County area resulting from EPA's NO_X SIP call rule or section 126 NO_X rule (65 FR 2674, January 18, 2000) to reach attainment of the ozone standard. In the NO_X SIP call (63 FR 57356), we concluded that NO_X emission reductions from various upwind States were necessary to provide for timely attainment of the 1-hour ozone standard in nonattainment areas in various downwind States, including Illinois on both counts. The NO_X SIP call established requirements for control of sources of significant emissions in the relevant upwind States. These NO_X emission reductions are not expected to be fully implemented until May 2004. The ozone attainment demonstration for Indiana indicates that the ozone reduction benefit expected to be achieved from the regional NO_X emission reductions is substantial. We have seen no evidence for similar ozone benefits resulting from Indiana-specific emission controls not already adopted by the State that would significantly advance the attainment date for the Chicago-Gary-Lake County ozone nonattainment area earlier than 2007. Therefore, EPA concludes, based on the available documentation, that the emission reductions from additional emission control measures will not advance attainment, and, thus none of the possible additional emission control measure can be considered to be RACM for the purposes of section 172(c)(1) of the CCA.

Comment: A commenter states that MVEBs in the State plans are by definition inadequate because the plans do not demonstrate timely attainment or contain the emission reductions required for all RACM. The commenter asserts that the EPA may not find as adequate a MVEB that is derived from a SIP that is inadequate for the purposes for which it is submitted. The commenter believes that none of the MVEBs in the state plans addressed in the December 16, 1999 proposed rules are consistent with either the level of emissions achieved by implementation of all RACM, nor are they derived from SIPs that provide for attainment.

Response: As noted above and in the August 3, 2001 proposed rule, we have determined that the State's air quality plan does reflect the adoption and implementation of RACM. The plan also contains MVEBs based on the plan's ozone attainment demonstration. Therefore, we disagree with the commenters assertion that we cannot approve the plan's MVEBs.

Comment: A commenter notes that the CAA requires the SIPs to include a program to provide for the enforcement of the adopted control measures. Most plans address this requirement, however, none of the plans clearly set out programs to provide for enforcement of the various emission control strategies relied on for emission reduction credit.

Response: State enforcement program elements are contained in SIP revisions previously approved by EPA under obligations for enforceable emission limitations set out in section 110 of the CAA. Once approved by the EPA, there is no need for States to readopt and resubmit their enforcement programs with each and every SIP revision generally required by other sections of the CAA.

To the extent that the ozone attainment demonstration and ROP plan depends on specific State emission control regulations, it must be noted that the individual regulations have undergone review by the EPA. The regulations (rules) contain specific enforcement mechanisms, such as record keeping and reporting requirements, which the EPA has approved. These regulations also provide for periodic State inspections and reviews of the affected sources. EPA's reviews of these regulations includes reviews of the enforceability of the regulations. Rules that are not enforceable are generally not approved by the EPA. It is not necessary for the State to submit separate enforcement program plans for these regulations other than those required under section 110 of the CAA, as noted above.

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

Response: EPA met with the commenter and discussed the technology described in the comment. Since the HFC–152a is VOC exempt, its use would give a VOC reduction compared to the use of VOCs, such a pentane or butane, as blowing agents. EPA, however, has not studied this technology exhaustively. It is each State's prerogative to specify which measures it will adopt in order to achieve the additional VOC reductions it needs. In evaluating the use of HFC–152a, States may want to consider claims that products made with this blowing agent are comparable in quality to products made with other blowing agents. Also, the question of the over-all long term environmental effect of encouraging emissions of fluorine compounds would be relevant to consider. This is a technology which States may want to consider, but ultimately, the decision of whether to require this particular technology to achieve the necessary VOC emissions reductions must be made by each affected State. Finally, EPA notes that under the Significant New Alternatives Policy (SNAP) program, created under CAA section 612, EPA has identified acceptable foam blowing agents, many of which are not VOCs (http://www.epa.gov/ozone/title6/snap/).

Comment: A commenter agrees with the concept of a mid-course review, but recommends that it be done in 2004 rather than 2003. In 2003, anticipated NO_X controls will have only been in effect for one ozone season. IDEM does not believe that critical planning decisions should be based on a single year's worth of data, given how weather dependent ozone levels can be. USEPA should revise the approval to provide

[12] To find regional solutions to the ozone nonattainment problems in the Lake Michigan, the States of Illinois, Indiana, Michigan, and Wisconsin have organized and participated in LADCO, in which all four States are represented in various ozone modeling analyses and control strategy reviews.

that the mid-course review is done in 2004, after a second year of ozone season data is available.

Response: EPA understands the issue of timing. However, the timing issue involves balancing two critical factors. On the one hand, for a MCR to be useful in flagging the need to make changes to an emissions control strategy in time to affect attainment by the attainment date (by November 15, 2007 for the Chicago nonattainment area), it needs to be done sufficiently in advance of the attainment date. On the other hand, the MCR would be able to discern more accurately whether progress is being made if there were sufficient emission reductions that occurred in the time period between the attainment demonstration modeling and the time the MCR is performed. Thus, in reviewing a state's commitment regarding the performance of a MCR for any specific area, EPA must appropriately accommodate these two factors. In general, EPA believes that the states should perform the MCR for ozone nonattainment areas within the NO_X SIP Call region (which includes Illinois) immediately following the first ozone season (April 15 through October 15 for the Chicago nonattainment area) during which sources are required to comply with the state's NO_X SIP. Because the Court extended the source compliance deadline for the NO_X SIP Call until May 31, 2004, EPA generally believes that for areas in the Eastern United States, the most appropriate time to perform the MCR would be following the 2004 ozone season.

The December 16, 1999 NPRs for the ten serious and severe ozone nonattainment areas noted that, for serious areas with an attainment date extension to 2005 or earlier, it would be impracticable to perform a mid-course review per se. The NPRs asked the states to commit instead to an early assessment of whether attainment will be achieved. See for example 64 FR 70319 at 70325 (NPR for the Western Massachusetts ozone nonattainment area). Thus, EPA did not base its recommendation for the MCR in 2003 on the assumption that the 18 to 24 month period between completion of the MCR and November 2005 would be a sufficient period to ensure attainment for serious nonattainment areas by 2005. EPA, however, continues to believe that for areas with an attainment date of 2007, the best balance in terms of timing for the MCR is to ensure that the area has several years between completion of the MCR and its attainment date in order for the state and EPA to assess the need for the state (or perhaps upwind states) to adopt and implement additional controls. Due to the court-ordered delay in the mandatory source compliance date under the NO_X SIP Call, EPA believes that performing the MCR by the end of 2004 best accommodates the need for emission controls to be implemented and the need for EPA and states to have time to take action in response to the MCR.

