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DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE–RM/TP–99–500]

RIN 1904–AB04

Energy Conservation Program for Consumer Products: Test Procedure for Dishwashers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (We, DOE, or the Department) today amends its test procedure for dishwashers. This amendment revises the number of cycles per year used for calculating the estimated annual operating cost, changes the definitions of compact and standard models, and modifies some of the testing specifications to improve testing repeatability. These amendments to the test procedure do not alter the minimum energy conservation standards currently in effect for dishwashers.

EFFECTIVE DATES: This rule is effective June 17, 2002. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of June 17, 2002.

ADDRESSES: You can read copies of all materials related to this rulemaking in the Freedom of Information Reading Room (Room 1E–190) at the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Barbara Twigg, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–41, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–8714, email: *barbara.twigg@ee.doe.gov;* or Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507, email: *eugene.margolis@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: This final rule incorporates, by reference, the ''American National Standard, Household Electric Dishwashers, ANSI/AHAM DW–1–1992'' published by the Association of Home Appliance Manufacturers (AHAM). You may obtain copies of the referenced standard AHAM DW–1 from the Association of Home Appliance Manufacturers, 1111 19th Street, NW., Suite 402, Washington, DC 20036, (202) 872–5955. Information regarding this rulemaking is also available on the Office of Codes and Standards web site at the following address: *http://www.eren.doe.gov/buildings/codes__standards/index.htm.*

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I. Introduction

A. Authority

Part B of Title III of the Energy Policy and Conservation Act, as amended (EPCA or Act), establishes the Energy Conservation Program for Consumer Products Other Than Automobiles (Program). The products currently subject to this Program (''covered products'') include residential dishwashers, the subject of today's final rule.

Under the Act, the Program consists of three parts: testing, labeling, and the Federal energy conservation standards. The Department, in consultation with the National Institute of Standards and Technology (NIST), must amend or establish test procedures as appropriate for each of the covered products. Section 323 of EPCA, 42 U.S.C. 6293. The purpose of the test procedures is to measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use. The test procedure must not be unduly burdensome to conduct. Section 323(b)(3) of EPCA, 42 U.S.C. 6293(b)(3).

If a test procedure is amended, DOE is required to determine to what extent, if any, the new test procedure would alter the measured energy efficiency or measured energy use of any covered product as determined under the existing test procedure. If DOE determines that an amended test procedure would alter the measured efficiency or measured energy use of a covered product, DOE is required to amend the applicable energy conservation standard accordingly. In determining the amended energy conservation standard, DOE is required to measure the energy efficiency or energy use of a representative sample of covered products that minimally comply with the existing standard. The average efficiency of these representative samples, tested using the amended test procedure, constitutes the amended standard. Section 323(e)(1) of EPCA, 42 U.S.C. 6293(e)(1). DOE has determined that today's amended test procedure does not alter the measured efficiency or measured energy use of dishwashers.

Beginning 180 days after a test procedure for a product is prescribed, no manufacturer, distributor, retailer, or private labeler may make representations with respect to the energy use, efficiency, or cost of energy consumed by such products, except as reflected in tests conducted according to the DOE procedure. Section 323(c)(2) of EPCA, 42 U.S.C. 6293(c)(2).

B. Background

On September 28, 1999, the Department published a Notice of Proposed Rulemaking (proposed rule) (64 FR 52248) that proposed a new test procedure for residential dishwashers. The key technological development that triggered the need for revision was the introduction of adaptive control or soil-sensing models. Industry and government tests indicated that the existing test method using only clean dishes did not produce results that would accurately reflect the energy consumed by these machines in a real use environment. The Association of Home Appliance Manufacturers (AHAM) proposed a new approach for testing the soil-sensing models using a formula to weight and average the energy consumption of the minimum and maximum sensor normal cycles. We adapted that method and presented it for comment in the September 28, 1999, proposed rule, along with several other issues such as the definitions for compact and standard models, a revision in the average number of times dishwashers are used each year, and some new specifications for improving testing repeatability. We held a public workshop on November 2, 1999, to discuss the proposed changes, with particular focus on the new method for testing soil-sensing or adaptive control models.

However, because of the questions raised at the workshop and the need expressed by industry to gather additional data and explore alternatives to the proposed method for testing soil-sensing models, we reopened the comment period and extended the deadline for comments to February 14, 2000. Again, comments raised problems with the proposed method. Stakeholders questioned the data supporting the selection of the percentages used to reflect the relative amount of soil encountered by soil-sensing dishwashers in typical loads. (Natural Resources Defense Council (NRDC), No. 4 at 2, and Schleede, No. 8 at 3). Others cited insufficient knowledge as to how different machines would actually react to varying soil loads, that is, what length cycle would be triggered under different wash conditions. (Oregon Office of Energy (OOE), No. 9 at 1). One manufacturer commented that the original AHAM method did not do an adequate job of reflecting the performance of their machines' pressure-based, soil-sensing technology. (Whirlpool, No. 6 at 6).

AHAM concluded that because of significant changes and variations in soil-sensing technology, it was premature to publish a new test method for those models at this time. AHAM cited the need for additional study by industry before their members could propose a new test procedure which would accurately test the response and performance of machines using a variety of soil-sensing technologies. They suggested that we divide the rulemaking into two parts with the following course of action: first, we should proceed to finalize the proposed modifications to improve testing reliability, revise the definitions for compact and standard models, and update the number of use cycles per year to reflect current consumer use patterns. However, AHAM recommended that we should wait to publish a new, comprehensive method for testing soil-sensing models until industry completed additional testing and proposed a new test procedure. (AHAM No. 12 at 8).

Following these comments, DOE further investigated the variety of soil-sensing technologies in the market. We determined that additional data and research were required before an adequate test procedure for all soil-sensing models could be devised. As a result, we agreed that it was premature to finalize a rulemaking for those models at this time. We also agreed that we should not wait to finalize the other proposed changes—the testing specifications, the definitions for compact and standard models, and the reduction in the average number of use cycles per year. These changes are needed to improve the reliability of the current test procedure, and to update the inputs for calculating the estimated operating cost of all models. Therefore, we are deferring the proposal of a new method for testing soil-sensing machines until NIST, industry, and other stakeholders complete the studies necessary for enacting a definitive test procedure. This final rule substantially retains the original test procedure, but adds new testing specifications, definitions, and a new number for average use cycles per year. We will continue to work with industry after this final rulemaking is enacted to develop a test procedure that accurately reflects the cycle performance of the variety of technologies used by soil-sensing machines. We anticipate that the final rule addressing soil-sensing dishwashers will be completed in 2003.

C. Summary of the Test Procedure Revisions

The following are the major revisions to the dishwasher test procedure included in this final rule:

1. Update the test procedure to reflect changes in consumer practices:

- Reduce the representative average number of use cycles per year to 264; and
- Base the definitions of compact and standard dishwashers on place-setting capacity.

2. Improve testing repeatability:

- Tighten the tolerance for ambient temperature;
- Add more detail to test chamber installation requirements.; and
- Add an instruction for manufacturers to run a conditioning cycle prior to the test.

II. Discussion

A. General Discussion

While this final rule retains many of the improvements to the test procedure for measuring the energy use of dishwashers presented in the September 28, 1999, proposed rule, it also includes important changes. Most significantly, we are withdrawing the new method described in the proposed rule for testing adaptive control dishwashers. We are retaining the original method currently in effect for testing conventional and adaptive control dishwashers until we adopt, with the assistance of the dishwasher industry and other stakeholders, a new test method that will accurately test machines using a variety of sensor technologies. Manufacturers of soil-sensing machines will continue to record the energy consumption of those models by measuring the energy used when the dishwasher runs the specified load of clean dishes through the normal cycle.

Although the Department recognizes the importance of determining a test method which will accurately reflect the energy performance of soil-sensing models under real life conditions, it became clear from all comments submitted during the Notice of Proposed Rulemaking process that additional research was necessary. Both industry and environmental advocates shared concerns that there was insufficient understanding of how the machines performed under ''typical'' soil conditions, and what those ''typical'' soil conditions actually were. The Natural Resources Defense Council (NRDC), for example, urged the Department not to ''make changes in the test procedure unless they are supported by data.'' (NRDC No. 4 at 1). AHAM stressed that ''there have been significant changes in technology with regard to soil-sensing dishwashers and there is still additional information needed on the usage of these units.'' (AHAM No. 12 at 8).

The Department at first considered adopting an interim strategy for

improving, at least partially, the accuracy of the energy factors derived from tests of soil-sensing models using only clean dishes. One proposal was imposing a maximum cap on the energy factor that could be claimed from using the conventional test method. However, the lack of reliable, statistical information in this area was one issue of significant concern during the workshop and comment periods: how to ascertain, with accuracy, the typical soil load, and then understand how a variety of soil-sensing models will function in response to that load. Therefore, rather than focusing time, resources, and research on an interim proposal, we decided to concentrate on the development of a permanent test method. We have underway, for example, a research project to evaluate available information on consumer behavior regarding the soil levels of typical dishwasher loads. This study will assess the validity and adequacy of existing consumer behavior data, and suggest a means of relating the different consumer usage patterns with amounts and characteristics of food soils. This information will point the direction toward translating that average soil load into a repeatable test load for testing dishwashers with adaptive controls and soil sensors. It appears that using a repeatable soil load may be the only solution for accurately testing the energy and water consumption of a variety of adaptive control dishwashers.

Although there are several existing soil tests for dishwashers, both national (such as the AHAM DW–1) and international, none of these currently satisfy our requirements for designing a normal test that is representative of the average soil load introduced by consumers. Since these methods test for both cleaning performance and energy consumption, they feature a very challenging soil load designed to be an extreme test of the dishwasher. However, it may be possible to use a reduced number of soiled dishes from one or a combination of these methods to represent normal soiling, recognizing the importance of test repeatability and the need to minimize test burden. We are exploring this possibility in conjunction with consumer use data and expect to present for comment a new test method for soil-sensing dishwashers in a proposed rule to be issued in 2002.

B. Changes in Consumer Practices—Representative Average Dishwasher Use

In 1983, DOE amended the dishwasher test procedure to reduce the representative average use from 416 cycles per year to 322 cycles per year based on Proctor and Gamble (P&G) surveys of consumer use conducted prior to 1982. For this rulemaking, in looking for more recent data, the Department learned from industry that the Soap and Detergent Association (SDA) was now the source to be contacted for survey data obtained by detergent manufacturers. By averaging the SDA data for available years between 1985 and 1995, as discussed in the proposed rule, we calculated 264 as the average number of dishwasher use cycles per year.

There were some issues raised at the public workshop regarding the SDA data. Energy Market & Policy Analysis (Schleede) asked about the statistical validity of the survey. (Schleede, Transcript at 19). The Oregon Office of Energy asked as to whether the survey considered such issues as family size. (OOE, Transcript at 23). Northwest Power Planning Council (NPPC) asked about household income and sample size of the data. (NPPC, Transcript at 29). At the workshop, NIST provided additional information regarding the detergent manufacturers' survey method, stating, ''The data below comes from our study contacting nationally representative panelists from the standpoint of geography, family size, age of homemaker, gender, income, and employment status. The data are obtained through an independent, outside research organization. This survey is run annually and has a base size of 1,500 to 1,800 respondents.'' AHAM commented that the SDA data should be considered as an unbiased source of information because ''the manufacturers of dishwasher detergent have, if you will, a vested interest in making sure that the data is absolutely as accurate as they can do because they use it for inventory tracking, and to them it is extremely important to know exactly how much dishwasher detergent is going to be used.'' (AHAM, Transcript at 28). The Department believes the SDA data is the best there is regarding dishwasher usage in that it is based on the detergent industry's needs.