With regard to the timing of the MCR for severe nonattainment areas versus serious nonattainment areas, as noted above, we conceptually agree with the commenter. Performing the MCR after the implementation of significant emission controls and after assessing the ozone data for the time period following the implementation of these emission controls would provide a more robust MCR with fewer assumptions regarding the impacts of the emission controls on ozone levels. Nonetheless, to allow for sufficient time to prepare and implement supplemental emission controls, if needed, prior to the ozone standard attainment deadline, the MCR must be conducted several years prior to the attainment deadline. A sufficient lead time of 2 to 3 years is believed to be reasonable. Therefore, for a severe ozone nonattainment area with a 2007 attainment deadline, the MCR should be conducted no later than late 2004. Indiana's commitment to conduct the MCR by the end of 2004 meets this recommendation.

Please note from the August 3, 2001 proposed rule that we are proposing to approve Indiana's commitment to conduct the MCR by the end of 2004, after the implementation of the State's NO_X emission control rules in compliance with EPA's NO_X SIP Call. This timing may not allow the State to collect and quality assure ozone data from the entire 2004 ozone season (the State is allowed up to 90 days following a calendar quarter to quality assure the ozone data and submit the data to the EPA) following ''normal'' quality assurance schedules and to include all of these data in the 2004 MCR. The State may have to expedite the quality assurance of the 2004 ozone data to include as many of the 2004 ozone data as possible in the MCR. On the other hand, the State should be able to project the impacts of the NO_X emission control rules using new or available ozone modeling and the 2001–2003 ozone data to draw some MCR conclusions.

Conducting a MCR by the end of 2004 will make it difficult for the State to fully quality assure and incorporate the ozone season ozone data for 2004 into the MCR while still allowing time for preparation of the MCR and public review and input into this process. Nonetheless, as noted above, the use of current ozone data is only one metric that may be taken into consideration in this process. In addition, the State will be able to take into consideration ozone data through 2003 which should be quality assured well before the production of the MCR. The State may also choose to pursue expedited quality assurance of the 2004 data if the State considers that to be an overwhelming need for the purposes of preparing the MCR, although such data use is not required by the EPA.

We assume that the State will use all available data in the preparation of the MCR. To the extent 2004 data are available, the state is encouraged to make use of such data.

Comment: Given the current status of the EPA's NO_X SIP Call rule, a commenter recommends that the EPA continue to allow Indiana and the other LADCO states the flexibility to adjust their plans for ozone and precursor emission reductions from upwind areas.

Response: Since this comment was submitted the ''status'' of the NO_X SIP Call has largely been resolved. On March 3, 2000, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) upheld EPA's rules in most respects. EPA and the States are moving forward to implement those portions of the rule that have been upheld. The court remanded two issues to EPA, and EPA has provided that the States did not need to address in the SIPs due in October 2000, the small portion of the budget allocated with these remanded issues. EPA intends to address these remanded issues through notice and comment rulemaking and, as appropriate, establish a schedule for states to submit SIPs addressing those outstanding portions of the SIP Call budgets.

Comment: A commenter believes that it is unnecessary to force states to rely upon the level of NO_X reductions anticipated from the NO_X SIP Call to achieve their attainment goals if more recent modeling and monitoring data show that sufficient reductions can be attained by other less stringent means.

Response: EPA's modeling to determine the region-wide impacts of the NO_X SIP call clearly shows regional transport of ozone and its precursors is impacting nonattainment areas several states away and NO_X control benefits for lowered downwind ozone concentrations are not limited to nearby nonattainment areas. Reductions in ozone transport associated with the collective application of the NO_X emission budgets in upwind States are expected to provide substantial benefits in downwind areas, 63 FR 57447. The purpose of the NO_X SIP Call was to address long range ozone transport. EPA

has not mandated that any State rely on NO_X emissions from the NO_X SIP call as part of their attainment demonstration. However, a decision by a State not to rely on these reductions for purposes of attainment does not alleviate that State's burden to reduce NO_X emissions to benefit downwind nonattainment areas in other States.

Comment: A commenter urges EPA not to include language in the rulemaking that will hinder the LADCO states efforts to achieve their goals. These states are continuing to evaluate both the level and type of controls in their respective states to solve the 1-hour ozone problem and the longer range ozone transport issue.

Response: This final approval approves rules and modeling which the State has chosen to address the 1-hour ozone problem. This final rule, in no way, hinders the LADCO States from considering additional emission controls to further lower local ozone concentrations and to further reduce the transport of ozone downwind.

Note that this comment was made relative to our December 16, 1999 proposed rule. This proposed rule was essentially replaced by the August 3, 2001 proposed rule, and, subsequent to the publication of the December 16, 1999 proposed rule, Indiana has completed its ozone nonattainment demonstration for the Chicago-Gary-Lake County ozone nonattainment area and has adopted the NO_X emission control rules required by EPA's NO_X SIP Call to reduce the downwind transport of ozone.

Comment: The commenter supports the efforts of the EPA to help bring the Chicago-Gary-Lake County nonattainment area into compliance with the 1-hour ozone NAAQS and applauds the efforts of the LADCO states to cooperatively address this regional problem.

Response: The EPA appreciates the support of the commenter and agrees that LADCO has done an excellent job of selecting and evaluating ozone attainment strategies.

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

Response: We have completed our review of the adequacy of these SIPs, and we have found the motor vehicle emissions budgets in all of these SIPs to be adequate. We responded to all comments related to adequacy when we issued our adequacy findings, and therefore we are not listing the individual comments or responding to them here. You may access our findings of adequacy and responses to comments at *www.epa.gov/otaq/traq* (once there, click on the ''conformity'' button). EPA regional contacts are identified on the web site.

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

Response: The Phase II attainment demonstrations that rely on Tier 2 emission reduction credit contain commitments to revise the motor vehicle emissions budgets after MOBILE6 is released. As noted elsewhere in this final rule, Indiana has committed to revising the motor vehicle emission budgets within two years after EPA releases the MOBILE6 emission factor model.

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

Response: This is the reason that EPA proposed in the July 28, 2000, Supplemental Notice of Proposed Rulemaking (65 FR 46383) that the approval of the MOBILE5 budgets for conformity purposes would last only until MOBILE6 budgets had been submitted and found adequate. In this way, the MOBILE6 budgets can apply for conformity purposes as soon as they are found adequate.

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

Response: EPA agrees. The motor vehicle emissions budgets in the Indiana ozone attainment demonstration reflect the motor vehicle control measures in the attainment demonstration.

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

Response: EPA will not approve SIPs without motor vehicle emissions budgets that are explicitly quantified for conformity purposes. The Indiana attainment demonstration contains explicitly quantified motor vehicle emissions budgets.