AHAM agreed with the Department's decision to use 264 cycles per year as the average figure for dishwasher use. (AHAM, Transcript at 21). Stephens thought the number could be higher because of an upswing in the SDA data for 1995–1996 and believed the data might extrapolate to a Pacific Northwest region 1998–1999 survey which tabulated 281 cycles per year. Stephens recommended that we wait for 1997–1998 detergent manufacturer data. (OOE, No. 9 at 2). Energy Market & Policy Analysis thought the 264 number was too high citing EIA's November 1999 Residential Energy Consumption Survey as a source for consumer use data. (Schleede, No. 10 at 1). He stated that ''Data in the recently released EIA report indicates that your (DOE's) estimate of 264 ''cycles'' is excessive and that the correct number is approximately 220 cycles (or less).'' (Schleede, No. 10 at 2).

The Department notes that survey data on the annual usage of dishwashers are likely to vary from year to year. Rather than base its number on any particular one year, the Department prefers to take an average over several years in order to smooth out year to year variations. Regarding the use of the EIA data, NIST reviewed the EIA report which had surveyed 8,000 respondents nationwide and collected data on how often households use automatic dishwashers in an average week. The data, however, do not present a firm, clear figure for the number of dishwasher cycles per year because of the way the information was collected. In the report, the data are provided in bands categorizing dishwasher use per week along with the percentage of responses for each band (less than 4 times per week, 4 to 6 times per week, and at least once per day). In order to use the EIA data, DOE somehow would have to annualize the data or abandon the existing methodology. Neither the EIA data nor the option of abandoning the existing methodology were within the scope of the proposed rule. Rather than reopening the comment period or reproposing the rule for public comment, DOE has decided to continue studying the EIA data with a view toward possibly including it in the forthcoming notice of proposed rulemaking that would cover a test procedure for adaptive control models. In DOE's view, there is ample support in the record for the proposed figure of 264 cycles per year, and the improvement in accuracy that might come from use of the EIA data is not worth the delay in bringing this rulemaking to a conclusion.

C. Improving Testing Repeatability

In the proposed rule, the Department discussed several changes to clarify the existing test procedure and improve its repeatability when multiple tests are conducted. Although the manufacturers agreed that such changes as tightening the tolerances for ambient temperature testing would improve reproducibility, they expressed concern over one item: the new definition for ''truncated normal cycle.'' AHAM stated that changing the word ''interrupted'' to ''preset'' would unnecessarily increase test burden by requiring additional test

runs. Many manufacturers were measuring the energy consumption at the end of the wash cycle, before the power dry, and recording that value as the machine energy consumption for the truncated normal cycle. The cycle was not terminated. The machine then was allowed to complete the power dry, and the energy consumption was measured and recorded as the value of the machine energy consumption for the normal cycle. The current test procedure (sections 2.6.1 and 2.6.2) calls for the user to average the water consumption for the normal and truncated normal cycles. However, the proposal in the proposed rule (section 1.10) called for a separate test cycle to be run for the truncated normal cycle in order to measure the amount of energy consumed during the air dry portion of the cycle. In the public hearing discussions the manufacturers claimed that the energy consumed during the air dry sequence was negligible, regardless of whether the action was to open a vent mechanically and let drying occur by natural convection, or whether mechanical drying was used to assist the air dry. After tests by NIST confirmed the claim that the energy consumption during the air dry sequence was indeed negligible, DOE concluded that a separate cycle need not be run. Under this final rule, manufacturers may continue to extract the normal and truncated normal energy consumption from a single test run.

Thus, the original definition will be retained and reads: ''Truncated Normal Cycle'' means the normal cycle interrupted to eliminate the power-dry feature after the termination of the last rinse operation.

D. New Definitions for Compact and Standard Models

As discussed in the proposed rule, we are changing the definitions for determining compact and standard models. The new definitions of ''compact dishwasher'' and ''standard dishwasher'' use place-setting capacity instead of the measurement of the width of the unit.

III. Procedural Requirements

A. Review Under the National Environmental Policy Act of 1969

In this rule, the Department finalizes amendments to test procedures that may be used to implement future energy conservation standards for dishwashers. The Department has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.* The rule is covered by Categorical Exclusion A5, for rulemakings that interpret or amend an existing rule without changing the environmental effect, as set forth in the Department's NEPA regulations in appendix A to subpart D, 10 CFR part 1021. This final rule will not affect the quality or distribution of energy usage and, therefore, will not result in any environmental impacts. Accordingly, neither an environmental impact statement nor an environmental assessment is required.

B. Review Under Executive Order 12866, ''Regulatory Planning and Review''

Today's final rule is not a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review.'' 58 FR 51735 (October 4, 1993). Accordingly, today's action is not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that an agency prepare an initial regulatory flexibility analysis for any rule, for which a general notice of proposed rulemaking is required, that would have a significant economic effect on small entities unless the agency certifies that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605.

Today's rule prescribes test procedures that will be used to test compliance with energy conservation standards. The rule affects dishwasher test procedures and would not have a significant economic impact, but rather would provide common testing methods. Therefore DOE certifies that today's rule would not have a ''significant economic impact on a substantial number of small entities,'' and the preparation of a regulatory flexibility analysis is not warranted.

D. ''Takings'' Assessment Review

DOE has determined pursuant to Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), that this regulation would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

E. Review Under Executive Order 13132, ''Federalism''

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among various levels of Government. If there are substantial direct effects, then this Executive Order requires preparation of a Federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

The rule published today would not regulate or otherwise affect the States. Accordingly, DOE has determined that preparation of a Federalism assessment is unnecessary.

F. Review Under the Paperwork Reduction Act

No new information or record keeping requirements are imposed by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

G. Review Under Executive Order 12988, ''Civil Justice Reform''

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by sections 3(a) and 3(b) of Executive Order 12988, it specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in

sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE reviewed today's final rule under the standards of section 3 of the Executive Order and determined that, to the extent permitted by law, the final regulations meet the relevant standards.

H. Review Under the Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') requires that the Department prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. The budgetary impact statement must include: (i) Identification of the Federal law under which the rule is promulgated; (ii) a qualitative and quantitative assessment of anticipated costs and benefits of the Federal mandate and an analysis of the extent to which such costs to state, local, and tribal governments may be paid with Federal financial assistance; (iii) if feasible, estimates of the future compliance costs and of any disproportionate budgetary effects the mandate has on particular regions, communities, non-Federal units of government, or sectors of the economy; (iv) if feasible, estimates of the effect on the national economy; and (v) a description of the Department's prior consultation with elected representatives of state, local, and tribal governments and a summary and evaluation of the comments and concerns presented.

The Department has determined that the action today does not include a Federal mandate that may result in estimated costs of $100 million or more to State, local or to tribal governments in the aggregate or to the private sector. Therefore, the requirements of Sections 203 and 204 of the Unfunded Mandates Act do not apply to this action.

I. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. No. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. Today's final rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

J. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to the promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Today's final rule will not have a significant adverse effect on the supply, distribution, or the use of energy, and, therefore, is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of today's final rule prior to the effective date set forth at the outset of this notice. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 801(2).

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances, Incorporation by reference.

Issued in Washington, DC, on December 12, 2001.

David K. Garman,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, part 430 of Chapter II of Title 10, Code of Federal Regulations, is amended, as set forth below.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

2. Section 430.22 is amended in Subpart B by revising paragraph (b)(1) introductory text and adding paragraph (b)(7) to read as follows:

§ 430.22 Reference Sources.

* * * * *

(b) * * * (1) American National Standards Institute (ANSI). The ANSI standards listed in this paragraph may be obtained from the American National Standards Institute, 25 W. 43rd Street, 4th Floor, New York, NY 10036, (212) 642–4900.

* * * * *

(7) Association of Home Appliance Manufacturers, 1111 19th Street, NW., Suite 402, Washington, DC 20036, (202) 872–5955, ''American National Standard, Household Electric Dishwashers, ANSI/AHAM DW–1–1992.''

* * * * *

3. Section 430.23 of subpart B is amended by revising the section heading, and paragraph (c) to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(c) *Dishwashers.* (1) The estimated annual operating cost (EAOC) for dishwashers must be rounded to the nearest dollar per year and is defined as follows:

(i) When cold water (50°F) is used,

(A) For dishwashers having a truncated normal cycle as defined in section 1.9 of appendix C to this subpart,

$$EAOC = N \times D_e \times (0.5 \times (M_n + M_t))$$

(B) for dishwashers not having a truncated normal cycle,

$$EAOC = N \times D_e \times M_n$$

where,

N = the representative average dishwasher use of 264 cycles per year,

D_e = the representative average unit cost of electrical energy in dollars per kilowatt-hour as provided by the Secretary,

M_n = the machine electrical energy consumption per-cycle for the normal cycle as defined in section 1.5 of appendix C to this subpart, in

kilowatt-hours and determined according to section 5.1 of appendix C to this subpart,

M_t = the machine electrical energy consumption per-cycle for the truncated normal cycle, in kilowatt-hours and determined according to section 5.1 of appendix C to this subpart.

(ii) When electrically-heated water (120°F or 140°F) is used,

(A) For dishwashers having a truncated normal cycle as defined in section 1.9 of appendix C to this subpart,

$EAOC = N \times D_e \times (0.5 \times (E_n + E_t))$

(B) For dishwashers not having a truncated normal cycle,

$EAOC = N \times D_e \times E_n \times$ where,

N and D_e are defined in paragraph (c)(1)(i) of this section,

E_n = the total electrical energy consumption per-cycle for the normal cycle as defined in section 1.5 of appendix C to this subpart, in kilowatt-hours and determined according to section 5.1 of appendix C to this subpart,

E_t = the total electrical energy consumption per-cycle for the truncated normal cycle, in kilowatt-hours and determined according to section 5.1 of appendix C to this subpart.

(iii) When gas-heated or oil-heated water is used,

(A) For dishwashers having a truncated normal cycle as defined in section 1.9 of appendix C to this subpart,

$EAOC = N \times ((D_e \times 0.5(M_n + M_t)) + (D_w \times 0.5(W_n + W_t)))$

(B) For dishwashers not having a truncated normal cycle,

$EAOC = N \times ((D_e \times M_n) + (D_w \times W_n))$

where,

N, D_e, M_n and M_t are defined in paragraph (c)(1)(i) of this section,

D_w = the representative average unit cost in dollars per Btu for gas or oil, as appropriate, as provided by the Secretary,

W_n = the total water energy consumption per cycle for the normal cycle as defined in section 1.5 of appendix C to this subpart, in Btus and determined according to section 5.3 of appendix C to this subpart,

W_t = the total water energy consumption per cycle for the truncated normal cycle as defined in section 1.9 of appendix C to this subpart, in Btus and determined according to section 5.3 of appendix C to this subpart.

(2) The energy factor for dishwashers, expressed in cycles per kilowatt-hour is defined as:

(i) For dishwashers not having a truncated normal cycle, as the reciprocal of the total energy consumption per cycle (E_n) for the normal cycle in kilowatt-hours per cycle, determined according to section 5.4 of appendix C to this subpart, and

(ii) For dishwashers having a truncated normal cycle, as the reciprocal of one-half the sum of

(A) The total energy consumption per cycle for the normal cycle (E_n), plus

(B) The total energy consumption per cycle for the truncated normal cycle (E), each in kilowatt-hours per cycle and determined according to section 5.4 of appendix C to this subpart.

(3) Other useful measures of energy consumption for dishwashers are those which the Secretary determines are likely to assist consumers in making purchasing decisions and which are derived from the application of appendix C to this subpart.