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

Response: If a state fails to meet its commitment, EPA could find a failure to implement the SIP, which would start a sanctions clock under section 179 of the Act.

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

Response: As EPA proposed in its December 16, 1999 notices, we will work with states on a case-by-case basis if the new emissions estimates raise issues about the sufficiency of the attainment demonstration.

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

Response: EPA agrees that if recalculation using MOBILE6 shows lower motor vehicle emissions than MOBILE5, then these motor vehicle emission reductions cannot be reallocated to other sources or assigned to the motor vehicle emissions budget as a safety margin unless the area reassesses the analysis in its attainment demonstration and shows that it will still attain. In other words, the area must assess how its original attainment demonstration is impacted by using MOBILE6 versus MOBILE5 before it reallocates any apparent motor vehicle emission reductions resulting from the use of MOBILE6. Since Illinois has committed to submit MOBILE6 budgets within two years of the model's release and EPA's approval of the MOBILE5 budgets is limited, the MOBILE5 budgets will not be retained once the MOBILE6 budgets have been found adequate.

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

Response: This comment is not germane to this rulemaking, since the

MOBILE6 grace period for conformity determinations is not explicitly tied to EPA's SIP policy and approvals. However, EPA understands that a longer grace period would allow some areas to better transition to new MOBILE6 budgets. EPA is considering the maximum two year grace period allowed by the conformity rule, and EPA will address this in the future when we release the final MOBILE6 emissions model and policy guidance.

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

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

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

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

V. Final Rulemaking Action

In this rulemaking action, we are fully approving Indiana's 1-hour ozone attainment demonstration SIP submitted on December 21, 1999, as meeting the requirements of sections 182(c)(2) and (d) of the CAA. Specifically, we are approving the following elements of the SIP: 1) the modeled attainment demonstration, 2) a post-1999 ozone ROP plan with associated ROP motor vehicle emissions budgets, 3) a revision to the NO_X waiver, 4) contingency measure plans for both the ozone attainment demonstration and the post-1999 ROP plan, 5) the motor vehicle emissions budgets for the 2007 attainment year, until such time that a revised budget is submitted and found adequate for conformity purposes as called for by the state in its commitment to recalculate and apply a revised budget for conformity within two years of the formal release of MOBILE6, 6) the RACM analysis, 7) the commitment to conduct a mid-course review of the attainment status of the Lake Michigan area, and 8) an agreed order between U.S. Steel (currently USX Corporation) and the IDEM signed by IDEM on March 22, 1996, which requires U.S. Steel to establish a coke plant process water treatment plant at its Gary Works. Today's action finalizes approval of Indiana's 1-hour ozone attainment demonstration SIP revision.

VI. Administrative Requirements

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

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

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. § 3501 *et seq.*).

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

This rule will be effective December 13, 2001.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States

Court of Appeals for the appropriate circuit by January 14, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen Oxides, Ozone, Volatile Organic Compounds.

Dated: October 15, 2001.

David A. Ullrich,

Deputy Regional Administrator, Region 5.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart P—Indiana

2. Section 52.770 is amended by adding paragraph (c)(145) to read as follows:

§ 52.770 Identification of Plan.

* * * * *

(c) * * *

(145) Indiana submitted on December 17, 1997, as part of the 9% Rate of Progress Plan, an agreed order between U.S. Steel and the Indiana Department of Environmental Management. Section 3 of Exhibit E requires U.S. Steel to establish a coke plant process water treatment plant at its Gary Works.

(i) Incorporation by Reference.

(A) Section 3 of Exhibit E of the March 22, 1996, Agreed Order between U.S. Steel (currently USX Corporation) and the Indiana Department of Environmental Management.

3. Section 52.777 is amended by adding paragraph (y) to read as follows:

§ 52.777 Control strategy: photochemical oxidants (hydrocarbons).

* * * * *

(y) Lake and Porter Counties Attainment Demonstration Approval—On December 21, 2000, Indiana submitted a 1-hour ozone attainment demonstration plan as a requested revision to the Indiana State Implementation Plan. This approval includes: A modeled demonstration of attainment, a plan to reduce ozone precursor emissions by 3 percent per year from 2000 to 2007, and associated conformity budgets for 2002 and 2005, a revision to the NO_X waiver, a contingency measures plan for both the ozone attainment demonstration and the post-1999 ROP plan, the conformity budgets for the 2007 attainment year, until such time that revised budgets are submitted and found adequate for conformity purposes as called for by the state in its commitment to recalculate and apply a revised budget for conformity within two years of the formal release of MOBILE6, the RACM analysis, the commitment to conduct a mid-course review of the attainment status of the Lake Michigan area, and an agreed order between U.S. Steel (currently USX Corporation) and the IDEM signed by IDEM on March 22, 1996, which requires U.S. Steel to establish a coke plant process water treatment plant at its Gary Works. Today's action finalizes approval of Indiana's 1-hour ozone attainment demonstration SIP revision.

[FR Doc. 01–27722 Filed 11–9–01; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Tuesday,
November 13, 2001

Part III

Department of Labor

Employment and Training Administration

20 CFR Part 625

Disaster Unemployment Assistance Program; Request for Comments; Interim Final Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 625

RIN 1205–AB31

Disaster Unemployment Assistance Program; Interim Final Rule; Request for Comments

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Interim final rule; request for comments.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (Department) is issuing this interim final rule, effective upon publication, to clarify eligibility for disaster unemployment assistance (DUA) in the wake of the major disasters declared as a result of the terrorist attacks of September 11, 2001. To provide an opportunity for public participation in this emergency rulemaking, this interim final rule includes a post-publication comment period. The Department will publish a final rule after taking into account any comments that are received.

DATES: This interim final rule is effective November 13, 2001. Written comments must be received in the Department on or before December 13, 2001.

ADDRESSES: Written comments on this interim final rule may be mailed or delivered to Grace A. Kilbane, Director, Office of Workforce Security, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S–4231, Washington, DC 20210.

All comments received will be available for public inspection during normal business hours in Room S–4231 at the above address.

FOR FURTHER INFORMATION CONTACT: Betty Castillo, Division Chief, Division of Unemployment Insurance Operations, Office of Workforce Security, Employment and Training Administration (ETA), U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S–4231, Washington, DC 20210. Telephone: (202) 693–3209 (this is not a toll-free member); facsimile: (202) 693–3229; E-mail: bcastillo@doleta.gov.

SUPPLEMENTARY INFORMATION:

I. The Disaster Unemployment Assistance Program

Section 410(a) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) (42 U.S.C 5177(a)) sets forth the framework of the Disaster Unemployment Assistance (DUA) Program. The President is authorized by section 410(a) of the Stafford Act to provide to any individual unemployed as a result of a major disaster declared by the President under the Stafford Act ''such benefit assistance as he deems appropriate while such individual is unemployed for the weeks of such unemployment with respect to which the individual is not entitled to any other unemployment compensation * * * or waiting period credit.'' Section 410(a) provides that DUA is to be furnished to individuals for no longer than 26 weeks after the major disaster is declared. Further, for any week of unemployment, a DUA payment (a type of unemployment compensation (UC)) is not to exceed the maximum weekly benefit amount authorized under the applicable UC state law, as specified in the Department's DUA regulations implementing section 410(a) of the Act.

The Department operates the DUA program under a delegation of authority (51 FR 4988, February 10, 1986) to the Secretary of Labor from the Director of the Federal Emergency Management Agency (FEMA). The Secretary of Labor has promulgated and published regulations for the DUA program at part 625 of title 20 of the Code of Federal Regulations. The DUA Program is administered by the states in accordance with an agreement each state has signed with the Secretary of Labor.

II. Explanation of the Interim Final Rule

The Department is adding, at § 625.5(c), a definition of the phrase ''unemployment is a direct result of the major disaster,'' used in §§ 625.5(a)(1) an (b)(1) for determining if a worker or self-employed individual's unemployment is caused by a major disaster. Section 410(a) of the Stafford Act provides, in pertinent part, that the President is authorized to provide benefit assistance to any individual ''unemployed as a result of a major disaster.'' The Department has consistently interpreted this phrase in its regulations as requiring, for DUA eligibility, that the individual's ''unemployment is a direct result of the major disaster.'' However, the phrase has never been defined in the Department's regulations. (Note that paragraphs (a)(2)–(a)(5) and (b)(2)–(b)(4) of § 625.5 also provide for other circumstances where an individual's unemployment is caused by a major disaster. However, these provisions are not involved here.)

The recent terrorist attacks of September 11, 2001, resulting in declarations of major disasters in New York City and Arlington County, Virginia, were of catastrophic proportions. They presented a number of situations the regulations did not contemplate, such as the extended closure of Reagan National Airport. In order to address these types of situations, the Department is now defining the phrase ''unemployment is a direct result of the major disaster'' to clarify eligibility. The Department has received many inquiries regarding whether an individual's unemployment was a direct result of either the New York or Arlington disasters. By defining the phrase ''unemployment is a direct result of the major disaster,'' the Department will ensure greater uniformity. This is consistent with the first and second rules of construction of §§ 625.1(b) and (c) of the DUA regulations, which provide that sections 410 and 423 of the Stafford Act and the implementing regulations must be construed liberally to carry out the purposes of the Act and to assure, insofar as possible, the uniform interpretation and application of the DUA provisions of the Act throughout the United States.

Definition of ''Unemployment is a Direct Result of the Major Disaster''

The Department interprets the phrase ''unemployment is a direct result of the major disaster'' under paragraphs (a)(1) and (b)(1) of § 625.5 to mean that an individual's unemployment must be an immediate result of the disaster itself, and not the result of a longer chain of events precipitated or exacerbated by the major disaster. This rule seeks to clarify that an individual's unemployment is a direct result of the major disaster if the unemployment resulted from: the physical damage or destruction of the work site; the physical inaccessibility of the work site due to a federal government closure of the work site, in immediate response to the major disaster; or lack of work, or loss of revenues, provided that the employer, or the business in the case of a self-employed individual, prior to the disaster, received at least a majority of its revenue or income from either an entity damaged or destroyed in the disaster, or an entity closed by the federal government in immediate response to the disaster. This rule simply sets forth whose unemployment is a direct result of a major disaster. Once that determination is made, however, claimants covered under this new definition must still meet the same

eligibility criteria as all other claimants in order to receive DUA.

The Department recognizes that the terrorist attacks of September 11 had a ''ripple effect'' throughout the economy, and that many businesses nationwide suffered serious declines due to the effect these disasters had on commerce. However, individuals who became unemployed as the result of a general decline in commerce in response to the major disasters are not unemployed as a ''direct result'' of the major disasters and thus are not eligible for DUA.

The above considerations apply equally to any major disaster. They lead the Department to conclude that workers and self-employed individuals whose work site, for example, is outside a major disaster area, and who no longer have a job because the federal government either closed or took over the job site in response to the major disaster, are potentially eligible for DUA. This includes only employees and self-employed individuals at facilities closed by the federal government. Examples of eligible individuals in the case of an airport shutdown might include airport employees, owners and employees of restaurants and shops located in airport terminal buildings, and workers or service providers for these and other facilities where the above conditions are met. However, workers at other airports not closed by the federal government would not be eligible for DUA. Individuals potentially eligible for DUA would also include employees and self-employed individuals who could not perform services or get to their workplace because a federal agency, such as FEMA, took over such site for disaster administration purposes. Similarly, the federal government may, as an immediate emergency response to the major disaster, close certain facilities such as bridges or tunnels. Employees of those facilities could, therefore, be potentially eligible for DUA.

As noted above, an employee or self-employed individual may be eligible for DUA if the major disaster caused physical damage or destruction of an entity which, before the major disaster, provided at least a majority of the employer's or self-employed individual's revenue or income. Where less than a majority of the employer's or self-employed individual's revenue or income came from that entity, the link to the unemployment is too tenuous to be considered direct under the regulations. Just as this test may be employed to determine whether employees of suppliers of goods or services to facilities physically damaged by the major disaster may be eligible for DUA, so too would that analysis be applicable to employees of suppliers of goods or services to other facilities closed or taken over by the federal government in immediate response to the major disaster. Thus, if one of those facilities provided at least a majority of the revenue or income of that employer or self-employed individual, the employees of that business or that self-employed individual may be eligible for DUA.

Where it cannot be established that at least a majority of the revenue or income of a business or self-employed individual was dependent upon providing goods or services to the businesses at these facilities, DUA eligibility must be denied. For example, a taxicab driver would be potentially eligible for DUA where a majority of his or her business depended on providing transportation services between points which include areas cordoned off because of the physical damage of the major disaster or because facilities were closed or commandeered by the federal government. On the other hand, DUA eligibility must be denied a taxicab driver who cannot establish that a majority of his or her livelihood depended on providing transportation services between points which include areas cordoned off because of either the physical damage of the major disaster or the closing or commandeering of the facilities by the federal government.

Further, DUA is payable only for those weeks of unemployment during the disaster assistance period that continues to be the direct result of the major disaster. Therefore, if the state agency finds that an eligible DUA applicant's unemployment can no longer be directly attributed to the major disaster, the applicant is no longer unemployed as a direct result of the disaster and is no longer eligible for DUA.