4. Appendix C to Subpart B of Part 430 is revised to read as follows:

Appendix C to Subpart B of Part 430–Uniform Test Method for Measuring the Energy Consumption of Dishwashers

1. Definitions

1.1 *AHAM* means the Association of Home Appliance Manufacturers.

1.2 *Compact dishwasher* means a dishwasher that has a capacity less than eight place settings plus six serving pieces as specified in ANSI/AHAM Standard DW–1 (see § 430.22).

1.3 *Cycle* means a sequence of operations of a dishwasher which performs a complete dishwashing function, and may include variations or combinations of washing, rinsing, and drying.

1.4 *Cycle type* means any complete sequence of operations capable of being preset on the dishwasher prior to the initiation of machine operation.

1.5 *Normal cycle* means the cycle type recommended by the manufacturer for completely washing a full load of normally soiled dishes including the power-dry feature.

1.6 *Power-dry feature* means the introduction of electrically generated heat into the washing chamber for the purpose of improving the drying performance of the dishwasher.

1.7 *Preconditioning cycle* means any cycle that includes a fill, circulation, and drain to ensure that the water lines and sump area of the pump are primed.

1.8 *Standard dishwasher* means a dishwasher that has a capacity equal to or greater than eight place settings plus six serving pieces as specified in ANSI/AHAM Standard DW–1 (see § 430.22).

1.9 *Truncated normal cycle* means the normal cycle interrupted to eliminate the power-dry feature after the termination of the last rinse operation.

1.10 *Water-heating dishwasher* means a dishwasher which is designed for heating cold inlet water (nominal 50°F) or a dishwasher for which the manufacturer recommends operation with a nominal inlet water temperature of 120°F, and may operate at either of these inlet water temperatures by providing internal water heating to above 120°F in at least one wash phase of the normal cycle.

2. Testing Conditions

2.1 *Installation Requirements.* Install the dishwasher according to the manufacturer's instructions. A standard or compact under-counter or under-sink dishwasher must be tested in a rectangular enclosure constructed of nominal 0.374 inch (9.5 mm) plywood painted black. The enclosure must consist of a top, a bottom, a back, and two sides. If the dishwasher includes a counter top as part of the appliance, omit the top of the enclosure. Bring the enclosure into the closest contact with the appliance that the configuration of the dishwasher will allow.

2.2 *Electrical energy supply.*

2.2.1 *Dishwashers that operate with an electrical supply of 115 volts.* Maintain the electrical supply to the dishwasher within two percent of 115 volts and within one percent of the nameplate frequency as specified by the manufacturer.

2.2.2 *Dishwashers that operate with an electrical supply of 240 volts.* Maintain the electrical supply to the dishwasher within two percent of 240 volts and within one percent of its nameplate frequency as specified by the manufacturer.

2.3 *Water temperature.* Measure the temperature of the water supplied to the dishwasher using a temperature measuring device as specified in section 3.1 of this Appendix.

2.3.1 *Dishwashers to be tested at a nominal 140°F inlet water temperature.* Maintain the water supply temperature at 140 ± 5°F.

2.3.2 *Dishwashers to be tested at a nominal 120°F inlet water temperature.* Maintain the water supply temperature at 120 ± 2°F.

2.3.3 Dishwashers to be tested at a nominal 50°F inlet water temperature. Maintain the water supply temperature at 50 ± 2 °F.

2.4 Water pressure. Using a water pressure gauge as specified in section 3.3 of this Appendix, maintain the pressure of the water supply at 35 ± 2.5 pounds per square inch gauge (psig).

2.5 Ambient and machine temperature. Using a temperature measuring device as specified in section 3.1 of this Appendix, maintain the room ambient air temperature at 75 ± 5 °F, and ensure that the dishwasher and the test load are at room ambient temperature at the start of each test cycle.

2.6 Load.

2.6.1 Dishwashers to be tested at a nominal inlet temperature of 140 °F. These units must be tested on the normal cycle without a test load.

2.6.2 Dishwashers to be tested at a nominal inlet temperature of 50 °F or 120 °F. These units must be tested on the normal cycle with a test load of eight place settings

plus six serving pieces, as specified in AHAM Standard DW–1. If the capacity of the dishwasher, as stated by the manufacturer, is less than eight place settings, then the test load must be the stated capacity.

2.7 Testing requirements. Provisions in this appendix pertaining to dishwashers that operate with a nominal inlet temperature of 50 °F or 120 °F apply only to water heating dishwashers.

2.8 Preconditioning requirements. Precondition the dishwasher by establishing the testing conditions set forth in sections 2.1 through 2.5 of this Appendix. Set the dishwasher to the preconditioning cycle as defined in section 1.7 of this Appendix, without using a test load, and initiate the cycle.

3. Instrumentation

3.1 Temperature measuring device. The device must have an error no greater than ± 1 °F over the range being measured.

3.2 Water meter. The water meter must have a resolution of no larger than 0.1 gallons and a maximum error no greater than 1.5 percent for all water flow rates from one to five gallons per minute and for all water temperatures encountered in the test cycle.

3.3 Water pressure gauge. The water pressure gauge must have a resolution of one pound per square inch (psi) and must have an error no greater than 5 percent of any measured value over the range of 35 ± 2.5 psig.

3.4 Watt-hour meter. The watt-hour meter must have a resolution of no greater than 1 watt-hour and a maximum error of no more than 1 percent of the measured value for any demand greater than 50 watts.

4. Test Cycle and Measurements

4.1 Test cycle. Perform a test cycle by establishing the testing conditions set forth in section 2 of this Appendix, setting the dishwasher to the cycle type to be tested, initiating the cycle, and allowing the cycle to proceed to completion.

4.2 Machine electrical energy consumption. Measure the electrical energy consumed by the machine during the test cycle, M, expressed in kilowatt-hours per cycle, using a water supply temperature as set forth in section 2.3 of this Appendix and using a watt-hour meter as specified in section 3.4 of this Appendix.

4.3 Water consumption. Measure the water consumption, V, specified as the number of gallons delivered to the dishwasher during the entire test cycle, using a water meter as specified in section 3.2 of this Appendix.

4.4 Report values. You must report the electrical energy consumption and water consumption values for the machine, as measured.

5. Calculation of derived results from test measurements

5.1 Machine energy consumption for electric dishwashers. Use the value recorded in section 4.2 of this Appendix as the per-cycle machine electrical energy consumption. Use the notation M_n for a test of the normal cycle or M_t for a test of the truncated normal cycle and express in kilowatt-hours per cycle.

5.2 Water energy consumption for dishwashers using electrically heated water. Determine the water energy consumption according to sections 5.2.1 and 5.2.2 of this Appendix. Use the notation W_n for a test of the normal cycle or W_t for a test of the truncated normal cycle, and express in kilowatt-hours per cycle. Note that electrically heated water was used.

5.2.1 Dishwashers that operate with a nominal 140 °F inlet water temperature, only. For each test cycle, calculate the water energy consumption, W, expressed in kilowatt-hours per cycle and defined as:

$$W = V \times T \times K$$

where,

V = reported water consumption in gallons per cycle, as measured in section 4.3 of this Appendix,
T = nominal water heater temperature rise = 90 °F,
K = specific heat of water in kilowatt-hours per gallon per degree Fahrenheit = 0.0024.

5.2.2 Dishwashers that operate with a nominal inlet water temperature of 120 °F. For each test cycle, calculate the water energy consumption, W, expressed in kilowatt-hours per cycle and defined as:

$$W = V \times T \times K$$

where,

V = reported water consumption in gallons per cycle, as measured in section 4.3 of this Appendix,
T = nominal water heater temperature rise = 70 °F,
K = specific heat of water in kilowatt-hours per gallon per degree Fahrenheit = 0.0024.

5.3 Water energy consumption per cycle using gas-heated or oil-heated water. Determine the water energy consumption for dishwashers according to sections 5.3.1 and 5.3.2 of this Appendix. Use the notation W_n for a test of the normal cycle or W_t for a test of the truncated normal cycle, and express in kilowatt-hours per cycle. Note that gas-heated or oil-heated water was used.

5.3.1 Dishwashers that operate with a nominal 140 °F inlet water temperature, only. For each test cycle, calculate the water energy consumption using gas-heated or oil-heated water, W, expressed in kilowatt-hours per cycle and defined as:

$$W = V \times T \times K/e$$

where,

V = reported water consumption in gallons per cycle, as measured in section 4.3 of this Appendix,
T = nominal water heater temperature rise = 90 °F,
K = specific heat of water in kilowatt-hours per gallon per degree Fahrenheit = 0.0024,
e = nominal gas or oil water heater recovery efficiency = 0.75.

5.3.2 Dishwashers that operate with a nominal inlet water temperature of 120 °F. For each test cycle, calculate the water energy consumption using gas heated or oil heated water, W, expressed in kilowatt-hours per cycle and defined as:

$$W = V \times T \times C/c$$

where,

V is measured in section 4.3 of this Appendix,
T = nominal water heater temperature rise = 70 °F,
K = specific heat of water in kilowatt-hours per gallon per degree Fahrenheit = 0.0024,
e = nominal gas or oil water heater recovery efficiency = 0.75.

5.4 Total energy consumption per cycle. For each test cycle the total per-cycle energy consumption, E, is defined as the sum of the per-cycle machine electrical energy consumption, M, and the per-cycle water energy consumption, W, in kilowatt-hours per cycle. For the cycle type, M is calculated according to section 5.1 of this Appendix and W is calculated according to section 5.2 of this Appendix for electrically heated water, or according to section 5.3 for gas or oil heated water. Use the notation E_n for a test of the normal cycle or E_t for a test of the truncated normal cycle, and express in kilowatt-hours per cycle.

5. Section 430.32 of Subpart C is amended by revising paragraph (f) to read as follows:

§ 430.32 Energy and water conservation standards and effective dates.

* * * * *

(f) Dishwashers. The energy factor of dishwashers manufactured on or after May 14, 1994, must not be less than:

Product class	Energy factor (cycles/kWh)
(1) Compact Dishwasher (capacity less than eight place settings plus six serving pieces as specified in ANSI/AHAM Standard DW–1 (see section 430.22))	0.62
(2) Standard Dishwasher (capacity equal to or greater than eight place settings plus six serving pieces as specified in ANSI/AHAM Standard DW–1(see section 430.22))	0.46

* * * * *

[FR Doc. 01–30980 Filed 12–17–01; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1773

RIN 2550–AA21

Flood Insurance

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Final Regulation.

SUMMARY: The Office of Federal Housing Enterprise Oversight (OFHEO) is issuing a final regulation to clarify and to codify OFHEO's authority and ongoing responsibility to oversee and enforce the statutory requirements affecting the operations of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation under the National Flood Insurance Reform Act of 1994.

EFFECTIVE DATE: The effective date of this regulation is December 18, 2001.

FOR FURTHER INFORMATION CONTACT: Luis E. Guzman, Counsel, telephone (202) 414–3832; David A. Felt, Associate General Counsel, telephone (202) 414–3750 (not toll free numbers), Office of General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Fourth Floor, Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Statutory Framework

Title XIII of the Housing and Community Development Act of 1992, Public Law 102–550, entitled the ''Federal Housing Enterprises Financial Safety and Soundness Act of 1992'' (the ''Act''),[1] established the Office of Federal Housing Enterprise Oversight (''OFHEO'') as an independent office within the Department of Housing and Urban Development. OFHEO is the financial safety and soundness regulator of the nation's two largest housing-related Government-sponsored enterprises: the Federal National Mortgage Association (''Fannie Mae'') and the Federal Home Loan Mortgage Corporation (''Freddie Mac'') (collectively, the ''Enterprises''). In addition to establishing OFHEO, the Act made amendments to the Enterprises' enabling statutes (collectively, ''the Charter Acts'')[2] to, among other things, accommodate the restructured regulatory regime under the Act.

The National Flood Insurance Act of 1968 (''NFIA'')[3] and the Flood Disaster Protection Act of 1973 (''FDPA''),[4] as amended by the National Flood Insurance Reform Act of 1994 (''NFIRA''),[5] together establish a comprehensive National Flood Insurance Program (''NFIP'') that includes various provisions designed to ensure that structures built in flood plains are covered by, at least, specified statutory minimum amounts of flood insurance. NFIRA, among other things, added specific requirements explicitly applicable to the Enterprises;[6] designated OFHEO as the Federal agency responsible for determining compliance of the Enterprises' flood insurance responsibilities; required OFHEO to report to Congress on the Enterprises' compliance in the agency's 1996, 1998 and 2000 annual reports;[7] and authorized OFHEO to issue any regulations necessary to carry out the applicable provisions of NFIRA.[8] NFIRA also explicitly authorized OFHEO to impose civil money penalties upon an Enterprise that fails to implement procedures reasonably designed to ensure that the loans it purchases comply with the mandatory flood insurance purchase requirements.[9]

More specifically, NFIRA requires that the Enterprises each implement procedures reasonably designed to ensure that any mortgage loan that is purchased and is secured by property located in a designated flood hazard area is covered for the term of the loan by flood insurance in an amount at least equal to the lesser of (1) the outstanding principal balance of the loan or (2) the maximum limit of coverage made available for that type of property under the NFIP. OFHEO is authorized under NFIRA to levy a civil money penalty for each violation, not to exceed an aggregate maximum amount per year,[10] against an Enterprise that it finds to have engaged in a pattern or practice of purchasing loans in violation of the procedures established pursuant to NFIRA.[11]

OFHEO published a notice of proposed rulemaking (66 FR 47563, September 12, 2001) for public comment relating to its flood insurance oversight responsibilities. Comments on the proposed regulation were received only from the two Enterprises. Those comments were carefully considered in developing this final regulation. A discussion of those comments and OFHEO's response to them follows.

II. Background

The Enterprises have a key role in the implementation of the National Flood Insurance Program, particularly with regard to lenders that are not subject to direct supervision by a Federal regulatory agency. The Enterprises use their seller/servicer guidelines and other quality control review procedures to ensure that lenders with whom they contract comply with the applicable flood insurance laws. The Enterprises are required to establish procedures designed to prevent their purchase of loans that do not comply with these laws. NFIRA tasks OFHEO with reviewing the adequacy of such procedures as well as the Enterprises' compliance with them.

A primary purpose of the final regulation is to reiterate the relevant statutory provisions specifically applicable to the Enterprises and to OFHEO and to codify them in OFHEO's regulations. The final regulation is intended to provide guidance as to the procedures to be applied if an enforcement action were to be required, to add statutory civil money penalty amounts for infractions of the flood insurance requirements to the schedule of penalties in OFHEO's regulations and to adjust such penalty amounts as contemplated by law for inflation.

The Inflation Adjustment Act

The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 (the Inflation Adjustment Act),[12] requires Federal agencies with the authority to issue civil money penalties, to adopt regulations to adjust each civil money penalty authorized by law that the agency has jurisdiction to administer. The purpose of these adjustments is to maintain the deterrent effect of civil money penalties and promote compliance with the law. The Inflation Adjustment Act requires agencies to make an initial adjustment of their civil money penalties upon the statute's enactment, and to make additional adjustments on an ongoing basis, at least once every four years following the initial adjustment.

[1] 12 U.S.C. 4501 *et seq.*

[2] Federal National Mortgage Association Charter Act (12 U.S.C. 1716–1723i) and Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451–1459).

[3] 42 U.S.C. 4001 *et seq.* and other scattered sections of 42 U.S.C.

[4] 42 U.S.C. 4002 *et seq.* and other scattered sections of 42 U.S.C.

[5] Pub. L. 103–325 (Sept. 23, 1994) (codified, as amended, at 42 U.S.C. 4001–4129).

[6] 42 U.S.C. 4012a(b)(3).

[7] 12 U.S.C. 4521(a)(4).

[8] 42 U.S.C. 4001 note.

[9] 42 U.S.C. 4012a(f)(3).

[10] Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Adjustment Act), as amended by the Debt Collection Improvement Act of 1996, adjustments have been made to the civil money penalty amounts. The Inflation Adjustment Act's rounding rules require that each increase be rounded to the nearest multiple as follows: $10 in the case of penalties less than or equal to $100; $100 in the case of penalties greater than $100 but less than or equal to $1,000; $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000; $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000; $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; and $25,000 in the case of penalties greater than $200,000.

[11] 42 U.S.C. 4012a(f)(3), (5).

[12] 28 U.S.C. 2461 note.

Under the Inflation Adjustment Act, the inflation adjustment for each applicable civil money penalty is determined by increasing the maximum civil money penalty amount by a cost-of-living adjustment. As is described in detail below, the Inflation Adjustment Act provides that this cost-of-living adjustment is to reflect the percentage increase in the Consumer Price Index since the civil money penalties were last adjusted or established.

NFIRA sets forth the procedures under which the Director of OFHEO could impose civil money penalties against an Enterprise and the amounts of these civil money penalties. In this rulemaking, the amounts of these civil money penalties are being adjusted in accordance with the requirements of the Inflation Adjustment Act. The increases in maximum civil money penalty amounts contained in this final rule do not mandate the amount of any civil money penalty that OFHEO may seek for a particular violation; OFHEO would determine each civil money penalty on a case-by-case basis in light of the circumstances of the case.

The Inflation Adjustment Act directs Federal agencies to calculate each civil money penalty adjustment as the percentage by which the CPI–U for June of the calendar year preceding the adjustment exceeds the CPI–U for June of the calendar year in which the amount of such civil money penalty was last set or adjusted pursuant to law. OFHEO has not previously adjusted these CMP amounts, so the base period is 1995, the year the statutory requirements became applicable to the Enterprises. Because OFHEO is making these adjustments in calendar year 2001, and the statutory requirements became applicable to the Enterprises in 1995, the inflation adjustment amount for each civil money penalty was calculated by comparing the CPI–U for June 1995 (152.5) with the CPI–U for June 2000 (172.4), resulting in an inflation adjustment of 13.05 percent. For each civil money penalty, the product of this inflation adjustment and the previous maximum penalty amount was then rounded in accordance with the specific requirements of the Inflation Adjustment Act,[13] then added to the previous maximum penalty amount to determine the new adjusted maximum penalty amount. However, the Inflation Adjustment Act further specifies that the first adjustment of any civil money penalty pursuant to such Act may not exceed ten percent of the penalty. Accordingly, the original civil money penalty maximum of $350 under NFIRA is increased to $385 for each violation and the civil money penalty maximum of $100,000 is increased to $110,000 for the total assessed penalties against any Enterprise during any calendar year.

Section-By-Section Analysis

Section 1773.1 Authority and Scope

Section 1773.1 sets forth the authority upon which this final regulation is based, namely the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended by the National Flood Insurance Reform Act of 1994. The National Flood Insurance Reform Act of 1994 requires OFHEO to examine the Enterprises to ascertain their compliance with these statutes and to report to Congress on their compliance, and provides OFHEO with the authority to issue any regulations necessary to carry out the applicable provisions of NFIRA. OFHEO is authorized to impose civil money penalties on an Enterprise for violation of procedures established pursuant to the National Flood Insurance Act of 1968, as amended, or rules or regulations adopted pursuant thereto.[14]

Section 1773.2 Requirements

Section 1773.2(a) sets forth the requirement that each Enterprise is to implement procedures reasonably designed to ensure that the properties securing particular loans described in paragraph (a) are properly insured in accordance with the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended by the National Flood Insurance Reform Act of 1994. This requirement applies to any loan purchased by an Enterprise that is secured by improved real estate or a mobile home located in an area that has been identified, at the time of the origination of the loan or at any time during the term of the loan, by the Director of the Federal Emergency Management Agency as an area having special flood hazards and in which flood insurance is available under the National Flood Insurance Program. As explained in this section, the Enterprise is required to ensure that a building or mobile home, and any personal property securing such loan are covered for the term of the loan by flood insurance in an amount at least equal to the lesser of the outstanding principal balance of the loan or the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Program.

Section 1773.2(b) sets forth that the procedures in section 1773.2(a) need apply only to loans made, increased, extended, or renewed after September 22, 1995. It further provides that paragraph (a) does not apply to any loan having an original outstanding principal balance of $5,000 or less and a repayment term of one year or less.

Section 1773.3 Civil Money Penalties

Section 1773.3 sets forth procedures under this final section under which the Director of OFHEO may impose civil money penalties against an Enterprise. Section 1773.3(a) sets forth that the Director of OFHEO may assess a civil money penalty against an Enterprise determined by the Director to have engaged in a pattern or practice of purchasing loans in violation of the procedures established pursuant to § 1773.2.

Section 1773.3(b) sets forth notice and hearing requirements prior to the imposition of civil money penalties under this section. A civil money penalty may be issued only after notice and an opportunity for a hearing on the record has been provided under 12 CFR part 1780.

Section 1773.3(c) sets forth the maximum amount of civil money penalties that may be imposed on an Enterprise under this section. A civil money penalty under this section may not exceed the adjusted statutory amount of $385 for each violation and the total amount of penalties assessed under this section against an Enterprise during any calendar year may not exceed the adjusted statutory cap of $110,000 for such total penalties.

Section 1773.3(d) sets forth procedures for the deposit of civil money penalties. Any civil money penalties collected under this section shall be paid into the National Flood Mitigation Fund in accordance with 42 U.S.C. 4104d.

Section 1773.3(e) provides that any civil money penalty under this section shall be in addition to any civil remedy or criminal penalty otherwise available.

Section 1773.3(f) provides that no penalty may be imposed under this section after the expiration of the four-year period beginning on the date of the occurrence of the violation for which the penalty is authorized.

[13] The statute's rounding rules require that each increase be rounded to the nearest multiple as follows: $10 in the case of penalties less than or equal to $100; $100 in the case of penalties greater than $100 but less than or equal to $1,000; $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000; $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000; $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; and $25,000 in the case of penalties greater than $200,000.

[14] 42 U.S.C. 4012a(f)(3).

III. Comments on the Proposed Flood Insurance Regulation

Enterprise Compliance

Fannie Mae's first comment concerned proposed new 12 CFR 1773.2(a), which sets forth the requirement that each Enterprise is to implement procedures reasonably designed to ensure that the properties securing particular loans described in paragraph (a) are properly insured in accordance with the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended by the National Flood Insurance Reform Act of 1994. Both Enterprises assert that they have implemented procedures consistent with these statutes and have also consistently complied with all statutory requirements for flood insurance. Fannie Mae noted that neither the proposed regulation nor the preamble of the proposal suggest that the proposal, should it be adopted, is intended to require the Enterprises to readdress or revise the procedures they already have developed and implemented that comply with the relevant statutes. Fannie Mae suggested that OFHEO confirm this interpretation in connection with final rulemaking so as to avoid any confusion on this point.

It would not be germaine, however, to the purposes of a rulemaking to issue a pronouncement that an Enterprises has fully developed and implemented adequate procedures that comply with their statutory responsibilities. The Enterprises' obligation to institute statutorily mandated procedures is subject to ongoing oversight by OFHEO as part of its routine examination process. This rulemaking is not intended to imply any deficiency in compliance or inadequacy of existing policies or practices of the Enterprises under the law.