Publication of Interim Final Rule

This rule interprets the statutory term in section 410(a) of the Stafford Act requiring, as a condition of DUA eligibility, that an individual be unemployed as a ''result'' of a major disaster. The Department has determined that the new § 625.5(c) defining this statutory term, should be added immediately to clarify eligibility and assure uniform interpretation and application nationwide. Notice-and-comment rulemaking is not required under 5 U.S.C. 553(b)(A) because the rule is interpretative. However, because of the public interest in this program, the Department has included a post-publication comment period in this interim final rule. Any comments received on the interim final rule adding § 625.5(c) will be considered before a final rule is issued.

Even were this not an interpretative rule, good cause, under 5 U.S.C. 553(b)(B), exists for adding § 625.5(c) in an interim final rule with a post-publication comment period because a pre-publication comment period is impracticable and contrary to the public interest. Communities are still recovering and individuals are filing claims due to the major disasters arising from the terrorist attacks of September 11, 2001. To not have the regulations in place at this time would be contrary to the public interest, especially under the current exigencies. Because of the scope of the effects of this disaster, this clarification will effect claims made through many States. In order to assure that all States will be able to respond as promptly and accurately as possible to this disaster, this regulation must be effective immediately.

Effective Date

The Department has determined that this interim final rule will be effective on publication. This rule clarifies which unemployed workers about whom eligibility questions have arisen are potentially eligible for DUA benefits. The exception to a 30-day delay in the effective date at 5 U.S.C. 553(d)(1) applies because the rule clarifies a statutory term which has the effect of relieving a restriction on the eligibility of individuals to receive benefits under the DUA Program.

Moreover, this rule interprets the statutory term unemployed as a ''result'' of a major disaster in section 410(a) of the Stafford Act. Therefore, under 5 U.S.C. 553(d)(2), a 30-day waiting period for the rule to become effective is not required because this is an interpretative rule.

Lastly, the Department has determined, under 5 U.S.C. 553(d)(3), that good cause exists for making the addition of § 625.5(c) effective upon publication in the **Federal Register**. As explained above, due to the exigencies arising from the events of September 11, 2001, the Department believes it contrary to the public interest and harmful to potential beneficiaries not to have the changes in place while so many individuals are recovering from those major disasters. Therefore, these amendments are effective immediately.

Executive Order 12866

This interim final rule is a ''significant regulatory action'' within the meaning of Executive Order 12866 because it meets the criteria of section 3(f)(4) of that Order in that it raises

novel or legal policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Accordingly, this rule was submitted to, and reviewed by, the Office of Management and Budget. It is not ''economically significant'' within the meaning of section 3(f)(1) of that Executive Order because it will not have an annual effect on the economy of $100 million or more. Rather, the Department estimates the cost of benefits under this rule for the major disasters of September 11, 2001, to be $1.47 million and, therefore, projects that the annual cost of benefits under this rule will be far less than $100 million.

The Department has evaluated the rule and finds it consistent with the regulatory philosophy and principles set forth in Executive Order 12866, which governs agency rulemaking. The rule will not impact states and state agencies in a material way because it would not impose any new requirements on states. Instead, the rule simply clarifies the rules states use to determine the eligibility of individuals affected by these new types of disasters now affecting the nation, such as the terrorist attacks of September 11, 2001, and the benefits are financed by the federal government.

Paperwork Reduction Act

The Department has determined that this interim final rule contains no new information collection requirements. The existing information collection requirements are approved under Office of Management and Budget control number 1205–0051.

Executive Order 13132

The Department has reviewed this interim final rule in accordance with Executive Order 13132 regarding federalism. The order requires that agencies, to the extent possible, refrain from limiting state policy options, consult with states prior to taking any actions which would restrict states' policy options, and take such action only when there is clear constitutional authority and the presence of a problem of national scope. Because this is a federal benefit program, the Department has determined that the rule does not have federalism implications.

Executive Order 12988

The Department drafted and reviewed this rule in accordance with Executive Order 12988, Civil Justice Reform, and will not unduly burden the federal court system. The rule has been written to minimize litigation and provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

Unfunded Mandates Reform Act of 1995 and Executive Order 12875

The Department has reviewed this interim final rule in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*) and Executive Order 12875. The Department has determined that this rule does not include any federal mandate that may result in increased expenditures by state, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, the Department has not prepared a budgetary impact statement.

Regulatory Flexibility Act

The Department has determined that this interim final rule will not have a significant economic impact on a substantial number of small entities. The rule sets forth the terms under which states and state agencies, which are not within the definition of ''small entity'' under 5 U.S.C. 601(6), will pay federal benefits. Under 5 U.S.C. 605(b), the Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory flexibility analysis is required.

Effect on Family Life

The Department certifies that this interim final rule has been assessed in accordance with section 654 of Pub. L. 105–277, 112 Stat. 2681, for its effect on family well-being. The Department concludes that the rule will not adversely affect the well-being of the nation's families. Rather, it should have a positive effect on family well-being by providing benefits to more individuals whose households have been affected by major disasters.

Congressional Review Act

This interim final rule is not a major rule for purposes of the Congressional Review Act.

Catalogue of Federal Domestic Assistance Number

This program is listed in the Catalogue of Federal Domestic Assistance at No. 17.225, ''Disaster Unemployment Assistance (DUA).''

List of Subjects in 20 CFR Part 625

Disaster assistance, Labor, and Unemployment compensation.

Words of Issuance

For the reasons set forth in this preamble, part 625 of chapter V of title 20, Code of Federal Regulations, is amended as follows:

PART 625—DISASTER UNEMPLOYMENT ASSISTANCE

1. The authority for part 625 continues to read as follows:

Authority: 42 U.S.C. 1302; 42 U.S.C. 5164; 42 U.S.C. 5189a(c); 42 U.S.C. 5201(a); Executive Order 12673 of March 23, 1989 (54 FR 12571); delegation of authority from the Director of the Federal Emergency Management Agency to the Secretary of Labor, effective December 1, 1985 (51 FR 4988); Secretary's Order No. 4–75 (40 FR 18515).

2. Section 625.5 is amended by adding a new paragraph (c) to read as follows:

§ 625.5 Unemployment caused by a major disaster.

* * * * *

(c) *Unemployment is a direct result of the major disaster.* For the purposes of paragraphs (a)(1) and (b)(1) of this section, a worker's or self-employed individual's unemployment is a direct result of the major disaster where the unemployment is an immediate result of the major disaster itself, and not the result of a longer chain of events precipitated or exacerbated by the disaster. Such an individual's unemployment is a direct result of the major disaster if the unemployment resulted from:

(1) the physical damage or destruction of the place of employment;

(2) the physical inaccessibility of the place of employment due to its closure by the federal government, in immediate response to the disaster; or

(3) lack of work, or loss of revenues, provided that, prior to the disaster, the employer, or the business in the case of a self-employed individual, received at least a majority of its revenue or income from an entity that was either damaged or destroyed in the disaster, or an entity closed by the federal government in immediate response to the disaster.

Signed at Washington, D.C. on November 7, 2001.

Elaine L. Chao,

Secretary of Labor.

Emily S. DeRocco,

Assistant Secretary of Labor.

[FR Doc. 01–28412 Filed 11–9–01; 8:45 am]

BILLING CODE 4510–30–P

Federal Register

Tuesday,
November 13, 2001

Part IV

The President

Notice of November 9, 2001—Continuation of Emergency Regarding Weapons of Mass Destruction

Notice of November 9, 2001—Continuation of Iran Emergency

Federal Register
Vol. 66, No. 219
Tuesday, November 13, 2001

Presidential Documents

Title 3—

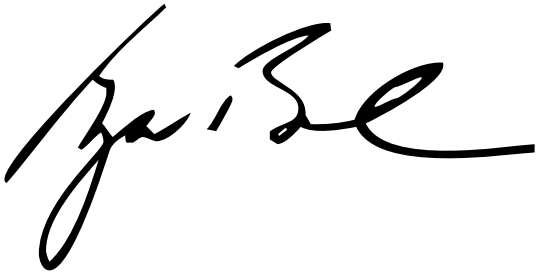
The President

Notice of November 9, 2001

Continuation of Emergency Regarding Weapons of Mass Destruction

On November 14, 1994, by Executive Order 12938, President Clinton declared a national emergency with respect to the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States posed by the proliferation of nuclear, biological, and chemical weapons (weapons of mass destruction) and the means of delivering such weapons. Because the proliferation of weapons of mass destruction and the means of delivering them continues to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, the national emergency first declared on November 14, 1994, and extended on November 14, 1995, November 12, 1996, November 13, 1997, November 12, 1998, November 10, 1999, and November 12, 2000, must continue in effect beyond November 14, 2001. In accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 12938.

This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
November 9, 2001.

[FR Doc. 01–28603
Filed 11–9–01; 11:54 am]
Billing code 3195–01–P

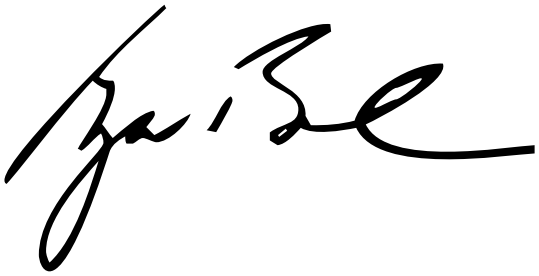
Presidential Documents

Notice of November 9, 2001

Continuation of Iran Emergency

On November 14, 1979, by Executive Order 12170, the President declared a national emergency with respect to Iran pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the situation in Iran. Because our relations with Iran have not yet returned to normal, and the process of implementing the January 19, 1981, agreements with Iran is still underway, the national emergency declared on November 14, 1979, must continue in effect beyond November 14, 2001. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year this national emergency with respect to Iran.

This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
November 9, 2001.

[FR Doc. 01–28604
Filed 11–9–01; 11:54 am]
Billing code 3195–01–P

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H.R. 1000/P.L. 107–60
William Howard Taft National Historic Site Boundary Adjustment Act of 2001 (Nov. 5, 2001; 115 Stat. 408)

H.R. 1161/P.L. 107–61
To authorize the Government of the Czech Republic to establish a memorial to honor Tomas G. Masaryk in the District of Columbia. (Nov. 5, 2001; 115 Stat. 410)

H.R. 1668/P.L. 107–62
To authorize the Adams Memorial Foundation to establish a commemorative work on Federal land in the District of Columbia and its environs to honor former President John Adams and his legacy. (Nov. 5, 2001; 115 Stat. 411)