Civil Money Penalties (§ 1773.3(a)), and Other Available Sanctions

Freddie Mac asserted that the general grant of authority to promulgate necessary regulations (granted to various agencies by 42 U.S.C. 4001 note) does not override the National Flood Insurance Reform Act's implicit limitation on OFHEO's authority to impose penalties. In explanation, Freddie Mac asserts that OFHEO's explicit statutory authority to assess civil money penalties relating to flood insurance is limited solely to assessing penalties for patterns or practices of purchasing loans in violation of an Enterprise's procedures established pursuant to the National Flood Insurance Reform Act. Freddie Mac asserts, therefore, that OFHEO's authority to assess penalties does not extend to other violations of the proposed flood insurance regulation or the law. According to Freddie Mac, the proposed flood insurance regulation exceeds statutory limits to the extent that its language could be read to provide for regulatory action against other statutory or regulatory violations, or would permit regulatory sanctions other than civil money penalties.

Fannie Mae expressed similar concerns that the language in proposed new 12 CFR 1773.3(a) is overbroad in suggesting that OFHEO may assess civil money penalties against an Enterprise that engages in a pattern or practice of purchasing loans in violation of procedures established pursuant to the National Flood Insurance Act. Fannie Mae urges OFHEO to substitute the reference to the National Flood Insurance Act for a reference to 42 U.S.C. 4012a(b)(3), inasmuch as the latter is assertedly the specific statutory provision to which OFHEO's civil money penalty authority in 42 U.S.C. 4012a(f)(3) relates.

OFHEO disagrees. The regulatory scheme established under NFIA under which OFHEO is charged to ensure compliance by the Enterprises cannot be reasonably read to allow unlawful conduct to go without sanction or remedy. OFHEO is broadly empowered under its enabling law to ensure the safe and sound operations of the Enterprises, including authority to oversee compliance by the Enterprises with applicable laws. The extraordinary civil money penalty authority granted under NFIA does not explicitly limit or displace the general powers of OFHEO to enforce applicable laws using its general enforcement powers under the 1992 Act.

Authority and Scope (§ 1773.1(a))

Fannie Mae's third comment notes that proposed new 12 CFR 1773.1(a) states that the National Flood Insurance Reform Act of 1994 designates OFHEO as the federal agency responsible for determining the Enterprises' compliance with the National Flood Insurance Reform Act of 1994 and the National Flood Insurance Act of 1968. Fannie Mae asserts that the asserted breadth of the proposed rule is overly broad because the only compliance role Congress explicitly assigned to OFHEO with regard to those Acts is confined to 42 U.S.C. 4012a. Fannie Mae therefore requests that OFHEO redraft this part of the proposed new rule to more narrowly reference only 42 U.S.C. 4012a.

Freddie Mac also argues that the law narrowly charges OFHEO with enforcing the requirements of the National Flood Insurance Reform Act and empowers OFHEO with the authority to assessing civil money penalties. Freddie Mac asserts that to the extent proposed new 12 CFR 1773.1(a) can be read more broadly to encompass more than what the statute contemplated it is invalid. That is, Freddie Mac asserts that the National Flood Insurance Reform Act establishes the only enforcement sanction applicable to the Enterprises to be civil money penalty assessments, and no other administrative action or sanction is available to OFHEO.

Both commenters recommended that OFHEO amend proposed new 12 CFR 1773.1(a) to more narrowly recite that OFHEO is charged solely with enforcing the requirements of 42 U.S.C. 4012a(b)(3) through the assessment of civil money penalties.

Similarly, Fannie Mae asserts that to the extent proposed new 12 CFR 1773.1(a) contemplates that OFHEO may enforce the requirements of the National Flood Insurance with respect to the Enterprises that language is overly broad inasmuch as OFHEO has no statutory basis for instituting an enforcement action against an Enterprise under the National Flood Insurance Reform Act beyond that explicitly set forth in 42 U.S.C. 4012a. Fannie Mae further asserts that OFHEO's organic enforcement authority, found at 12 U.S.C. 4615 et seq., includes no explicit language relating to violations of the National Flood Insurance Reform Act.

OFHEO disagrees. The Enterprises proposal to narrowly confine OFHEO's role under the National Flood Insurance Act would ignore OFHEO's pervasive authority under the 1992 Safety and Soundness Act to use its full array of preventative and remedial tools to ensure the safety and soundness of the Enterprises, including compliance with applicable federal laws and regulations. It is implausible that Congress would suggest a scheme that would allow violative conduct, constituting unsafe and unsound practice, to go without sanction or remedy.

Amount of Flood Insurance Coverage (§ 1773.2)

Freddie Mac's comment notes that, with respect to the amount of required flood insurance, the proposed regulation reiterates the statutory requirement that the amount of flood insurance be at least equal to the lesser of the outstanding principal balance of the loan or the maximum limit of coverage made available with respect to the particular type of property under the NFIP.

Freddie Mac indicated that in implementing the law's requirements under NFIRA it requires flood insurance coverage levels at or above the statutory minimums. That is, Freddie Mac, requires seller/servicers to ensure that borrowers maintain insurance ''at least equal to the higher'' of: (a) 80% of the replacement cost of the insurable improvements, or (b) the lower of the outstanding loan balance or the full replacement cost of the improvements (provided that the insurance never needs to exceed the maximum amount available under the NFIP). The Enterprise asserts that it requires such higher coverage because borrowers are not fully protected against a partial loss under a NFIP flood insurance policy if the policy covers less than 80% of the replacement cost of the improvements. Freddie Mac asserts that the higher required coverage serves the best interests of Freddie Mac, the borrower and the public purpose of the NFIP.

In order to avoid any doubt as to its authority to require such a higher coverage amount, Freddie Mac recommends that OFHEO add a provision to proposed section 1773.2(a) explicitly stating that nothing in the regulation precludes an Enterprise from requiring a higher level of coverage than is required by the regulation. Freddie Mac asserts that such a provision would assist the Enterprises in the cases in which lenders or borrowers assert that a higher level of coverage may not be allowed under law.

Nothing in this regulation precludes the asserted authority of the Enterprises to require additional flood insurance coverage. This issue of authority encompasses questions of law and policy beyond the immediate parameters of the published proposal and request for comment. OFHEO will, however, refrain at this time from addressing the issue further absent a fuller exploration of the matter. The Enterprise or any other involved parties may nevertheless seek to otherwise clarify the issue through other appropriate means.

Regulatory Impact

Executive Order 12866, Regulatory Planning and Review

This final rule is not deemed to be a significant rule under Executive Order 12866 because it will not result in (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory impact assessment is required and this final rule has not been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a rule that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). OFHEO has considered the impact of this final rule under the Regulatory Flexibility Act. The General Counsel certifies that this final rule will not have a significant economic impact on a substantial number of small business entities.

Paperwork Reduction Act

This final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Unfunded Mandates Reform Act of 1995

This final rule does not require the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531. Assessment statements are not required for regulations that incorporate requirements specifically set forth in law. As explained in the preamble, this rule implements specific statutory requirements. In addition, this rule does not include a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year.

List of Subjects in 12 CFR Part 1773

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

Accordingly, for the reasons stated in the preamble, OFHEO adds 12 CFR part 1773 to subchapter C of Chapter XVII to read as follows:

PART 1773—FLOOD INSURANCE

Sec.
1773.1 Authority and scope.
1773.2 Requirements.
1773.3 Civil money penalties.

Authority: 12 U.S.C. 4521(a)(4), 4513, 4536(a); 42 U.S.C. 4001 note; 28 U.S.C. 2461 note; 42 U.S.C. 4012a(f)(3), (4), (8), (9), (10).

§ 1773.1 Authority and scope.

(a) *Authority*. The National Flood Insurance Act of 1968, title XII of Public Law 90–448, Aug. 1, 1968, 42 U.S.C. 4002 *et seq.*, and the Flood Disaster Protection Act of 1973, 42 U.S.C. 4002 *et seq.*, as amended by the National Flood Insurance Reform Act of 1994 (''NFIRA''), Public Law 103–325, Sept. 23, 1994, 42 U.S.C. 4001–4129, together create the National Flood Insurance Program (''NFIP'') which established specific requirements applicable to the Enterprises. NFIRA designates OFHEO as the Federal agency responsible for determining compliance by the Enterprises with these statutes and with reporting to Congress biannually for six years on the Enterprises' compliance. OFHEO has the authority to issue any regulations necessary to carry out the applicable provisions of NFIRA. OFHEO is also charged with enforcing the requirements of NFIRA as to the Enterprises and provides for the assessment of civil money penalties for violations of the procedures established by the Enterprises pursuant to the law or implementing regulations.

(b) *Scope*. This part sets forth the responsibilities of the Enterprises under NFIRA and the procedures to be used in any proceeding to assess civil money penalties against an Enterprise under NFIRA.

§ 1773.2 Requirements.

(a) *Procedures*. Each Enterprise shall implement procedures reasonably designed to ensure for any loan that is secured by improved real estate or a mobile home located in an area that has been identified, at the time of the origination of the loan or at any time during the term of the loan, by the Director of the Federal Emergency Management Agency as an area having special flood hazards and in which flood insurance is available under the NFIP, and purchased by such entity, the building or mobile home and any personal property securing the loan is covered for the term of the loan by flood insurance in an amount at least equal to the lesser of the outstanding principal balance of the loan or the maximum limit of coverage made available with respect to the particular type of property under the NFIP.

(b) *Applicability*. (1) Paragraph (a) of this section shall apply only with respect to any loan made, increased, extended, or renewed after September 22, 1995.

(2) Paragraph (a) of this section shall not apply to any loan having an original outstanding balance of $5,000 or less and a repayment term of one year or less.

§ 1773.3 Civil money penalties.

(a) *In general*. If an Enterprise is determined by the Director of OFHEO to have engaged in a pattern or practice of purchasing loans in violation of the procedures established pursuant to the NFIA, as amended, or to § 1773.2, the Director may assess civil money penalties against such Enterprise in such amount or amounts as deemed to be appropriate under paragraph (c) of this section.

(b) *Notice and hearing*. A civil money penalty under this section may be assessed only after notice and an opportunity for a hearing on the record has been provided under 12 CFR part 1780.

(c) *Amount*. A civil money penalty under this section may not exceed $385 for each violation. The total amount of penalties assessed under this section against an Enterprise during any calendar year may not exceed $110,000.

(d) *Deposit of penalties*. Any penalties collected under this section shall be paid into the National Flood Mitigation Fund in accordance with 42 U.S.C. 4104d.

(e) *Additional penalties*. Any penalty under this section shall be in addition to, and shall not preclude, any civil remedy or criminal penalty otherwise available.

(f) *Statute of limitations*. No civil money penalty may be imposed under this section after the expiration of the four-year period beginning on the date of the occurrence of the violation for which the penalty is authorized under this section.

Dated: December 13, 2001.

Armando Falcon, Jr.,

Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 01–31166 Filed 12–17–01; 8:45 am]

BILLING CODE 4220–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–18–AD; Amendment 39–12561; AD 2001–25–08]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Model S–70A and S–70C Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for Sikorsky Model S–70A and S–70C helicopters. This action requires certain inspections of each main landing gear drag beam (beam) for a crack and removing any cracked beam before further flight. This action also requires reducing the torque of the jackpad mounting bolt retention nut (nut) of each beam. This amendment is prompted by failure of a beam due to stress corrosion resulting from sustained tensile stress due partly to excessive torque of the nut. The actions specified in this AD are intended to prevent excessive torque of the nut, failure of a beam, and subsequent loss of control of the helicopter during takeoff or landing.

DATES: Effective January 2, 2002.

Comments for inclusion in the Rules Docket must be received on or before February 19, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–18–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9–asw–adcomments@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Terry Fahr, Aviation Safety Engineer, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7155, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: This amendment adopts a new AD for Sikorsky Model S–70A and S–70C helicopters. This action requires certain inspections of each beam for a crack and removing any cracked beam before further flight. This AD also requires reducing the torque of the nut on each beam. This amendment is prompted by the failure of a beam due to stress corrosion resulting from sustained tensile stress due partly to excessive torque on the nut.

The FAA has reviewed Sikorsky Alert Service Bulletin No. 70–03–2, dated July 26, 1999 (ASB). The ASB describes procedures for reducing the torque on each nut to 45–50 ft-lbs to reduce stress to the beam.

We have identified an unsafe condition that is likely to exist or develop on other Sikorsky Model S–70A and S–70C helicopters of the same type designs. Therefore, this AD is being issued to prevent excessive torque on a nut, failure of a beam, and subsequent loss of control of the helicopter during takeoff or landing. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability and structural integrity of the helicopter. Therefore, within 30 hours time-in-service, the following actions are required for the beam, and this AD must be issued immediately:

- Visually inspect each beam for a crack.
- If a crack is found, remove the beam before further flight.
- If a crack is suspected, dye-penetrant inspect the beam, and if a crack is found, remove the beam before further flight.
- If no crack is found, reduce the torque on the nut.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that 3 helicopters on the U.S. register will be affected by this AD, that it will take approximately 2 work hours to inspect the beam and to reduce the torque on each nut, and 2 work hours to replace a cracked beam. The average labor rate is $60 per work hour. Required parts will cost approximately $18,600 per beam. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $56,520, assuming one beam has to be replaced on each affected helicopter.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified

under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2001–SW–18–AD.'' The postcard will be date stamped and returned to the commenter.

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.

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2001–25–08 Sikorsky Aircraft Corporation: Amendment 39–12561. Docket No. 2001–SW–18–AD.

Applicability: Model S–70A helicopters, serial numbers 700029, 701129, 701322, 701325, 701327, 701329, 701331, 701333, 701592, 701593,701594, 701595, 701613, 701614, 701825, 701835, 702127, and 702129, and Model S–70C helicopters, serial numbers 70583, 70785, 70788, 70792, 70793, 70794, 70797, 70798, 70799, 70800, 70811, 70812, 70813, 70830, 70831, 70836, 70837, 70848, 70855, 70856, 70867, 70868, 70879, 70884, 70892, 70910, 70918, 70927, 70928, 70929, 70949, 70950, 70951, 70954, 70957, 70958, 70959, 70965, 70966, and 701029, certificated in any category.

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

Compliance: Required within 30 hours time-in-service, unless accomplished previously.

To prevent excessive torque on a jackpad mounting bolt retention nut (nut), failure of a main landing gear drag beam (beam), and subsequent loss of control of the helicopter during takeoff or landing, accomplish the following:

(a) With jackpad installed, using a 10X or higher magnifying glass, visually inspect each beam, part number (P/N) 70250–32105, for a crack at a 3.0-inch radius around the upper and lower jackpad holes.

(1) If a crack is found, remove the beam.

(2) If a crack is suspected, dye-penetrant inspect the beam, and if a crack is found, remove the beam.

Note 2: Temporary Revision No. 19 of Sikorsky Aircraft Model S–70 Maintenance Manual, dated January 23, 2001, pertains to the subject of this AD.

(b) If a crack is not found while accomplishing the requirements of paragraph (a) of this AD, retorque the nut, part number (P/N) MS21245–L12, on each beam as follows:

(1) Restrain the jackpad and rotate the nut counterclockwise to release the torque on the nut. If movement of the jackpad occurs, remove and replace the sealant from the lower surface of the jackpad/beam interface.

(2) Retorque the nut to 45–50 ft-lbs.

(3) Apply sealant to the nut and the immediate area.

(4) After sealant has dried, touch up the paint as required.

(5) After the paint has dried, apply a slippage mark (of a contrasting color) to the nut as follows:

(i) Wipe the area to be marked with a clean-lint-free cloth.

(ii) Apply F1000 Sentry Seal, or equivalent, with a width of approximately one half the diameter of the nut (to a maximum width of 3/16 inch) and extending a minimum of 1/2 inch on the base part (or to the edge of the part, whichever is smaller).

Note 3: Sikorsky Alert Service Bulletin No. 70–03–2, dated July 26, 1999, pertains to the subject of this AD.

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

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Boston Aircraft Certification Office.

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

(e) This amendment becomes effective on January 2, 2002.

Issued in Fort Worth, Texas, on December 11, 2001.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 01–31041 Filed 12–17–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–00–006]

RIN 2115–AE47

Drawbridge Operation Regulations: Longboat Pass and New Pass, Longboat Key, Florida

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing the regulations governing the operation of the Longboat Pass Bridge across Longboat Pass, Manatee County, Longboat Key, Florida and changing the regulations governing the operation of the New Pass Bridge, Sarasota County, Longboat Key, Florida. These changes will decrease vehicle and vessel traffic congestion. The removal and change are due to the increased vessel traffic at the Longboat Pass Bridge and the decreased vessel traffic at the New Pass Bridge.

DATES: This rule is effective January 17, 2002.

ADDRESSES: Comments and material received from the public as well as documents indicated in this preamble as being available in the docket are part of docket [CGD07–00–006] and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 SE 1st Avenue, Room 406, Miami, Florida, 33131 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Project Officer, Seventh Coast Guard District, Bridge Branch, at (305) 415–6743.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On August 25, 2000 we published a notice of proposed rulemaking entitled Drawbridge Operation Regulations; Longboat Pass and New Pass, Longboat Key, FL, in the **Federal Register** (65 FR 51787). On December 7, 2000 we published a notice of proposed rulemaking reopening the comment period for an additional 60 days, entitled Drawbridge Operation Regulations; Longboat Pass and New Pass, Longboat Key, FL, in the **Federal Register** (65 FR 76956).

Background and Purpose

Based on the increased vessel traffic through Longboat Pass Bridge and the decreased vessel traffic through New Pass Bridge, the Coast Guard is changing the operating regulations for these two Bridges to provide a safer and more efficient transit for vehicles and vessels near Longboat Key. The current regulation governing Longboat Pass Bridge (SR 789), mile 0.0, between Longboat Key and Anna Maria Key, codified in 33 CFR 117.299 states that the draw shall open on signal, except that from 6 p.m. to 6 a.m., the draw will open on signal if at least 3 hours notice is given. This rule removes the operating regulations in 33 CFR 117.299 and requires the draw to open on signal in accordance with the general bridge operation provision in 33 CFR 117.5.

Due to the number of comments from motor vehicle drivers concerning the proposed New Pass Bridge regulation, we are keeping the existing part of the regulation in 33 CFR 117.311 which states that the Bridge shall open on signal except from 7 a.m. to 6 p.m. the draw need open only on the hour, twenty minutes past the hour and forty minutes past the hour. The change to the rule allows the Bridge to open on signal between 6 p.m. and 7 a.m. if at least 3 hours of notice is given to the bridge tender.

Public vessels of the United States, tugs with tows and vessels in a situation where a delay would endanger life or property will, upon proper signal, be passed through both bridges at any time.

Discussion of Comments and Changes

The Coast Guard received seventy-three comment letters addressing the notice of proposed rulemaking. Sixty-one of the letters disagreed with the proposed rule changes. The comments indicated that the proposed changes would create a burden for vehicular traffic. The collected data indicates that the New Pass Bridge currently opens approximately 3 to 4 times per day, due to the extreme hazards involved with transiting through New Pass to the Gulf of Mexico. As a result of these conditions, vessel traffic through New Pass at night is sparse. To alleviate the concerns expressed in these comments, we decided to keep the current regulations in 33 CFR 117.311 governing the New Pass Bridge and add to the regulation a provision that the bridge will open on signal from 6 p.m. to 7 a.m. if at least 3 hours notice is given to the bridge tender.

Eighteen of these comments also requested a new daytime rule on the Longboat Pass Bridge. We forwarded these comments to the Bridge owner/operator, Florida Department of Transportation, to research and address the feasibility of a new daytime rule.

Twelve comments agreed with the rule change. The comment letters, all from the boating public, acknowledged the navigational hazards at New Pass including the difficulties involved in nighttime access into and out of the Gulf of Mexico. The comments indicated the preferred route into and out of the Gulf of Mexico has changed over the years from New Pass to Longboat Pass. The current collected data corroborates these comments by showing a decrease in vessel traffic at New Pass and the increase in vessel traffic at Longboat Pass. We are adopting, without change, the proposal placing the Longboat Pass Bridge on a twenty-four hour, open on signal, operation schedule.

Regulatory Evaluation

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

The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary because the rule allows the Longboat Pass Bridge to open on signal and will only slightly modify the existing operating schedule for the New Pass Bridge.

Small Entities

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

This rule may affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit under the Longboat Pass and New Pass Bridges. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities because the rule allows the Longboat Pass Bridge to open on signal and will only slightly modify the existing operating schedule for the New Pass Bridge.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

The Coast Guard has considered the environmental impact of this action and has determined under Figure 2–1, paragraph 32(e) of Commandant Instruction M16475.1D, that this rule is categorically excluded from further environmental documentation.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.311 is revised to read as follows:

§ 117.311 New Pass

The draw of the State Road 789 bridge, mile 0.05, at Sarasota, need only open on the hour, twenty minutes past the hour, and forty minutes past the hour from 7 a.m. to 6 p.m. From 6 p.m. to 7 a.m., the draw shall open on signal if at least 3 hours notice is given to the bridge tender. Public vessels of the United States, tugs with tows, and vessels in a situation where a delay would endanger life or property shall, upon proper signal, be passed at any time.

§ 117.299 Longboat Pass (Removed)

Remove § 117.299.

Dated: December 1, 2001.

James S. Carmichael,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 01–31174 Filed 12–17–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–01–206]

RIN 2115–AA97

Security Zone: Maine Yankee Nuclear Power Plant, Wiscasset, Maine

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone around the Maine Yankee Power Plant in Wiscasset, Maine, temporarily closing all land and waters surrounding Bailey Point and Foxbird Island. This security zone prohibits entry into or movement within a portion of the Back River and adjacent land areas and is needed to ensure public safety and prevent sabotage or terrorist acts. Entry into this security zone is prohibited unless authorized by the Captain of the Port, Portland, Maine.

DATES: This rule is effective from December 10, 2001 until June15, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the

docket are part of docket CGD01–01–206 and are available for inspection or copying at Marine Safety Office Portland, Maine, 103 Commercial Street, Portland, Maine between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) W. W. Gough, Chief, Ports and Waterways Safety Branch, Port Operations Department, Captain of the Port, Portland, Maine at (207) 780–3251.

SUPPLEMENTARY INFORMATION:

Regulatory History

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. On September 11, 2001, terrorist attacks in New York and Washington DC inflicted catastrophic human casualties and property damage. National security and intelligence officials warn that future terrorist attacks against civilian targets may be anticipated. The Maine Yankee Nuclear Plant is located on a peninsula, surrounded by water, exposing it to possible attack initiated from waters surrounding the power plant. Due to the catastrophic effect an exposure to radiation from the nuclear material stored at the plant would have on the surrounding area, this rulemaking is urgently required to prevent potential future terrorist strikes against the Maine Yankee Nuclear Power Plant. The delay inherent in the NPRM process is contrary to the public interest insofar as it may render people and facilities within and adjacent to the Maine Yankee Nuclear Power Plant property vulnerable to subversive activity, sabotage or terrorist attack.

Under 5 U.S.C. 553 (d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The measures implemented in this rule are intended to prevent possible terrorists attacks against the Maine Yankee Nuclear Power Plant, and are needed to protect the facility, persons at the facility, the public and the surrounding communities from potential sabotage or other subversive activity, sabotage and terrorists attacks, either from the water or by access to the facility by utilizing public trust lands between the low and high water tide lines. Immediate action is required to accomplish these objectives. Any delay in the effective date of this rule is impracticable and contrary to the public interest. This zone should have minimal impact on the users of Bailey Point, Foxbird Island and the surrounding waters, as this zone only restricts movement adjacent to the Bailey Point, allowing vessels to pass safely outside the zones. Public notifications will be made to the maritime community via notice to mariners, marine information broadcasts and signs posted informing them of the boundaries of the zones.

Background and Purpose

In light of terrorist attacks on New York City and Washington DC on September 11, 2001 a security zone is being established to safeguard the Maine Yankee Nuclear Power Plant, persons at the facility, the public and surrounding communities from sabotage or other subversive acts, accidents, or other events of a similar nature. The Maine Yankee Nuclear Plant is located on a peninsula, surrounded by water, making it vulnerable to possible attack initiated from waters surrounding the power plant. The Maine Yankee Nuclear Power Plant presents a possible target of terrorist attack due to the catastrophic impact release of nuclear radiation would have on the surrounding area.

This rulemaking establishes a security zone in all land and waters surrounding Bailey Point and Foxbird Island within a zone beginning at position 43°57′23″ N, 069°41′17″ W then running southeasterly to 43°56′40″ N, 069°41′40″ W then running west to 43°56′40″ N, 069°41′56″ W then running north to 43°57′06″ N, 069°41′56″ W then running north-northeasterly to 43°57′21″ N, 069°41′48″ W then running north-northwesterly to 43°57′39″ N, 069°41′52″ W then south-southeasterly to the point of origin.

This rulemaking is necessary to provide complete protection of the waterfront areas of the Maine Yankee Nuclear Power Plant. This security zone prohibits entry into or movement within the specified areas. This security zone also closes all lands within the zone to prevent access along areas traditionally reserved for public use between the mean low water tide line and the mean high water tide line.

No person or vessel may enter or remain in the prescribed security zone at any time without the permission of the Captain of the Port, Portland, Maine. Each person or vessel in a security zone shall obey any direction or order of the Captain of the Port, Portland, Maine. The Captain of the Port, Portland, Maine may take possession and control of any vessel in a security zone and/or remove any person, vessel, article or thing from a security zone. No person may board, take or place any article or thing on board any vessel or waterfront facility in a security zone without permission of the Captain of the Port, Portland, Maine. These regulations are issued under authority contained in 33 U.S.C. 1223, 1225 and 1226.

Regulatory Evaluation

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

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The effect of this regulation will not be significant for several reasons: there is ample room for vessels to navigate around the zones in the Back River, notifications will be made to the local maritime community and signs will be posted informing the public of the boundaries of the zone.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605 (b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Back River. For the reasons enumerated in the Regulatory Evaluation section above, this security zone will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offers to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If your small business or

organization is affected by this final rule and you have questions concerning its provisions or options for compliance, please call Lieutenant (Junior Grade) Wade W. Gough, Marine Safety Office Portland, Maine, at (207) 780–3251. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

The Coast Guard has analyzed this rule under Executive Order 13132 and has determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An Unfunded Mandate is a regulation that requires a state, local or tribal government or the private sector to incur costs without the Federal government's having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Environment

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

Energy Effects

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

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add temporary section, 165.T01–206, to read as follows:

§ 165.T01–206 Security Zone; Maine Yankee Nuclear Power Plant, Wiscasset, Maine.

(a) *Location.* The following area is a security zone: All land and waters surrounding Bailey Point and Foxbird Island within a zone beginning at position 43°57′23″ N, 069°41′17″ W then running southeasterly to 43°56′40″ N, 069°41′40″ W then running west to 43°56′40″ N, 069°41′56″ W then running north to 43°57′06″ N, 069°41′56″ W then running north-northeasterly to 43°57′21″ N, 069°41′48″ W then running north-northwesterly to 43°57′39″ N, 069°41′52″ W then south-southeasterly to the point of origin.

(b) *Effective date.* This section is effective from December 10, 2001 until June 15, 2001.

(c) *Regulations.*

(1) In accordance with the general regulations in section 165.33 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port, Portland, Maine.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port, Portland, Maine or designated on-scene U. S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels.

(3) No person may enter the waters within the boundaries of the security zone unless previously authorized by the Captain of the Port, Portland, Maine or his authorized patrol representative.

(d) In addition to 33 U.S.C. 1231 and 49 CFR 1.46, the authority for this section includes 33 U.S.C. 1226.

Dated: December 7, 2001.

M.P. O'Malley,

Commander, U.S. Coast Guard, Captain of the Port, Portland, Maine.

[FR Doc. 01–31172 Filed 12–17–01; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–D–7517]

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 is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) 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 Executive Associate Director reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations 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, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (email) *matt.miller@fema.gov*.

SUPPLEMENTARY INFORMATION: The modified base flood elevations 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 upon 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 base flood elevations 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 base flood elevations 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 base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. 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	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Connecticut: Fairfield	Town of Greenwich	November 15, 2001, November 22, 2001, *Greenwich Times*.	Ms. Lolly H. Prince, First Selectman of the Town of Greenwich, 101 Field Point Road, Greenwich, Connecticut 06830.	Nov. 5, 2001.	090008 D&E
Florida:					
Lee	Unincorporated Areas.	September 27, 2001, October 4, 2001, *News-Press*.	Mr. Doug St. Cerny, Chairman of the Lee County, Board of County Commissioners, P.O. Box 398, Fort Myers, Florida 33902.	Sept. 20, 2001.	125124 E
Leon	City of Tallahassee	September 28, 2001, October 5, 2001, *Tallahassee Democrat*.	The Honorable Scott Maddox, Mayor of the City of Tallahassee, 300 South Adams Street, Tallahassee, Florida 32301–1731.	Jan. 4, 2002.	120144 D
Georgia:					
Bibb and Jones	City of Macon	September 25, 2001, October 4, 2001, *The Macon Telegraph*.	The Honorable Jack Ellis, Mayor of the City of Macon, 700 Poplar Street, Macon, Georgia 31201.	Jan. 1, 2002.	130011 D

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Gwinnett	Unincorporated Areas.	September 27, 2001, October 4, 2001, *Gwinnett Daily Post*.	Mr. Wayne Hill, Chairman of the Gwinnett County Board of Commissioners, Justice and Administration Center, 75 Langley Drive, Lawrenceville, Georgia 30045.	Sept. 20, 2001.	130322 D
Maine:					
York	Town of Alfred	September 27, 2001, October 4, 2001, *The Sanford News*.	Mr. Perley Yeaton, Chairperson of the Board of Selectmen for the Town of Alfred, P.O. Box 667, Alfred, Maine 04001.	Sept. 19, 2001.	230191 C
Knox	Town of St. George	October 18, 2001, October 25, 2001, *Courier-Gazette*.	Mr. John Falla, St. George Town Manager, P.O. Box 131, Tenants Harbor, Maine 04860.	Oct. 12, 2001.	230229 C
Maryland:					
Frederick	Unincorporated Areas.	November 14, 2001, November 21, 2001, *Frederick News Post*.	Mr. Ron Hart, Frederick County Manager, 12 East Church Street, Frederick, Maryland 21701.	Oct. 30, 2001.	240027 B
Frederick	City of Frederick	November 14, 2001, November 21, 2001, *Frederick News Post*.	The Honorable James Grimes, Mayor of the City of Frederick, 101 North Court Street, Frederick, Maryland 21701.	Oct. 30, 2001.	240030 B
Michigan: Wayne	Township of Canton	October 18, 2001, October 25, 2001, *The Observer & Eccentric*.	Mr. Thomas J. Yack, Township of Canton Supervisor, 1150 South Canton Center Road, Canton, Michigan 48188.	Jan. 24, 2002.	260219 B
New Jersey: Cape May.	City of North Wildwood.	October 10, 2001, October 17, 2001, *The Leader*.	The Honorable Aldo A. Palombo, Mayor of the City of North Wildwood, Municipal Building, 901 Atlantic Avenue, North Wildwood, New Jersey 08260.	Sept. 19, 2001.	345308 E
New York: Monroe	Town of Greece	November 29, 2001, December 6, 2001, *Greece Post*.	Mr. John Auberger, Supervisor of the Town of Greece, One Vince Tofany Boulevard, Rochester, New York 14616.	May 2, 2002.	360417 E
Ohio: Warren	City of Mason	September 5, 2001, September 12, 2001, *Pulse-Journal*.	The Honorable John McCurley, Mayor of the City of Mason, 202 West Main Street, Mason, Ohio 45040.	Aug. 30, 2001.	390559 C
Puerto Rico:					
	Commonwealth	October 5, 2001, October 12, 2001, *The San Juan Star*.	The Honorable Sila Maria Calderon, Governor of the Commonwealth of Puerto Rico, P.O. Box 82, La Fortaleza, San Juan, Puerto Rico 00901.	Jan. 11, 2002.	720000 D
	Commonwealth	October 12, 2001, October 19, 2001, *San Juan Star*.	The Honorable Sila Maria Calderon, Governor of the Commonwealth of Puerto Rico, P.O. Box 82, La Fortaleza, San Juan, Puerto Rico 00901.	Jan. 18, 2002.	720000 B&C
	Commonwealth	October 12, 2001, October 19, 2001, *San Juan Star*.	The Honorable Sila Maria Calderon, Governor of the Commonwealth of Puerto Rico, P.O. Box 82, La Fortaleza, San Juan, Puerto Rico 00901.	Jan. 18, 2002.	720000 B&C
South Carolina:					
Florence	City of Lake City	September 5, 2001, September 12, 2001, *The News Journal*.	Mr. George Simmons, Lake City Administrator, 202 Kelly Street, Lake City, South Carolina 29560.	Dec. 12, 2001.	450075 D
Florence	Unincorporated Areas.	September 5, 2001, September 12, 2001, *The News Journal*.	Mr. Joe King, Florence County Administrator, 180 North Irby Street MSC–G, Florence, South Carolina 29501.	Dec. 12, 2001.	450079 D
U.S. Virgin Islands	Island of St. Croix	November 1, 2001, November 8, 2001, *The Daily News*.	The Honorable Charles W. Turnbull, Governor of the U.S. Virgin Islands, Government House, 21–22 Kongens Gade, St. Thomas, Virgin Islands 00802.	Oct. 25, 2001.	78000 D
Virginia:					
Fauquier	Unincorporated Areas.	October 18, 2001, October 25, 2001, *Fauquier Citizen*.	Mr. G. Robert Lee, Fauquier County Administrator, 40 Culpeper Street, Warrenton, Virginia 20186.	Jan. 24, 2002.	510055 A

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Henrico	Unincorporated Areas.	October 26, 2001, November 1, 2001, *The Richmond Times*.	Mr. Richard Glover, Chairman of the Henrico County, Board of Supervisors, P.O. Box 27032, Richmond, Virginia 23273.	Oct. 12, 2001.	510077 B

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

Dated: December 11, 2001.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 01–31030 Filed 12–17–01; 8:45 am]

BILLING CODE 6718–04–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 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 base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations 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, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (email) *matt.miller@fema.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of modified base flood elevations 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 has resolved any appeals resulting from this notification.

The modified base flood elevations 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 base flood elevation 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 base flood elevations 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 base flood elevations 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 base flood elevations 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	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama:					
Autauga (FEMA Docket No. D–7511).	Unincorporated Areas.	April 7, 2001, April 14, 2001, *Prattville Progress*.	Mr. Clyde O. Chambliss, Jr., Chairman of the County Commission, 134 North Court Street Prattville, Alabama 36067.	Mar. 26, 2001	010314 B
Morgan (FEMA Docket No. D–7513).	City of Decatur	May 29, 2001, June 5, 2001, *The Decatur Daily*.	The Honorable Julian Price, Mayor of the City of Decatur, P.O. Box 488, Decatur, Alabama 35602.	Sept. 4, 2001	010176
Autauga, Lowndes, Elmore & Montgomery (FEMA Docket No. D–7509).	City of Montgomery.	March 30, 2001, April 6, 2001,*The Montgomery Advertiser*.	The Honorable Bobby N. Bright, Mayor of the City of Montgomery, City Hall, P.O. Box 1111, Montgomery, Alabama 36101.	Mar. 22, 2001	010174 F
Connecticut: New Haven (FEMA Docket No. D–7513).	Town of Branford	June 11, 2001, June 18, 2001, *New Haven Register*.	Mr. Anthony Daros, Town of Branford First Selectman, Town Hall, P.O. Box 150, Branford, Connecticut 06405.	June 1, 2001	090073 C
Florida:					
Alachua (FEMA Docket No. D–7509).	Unincorporated Areas.	March 9, 2001, March 16, 2001, *The Gainesville Sun*.	Mr. Randall H. Reid, Alachua County Manager, P.O. Box 2877, Gainesville, Florida 32602.	Feb. 26, 2001	120001 A
Charlotte (FEMA Docket No. D–7513).	Unincorporated Areas.	July 2, 2001, July 9, 2001, *Charlotte Sun Herald*.	Mr. Jan Winters, Charlotte County Administrator, 18500 Murdock Circle, Room 536, Port Charlotte, Florida 33948–1094.	June 25, 2001	120061 D
Manatee (FEMA Docket No. D–7511).	Unincorporated Areas.	April 12, 2001, April 19, 2001, *Bradenton Herald*.	Mr. Ernie Padgett, Manatee County Administrator, P.O. Box 1000, Bradenton, Florida 34206.	Apr. 4, 2001	120153 B
Monroe (FEMA Docket No. D–7509).	Unincorporated Areas.	March 13, 2001, March 20, 2001, *The Key-West Citizen*.	Mr. James Roberts, Monroe County Administrator, 5100 College Road, Key West, Florida 33040.	Feb. 27, 2001	125129 G
Pasco (FEMA Docket No. D–7509).	Unincorporated Areas.	February 6, 2001, February 13, 2001, *St. Petersburg Times*.	Mr. John J. Gallagher, Pasco County Administrator, West Pasco Government Center, 7530 Little Road, New Port Richey, Florida 34654.	Jan. 25, 2001	120230 D
Seminole (FEMA Docket No. D–7513).	Unincorporated Areas.	May 30, 2001 June 6, 2001, *Seminole Herald*.	Mr. Kevin Grace, Manager of Seminole County, 1101 East First Street, Sanford, Florida 32771.	May 23, 2001	120289 E
Illinois:					
DuPage and Will (FEMA Docket No. D–7513).	Village of Bolingbrook.	July 6, 2001, July 13, 2001, *The Bolingbrook Sun*.	The Honorable Roger C. Claar, Mayor of the Village of Bolingbrook, 375 West Briarcliff Road, Bolingbrook, Illinois 60440–0951.	June 26, 2001	170812 F
Macon (FEMA Docket No. D–7511).	City of Decatur	March 21, 2001, March 28, 2001, *Decatur Tribune*.	The Honorable Terry Howley, Mayor of the City of Decatur, 1 Gary K. Anderson Plaza, Decatur, Illinois 62523.	June 27, 2001	170429 C
Kendall (FEMA Docket No. D–7511).	Unincorporated Areas.	April 19, 2001, April 26, 2001, *Kendall County Record*.	Mr. John A. Church, Chairman of the Kendall County Board, 111 West Fox Street, Yorkville, Illinois 60560.	July 26, 2001	170341 C
Cook (FEMA Docket No. D–7513).	Village of Northbrook.	June 7, 2001, June 14, 2001, *Northbrook Star*.	Mr. Mark W. Damisch, Village of Northbrook President, 1225 Cedar Lane,Northbrook, Illinois 60062–4582.	June 1, 2001	170132 F
St. Clair (FEMA Docket No. D–7509).	Unincorporated Areas.	February 15, 2001, February 22, 2001, *Bellevue News-Democrat*.	Mr. John Baricevic, Chairman of the St. Clair County Board,St. Clair County Courthouse, 10 Public Square, Bellevue, Illinois 62220–1623.	May 24, 2001	170616 B
Will (FEMA Docket No. D–7513).	Unincorporated Areas.	July 6, 2001, July 13, 2001, *Herald-News*.	Mr. Joseph Mikan, Will County Executive, 302 North Chicago Street,Joliet, Illinois 60432.	Oct. 12, 2001	170695 F

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Noble (FEMA Docket No. D–7511).	Unincorporated Areas.	May 30, 2001, June 6, 2001, *The News-Sun*.	Mr. Mark Pankap, President of the Noble County Board of Commissioners,Noble County Courthouse, 101 North Orange Street, Albion, Indiana 46701.	Sept. 5, 2001	180183 B
Lake (FEMA Docket No. D–7511).	Town of Schererville.	March 20, 2001, March 27, 2001 *The Times*.	Mr. Richard Krame, Manager of the Town of Schererville, 833 West Lincoln highway, Suite B20W, Schererville, Indiana 46375.	June 26, 2001	180142 B
Kentucky:					
Warren (FEMA Docket No. D–7509).	City of Bowling Green.	March 13, 2001, March 20, 2001, *Daily News*.	The Honorable Sandy Jones, Mayor of the City of Bowling Green,P.O. Box 430,Bowling Green, Kentucky 42102–0430.	June 19, 2001	210219 D
Jefferson (FEMA Docket No. D–7511).	Unincorporated Areas.	April 13, 2001, April 20, 2001, *The Courier-Journal*.	Ms. Rebecca JacksonJefferson County Judge Executive,527 West Jefferson Street, Suite 400,Louisville, Kentucky 40202.	July 20, 2001	210120 D
(FEMA Docket No. D–7513).	Lexington-Fayette Urban County Government.	May 30, 2001, June 6, 2001, *Lexington Herald-Leader*.	The Honorable Pam Miller,Mayor of the Lexington-FayetteUrban County Government, 200 East Main Street, 12th Floor,Lexington-Fayette Government Building,Lexington, Kentucky 40507.	May 23, 2001	210067 C
Michigan: Macomb (FEMA Docket No. D–7513).	City of New Baltimore.	June 20, 2001, June 27, 2001, *The Bay Voice*.	The Honorable Joe Grajek, Mayor of the City of New Baltimore, City Hall,36535 Green Street,New Baltimore, Michigan 48047.	June 8, 2001	260125 B
Minnesota:					
Hennepin (FEMA Docket No. D–7511).	City of Crystal	April 18, 2001, April 25, 2001, *Sun Post*.	The Honorable Peter E. Meinstma, Mayor of the City of Crystal,4141 Douglas Drive, Crystal, Minnesota 55422.	July 25, 2001	270156 C
Hennepin (FEMA Docket No. D–7511).	City of Medicine Lake.	April 18, 2001, April 25, 2001 *Sun-Sailor*.	The Honorable Thomas Schrader,Mayor of the City of Medicine Lake,10609 South Shore Drive,Medicine Lake, Minnesota 55441.	July 25, 2001	270690 A
Hennepin (FEMA Docket No. D–7511).	City of Minneapolis	April 18, 2001, April 25, 2001, *Finance and Commerce*.	The Honorable Sharon Sayles Belton, Mayor of the City of Minneapolis, Minneapolis City Hall, 350 South Fifth Street, Room 331, Minneapolis, Minnesota 55415.	July 25, 2001	270172 B
Hennepin (FEMA Docket No. D–7511).	City of Plymouth ...	April 18, 2001, April 25, 2001, *Sun-Sailor*.	The Honorable Joy Tierney, Mayor of the City of Plymouth, 3400 Plymouth Boulevard, Plymouth, Minnesota 55447.	July 25, 2001	270179 C
Mississippi: Madison (FEMA Docket No. D–7513).	City of Ridgeland	May 17, 2001, May 24, 2001, *Madison County Journal*.	The Honorable Gene F. McGee, Mayor of the City of Ridgeland, P.O. Box 217, Ridgeland, Mississippi 39158.	May 10, 2001	280110 D
New Hampshire:					
Sullivan (FEMA Docket No. D–7513).	City of Claremont	July 23, 2001, July 30, 2001, *Eagle Times*.	Mr. Richard Hodgkinson, City Manager of Claremont, 58 Tremont Square, City Hall, Claremont, New Hampshire 03743.	July 11, 2001	330154 C
Hillsborough (FEMA Docket No. D–7513).	Town of Hollis	June 19, 2001, June 26, 2001, *The Telegraph*.	Mr. Daniel McManus, Chairman of the Board of Selectmen, 7 Monument Square, Hollis, New Hampshire 03049.	Sept. 25, 2001	330091 B
New Jersey:					
Burlington (FEMA Docket No. D–7511).	Township of Evesham.	April 19, 2001, April 26, 2001, *Central Records*.	The Honorable Augustus F. Tamburro, Mayor of the Township of Evesham, Municipal Building, 984 Tuckerton Road, Marlton, New Jersey 08053.	Apr. 5, 2001	340097 C
Burlington (FEMA Docket No. D–7511).	Township of Evesham.	April 19, 2001, April 26, 2001, *Central Records*.	The Honorable Augustus F. Tamburro, Mayor of the Township of Evesham, Municipal Building, 984 Tuckerton Road, Marlton, New Jersey 08053.	Apr. 5, 2001	340097 C
New York:					

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Schoharie (FEMA Docket No. D–7511).	Village of Cobleskill.	February 21, 2001, February 28, 2001, *Times Journal*.	The Honorable William Gilmore, Mayor of the Village of Cobleskill, Village Offices, P.O. Box 169, Cobleskill, New York 12043.	Aug. 9, 2001	360743 B
Westchester (FEMA Docket No. D–7511).	Village of Larchmont.	May 21, 2001, May 28, 2001, *The Journal News*.	Mr. R. Joseph Morgan, Larchmont Village Engineer, Municipal Building, 120 Larchmont Avenue, Larchmont, New York 10538.	Nov. 7, 2001	360915 B
Oneida (FEMA Docket No. D–7511).	City of Utica	May 18, 2001, May 25, 2001, *The Observer Dispatch*.	The Honorable Timothy J. Julian, Mayor of the City of Utica, 1 Kennedy Plaza, Utica, New York 13502.	Nov. 7, 2001	360558 A
North Carolina:					
Buncombe (FEMA Docket No. D–7511).	City of Asheville ...	May 10, 2001, May 17, 2001, *The Asheville Citizen-Times*.	The Honorable Leni Sitnick, Mayor of the City of Asheville, 70 Court Plaza P.O. Box 7148, Asheville, North Carolina 28802.	Aug. 16, 2001	370032 C
Brunswick (FEMA Docket No. D–7513).	Unincorporated Areas.	June 28, 2001, July 5, 2001, *Wilmington Morning Star*.	Mr. Marty Lawing, Brunswick County Manager,P.O. Box 249, 45 Courthouse Drive,Bolivia, North Carolina 28422.	Oct