H.R. 2217/P.L. 107–63
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1–699	(869–044–00004–1)	53.00	Jan. 1, 2001
700–1199	(869–044–00005–9)	44.00	Jan. 1, 2001
1200–End, 6 (6 Reserved)	(869–044–00006–7)	55.00	Jan. 1, 2001
7 Parts:			
1–26	(869–044–00007–5)	40.00	[4] Jan. 1, 2001
27–52	(869–044–00008–3)	45.00	Jan. 1, 2001
53–209	(869–044–00009–1)	34.00	Jan. 1, 2001
210–299	(869–044–00010–5)	56.00	Jan. 1, 2001
300–399	(869–044–00011–3)	38.00	Jan. 1, 2001
400–699	(869–044–00012–1)	53.00	Jan. 1, 2001
700–899	(869–044–00013–0)	50.00	Jan. 1, 2001
900–999	(869–044–00014–8)	54.00	Jan. 1, 2001
1000–1199	(869–044–00015–6)	24.00	Jan. 1, 2001
1200–1599	(869–044–00016–4)	55.00	Jan. 1, 2001
1600–1899	(869–044–00017–2)	57.00	Jan. 1, 2001
1900–1939	(869–044–00018–1)	21.00	[4] Jan. 1, 2001
1940–1949	(869–044–00019–9)	37.00	[4] Jan. 1, 2001
1950–1999	(869–044–00020–2)	45.00	Jan. 1, 2001
2000–End	(869–044–00021–1)	43.00	Jan. 1, 2001
8	(869–044–00022–9)	54.00	Jan. 1, 2001
9 Parts:			
1–199	(869–044–00023–7)	55.00	Jan. 1, 2001
200–End	(869–044–00024–5)	53.00	Jan. 1, 2001
10 Parts:			
1–50	(869–044–00025–3)	55.00	Jan. 1, 2001
51–199	(869–044–00026–1)	52.00	Jan. 1, 2001
200–499	(869–044–00027–0)	53.00	Jan. 1, 2001
500–End	(869–044–00028–8)	55.00	Jan. 1, 2001
11	(869–044–00029–6)	31.00	Jan. 1, 2001
12 Parts:			
1–199	(869–044–00030–0)	27.00	Jan. 1, 2001
200–219	(869–044–00031–8)	32.00	Jan. 1, 2001
220–299	(869–044–00032–6)	54.00	Jan. 1, 2001
300–499	(869–044–00033–4)	41.00	Jan. 1, 2001
500–599	(869–044–00034–2)	38.00	Jan. 1, 2001
600–End	(869–044–00035–1)	57.00	Jan. 1, 2001
13	(869–044–00036–9)	45.00	Jan. 1, 2001
14 Parts:			
1–59	(869–044–00037–7)	57.00	Jan. 1, 2001
60–139	(869–044–00038–5)	55.00	Jan. 1, 2001
140–199	(869–044–00039–3)	26.00	Jan. 1, 2001
200–1199	(869–044–00040–7)	44.00	Jan. 1, 2001
1200–End	(869–044–00041–5)	37.00	Jan. 1, 2001
15 Parts:			
0–299	(869–044–00042–3)	36.00	Jan. 1, 2001
300–799	(869–044–00043–1)	54.00	Jan. 1, 2001
800–End	(869–044–00044–0)	40.00	Jan. 1, 2001
16 Parts:			
0–999	(869–044–00045–8)	45.00	Jan. 1, 2001
1000–End	(869–044–00046–6)	53.00	Jan. 1, 2001
17 Parts:			
1–199	(869–044–00048–2)	45.00	Apr. 1, 2001
200–239	(869–044–00049–1)	51.00	Apr. 1, 2001
240–End	(869–044–00050–4)	55.00	Apr. 1, 2001
18 Parts:			
1–399	(869–044–00051–2)	56.00	Apr. 1, 2001
400–End	(869–044–00052–1)	23.00	Apr. 1, 2001
19 Parts:			
1–140	(869–044–00053–9)	54.00	Apr. 1, 2001
141–199	(869–044–00054–7)	53.00	Apr. 1, 2001
200–End	(869–044–00055–5)	20.00	[5] Apr. 1, 2001
20 Parts:			
1–399	(869–044–00056–3)	45.00	Apr. 1, 2001
400–499	(869–044–00057–1)	57.00	Apr. 1, 2001
500–End	(869–044–00058–0)	57.00	Apr. 1, 2001
21 Parts:			
1–99	(869–044–00059–8)	37.00	Apr. 1, 2001
100–169	(869–044–00060–1)	44.00	Apr. 1, 2001
170–199	(869–044–00061–0)	45.00	Apr. 1, 2001
200–299	(869–044–00062–8)	16.00	Apr. 1, 2001
300–499	(869–044–00063–6)	27.00	Apr. 1, 2001
500–599	(869–044–00064–4)	44.00	Apr. 1, 2001
600–799	(869–044–00065–2)	15.00	Apr. 1, 2001
800–1299	(869–044–00066–1)	52.00	Apr. 1, 2001
1300–End	(869–044–00067–9)	20.00	Apr. 1, 2001
22 Parts:			
1–299	(869–044–00068–7)	56.00	Apr. 1, 2001
300–End	(869–044–00069–5)	42.00	Apr. 1, 2001
23	(869–044–00070–9)	40.00	Apr. 1, 2001
24 Parts:			
0–199	(869–044–00071–7)	53.00	Apr. 1, 2001
200–499	(869–044–00072–5)	45.00	Apr. 1, 2001
500–699	(869–044–00073–3)	27.00	Apr. 1, 2001
700–1699	(869–044–00074–1)	55.00	Apr. 1, 2001
1700–End	(869–044–00075–0)	28.00	Apr. 1, 2001
25	(869–044–00076–8)	57.00	Apr. 1, 2001
26 Parts:			
§§ 1.0-1–1.60	(869–044–00077–6)	43.00	Apr. 1, 2001
§§ 1.61–1.169	(869–044–00078–4)	57.00	Apr. 1, 2001
§§ 1.170–1.300	(869–044–00079–2)	52.00	Apr. 1, 2001
§§ 1.301–1.400	(869–044–00080–6)	41.00	Apr. 1, 2001
§§ 1.401–1.440	(869–042–00081–1)	47.00	Apr. 1, 2000
§§ 1.441-1.500	(869-044-00082-2)	45.00	Apr. 1, 2001
§§ 1.501–1.640	(869–044–00083–1)	44.00	Apr. 1, 2001
§§ 1.641–1.850	(869–044–00084–9)	53.00	Apr. 1, 2001
§§ 1.851–1.907	(869–044–00085–7)	54.00	Apr. 1, 2001
§§ 1.908–1.1000	(869–044–00086–5)	53.00	Apr. 1, 2001
§§ 1.1001–1.1400	(869–044–00087–3)	55.00	Apr. 1, 2001
§§ 1.1401–End	(869–044–00088–1)	58.00	Apr. 1, 2001
2–29	(869–044–00089–0)	54.00	Apr. 1, 2001
30–39	(869–044–00090–3)	37.00	Apr. 1, 2001
40–49	(869–044–00091–1)	25.00	Apr. 1, 2001
50–299	(869–044–00092–0)	23.00	Apr. 1, 2001
300–499	(869–044–00093–8)	54.00	Apr. 1, 2001
500–599	(869–044–00094–6)	12.00	[5] Apr. 1, 2001
600–End	(869–044–00095–4)	15.00	Apr. 1, 2001
27 Parts:			
1–199	(869–044–00096–2)	57.00	Apr. 1, 2001

Title	Stock Number	Price	Revision Date
200–End	(869–044–00097–1)	26.00	Apr. 1, 2001
28 Parts:			
0-42	(869–044–00098–9)	55.00	July 1, 2001
43-end	(869-044-00099-7)	50.00	July 1, 2001
29 Parts:			
*0–99	(869–044–00100–4)	45.00	July 1, 2001
100–499	(869–044–00101–2)	14.00	[6]July 1, 2001
500–899	(869–044–00102–1)	47.00	[6]July 1, 2001
900–1899	(869–044–00103–9)	33.00	July 1, 2001
1900–1910 (§§ 1900 to 1910.999)	(869–044–00104–7)	55.00	July 1, 2001
1910 (§§ 1910.1000 to end)	(869–044–00105–5)	42.00	July 1, 2001
1911–1925	(869–044–00106–3)	20.00	[6]July 1, 2001
1926	(869–044–00107–1)	45.00	July 1, 2001
1927–End	(869–044–00108–0)	55.00	July 1, 2001
30 Parts:			
1–199	(869–044–00109–8)	52.00	July 1, 2001
200–699	(869–044–00110–1)	45.00	July 1, 2001
700–End	(869–044–00111–7)	53.00	July 1, 2001
31 Parts:			
0–199	(869–044–00112–8)	32.00	July 1, 2001
200–End	(869–044–00113–6)	56.00	July 1, 2001
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–044–00114–4)	51.00	[6]July 1, 2001
191–399	(869–044–00115–2)	57.00	July 1, 2001
400–629	(869–044–00116–8)	35.00	[6]July 1, 2001
630–699	(869–044–00117–9)	34.00	July 1, 2001
700–799	(869–044–00118–7)	42.00	July 1, 2001
800–End	(869–044–00119–5)	44.00	July 1, 2001
33 Parts:			
1–124	(869–044–00120–9)	45.00	July 1, 2001
125–199	(869–044–00121–7)	55.00	July 1, 2001
200–End	(869–044–00122–5)	45.00	July 1, 2001
34 Parts:			
1–299	(869–044–00123–3)	43.00	July 1, 2001
300–399	(869–044–00124–1)	40.00	July 1, 2001
400–End	(869–044–00125–0)	56.00	July 1, 2001
35	(869–044–00126–8)	10.00	[6]July 1, 2001
36 Parts			
1–199	(869–044–00127–6)	34.00	July 1, 2001
200–299	(869–044–00128–4)	33.00	July 1, 2001
300–End	(869–044–00129–2)	55.00	July 1, 2001
37	(869–044–00130–6)	45.00	July 1, 2001
38 Parts:			
0–17	(869–044–00131–4)	53.00	July 1, 2001
18–End	(869–044–00132–2)	55.00	July 1, 2001
39	(869–042–00133–8)	28.00	July 1, 2000
40 Parts:			
1–49	(869–044–00134–9)	54.00	July 1, 2001
50–51	(869–044–00135–7)	38.00	July 1, 2001
52 (52.01–52.1018)	(869–044–00136–5)	50.00	July 1, 2001
52 (52.1019–End)	(869–044–00137–3)	55.00	July 1, 2001
53–59	(869–044–00138–1)	28.00	July 1, 2001
60 (60.1–End)	(869–044–00139–0)	53.00	July 1, 2001
60 (Apps)	(869–044–00140–3)	51.00	July 1, 2001
61–62	(869–044–00141–1)	35.00	July 1, 2001
63 (63.1–63.599)	(869–044–00142–0)	53.00	July 1, 2001
63 (63.600–63.1199)	(869–044–00143–8)	44.00	July 1, 2001
63 (63.1200-End)	(869–044–00144–6)	56.00	July 1, 2001
64–71	(869–044–00145–4)	26.00	July 1, 2001
72–80	(869–044–00146–2)	55.00	July 1, 2001
81–85	(869–044–00147–1)	45.00	July 1, 2001
86 (86.1–86.599–99)	(869–044–00148–9)	52.00	July 1, 2001
86 (86.600–1–End)	(869–044–00149–7)	45.00	July 1, 2001
87–99	(869–044–00150–1)	54.00	July 1, 2001
100–135	(869–044–00151–9)	38.00	July 1, 2001
136–149	(869–044–00152–7)	55.00	July 1, 2001
150–189	(869–044–00153–5)	52.00	July 1, 2001
190–259	(869–044–00154–3)	34.00	July 1, 2001
260–265	(869–044–00155–1)	45.00	July 1, 2001
266–299	(869–044–00156–0)	45.00	July 1, 2001
300–399	(869–044–00157–8)	41.00	July 1, 2001
400–424	(869–044–00158–6)	51.00	July 1, 2001
425–699	(869–044–00159–4)	55.00	July 1, 2001
700–789	(869–044–00160–8)	55.00	July 1, 2001
790–End	(869–044–00161–6)	44.00	July 1, 2001
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–044–00162–4)	22.00	July 1, 2001
101	(869–044–00163–2)	45.00	July 1, 2001
102–200	(869–044–00164–1)	33.00	July 1, 2001
201–End	(869–044–00165–9)	24.00	July 1, 2001
42 Parts:			
1–399	(869–042–00162–1)	53.00	Oct. 1, 2000
400–429	(869–042–00163–0)	55.00	Oct. 1, 2000
430–End	(869–042–00164–8)	57.00	Oct. 1, 2000
43 Parts:			
1–999	(869–042–00165–6)	45.00	Oct. 1, 2000
1000–end	(869–042–00166–4)	55.00	Oct. 1, 2000
44	(869–042–00167–2)	45.00	Oct. 1, 2000
45 Parts:			
1–199	(869–042–00168–1)	50.00	Oct. 1, 2000
200–499	(869–042–00169–9)	29.00	Oct. 1, 2000
500–1199	(869–042–00170–2)	45.00	Oct. 1, 2000
1200–End	(869–042–00171–1)	54.00	Oct. 1, 2000
46 Parts:			
1–40	(869–042–00172–9)	42.00	Oct. 1, 2000
41–69	(869–042–00173–7)	34.00	Oct. 1, 2000
70–89	(869–042–00174–5)	13.00	Oct. 1, 2000
90–139	(869–042–00175–3)	41.00	Oct. 1, 2000
140–155	(869–042–00176–1)	23.00	Oct. 1, 2000
156–165	(869–042–00177–0)	31.00	Oct. 1, 2000
166–199	(869–042–00178–8)	42.00	Oct. 1, 2000
200–499	(869–042–00179–6)	36.00	Oct. 1, 2000
500–End	(869–044–00184–5)	23.00	Oct. 1, 2001
47 Parts:			
0–19	(869–042–00181–8)	54.00	Oct. 1, 2000
20–39	(869–042–00182–6)	41.00	Oct. 1, 2000
40–69	(869–042–00183–4)	41.00	Oct. 1, 2000
70–79	(869–042–00184–2)	54.00	Oct. 1, 2000
80–End	(869–042–00185–1)	54.00	Oct. 1, 2000
48 Chapters:			
1 (Parts 1–51)	(869–042–00186–9)	57.00	Oct. 1, 2000
1 (Parts 52–99)	(869–042–00187–7)	45.00	Oct. 1, 2000
2 (Parts 201–299)	(869–042–00188–5)	53.00	Oct. 1, 2000
3–6	(869–042–00189–3)	40.00	Oct. 1, 2000
7–14	(869–042–00190–7)	52.00	Oct. 1, 2000
15–28	(869–042–00191–5)	53.00	Oct. 1, 2000
29–End	(869–042–00192–3)	38.00	Oct. 1, 2000
49 Parts:			
1–99	(869–042–00193–1)	53.00	Oct. 1, 2000
100–185	(869–042–00194–0)	57.00	Oct. 1, 2000
186–199	(869–042–00195–8)	17.00	Oct. 1, 2000
200–399	(869–042–00196–6)	57.00	Oct. 1, 2000
400–999	(869–042–00197–4)	58.00	Oct. 1, 2000
1000–1199	(869–042–00198–2)	25.00	Oct. 1, 2000

Title	Stock Number	Price	Revision Date
1200–End	(869–042–00199–1)	21.00	Oct. 1, 2000
50 Parts:			
1–199	(869–042–00200–8)	55.00	Oct. 1, 2000
200–599	(869–042–00201–6)	35.00	Oct. 1, 2000
600–End	(869–042–00202–4)	55.00	Oct. 1, 2000
CFR Index and Findings Aids	(869–044–00047–4)	56.00	Jan. 1, 2001
Complete 2000 CFR set		1,094.00	2000
Microfiche CFR Edition:			
Subscription (mailed as issued)		298.00	2000
Individual copies		2.00	2000
Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

[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, 2000, through January 1, 2001. The CFR volume issued as of January 1, 2000 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 July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained..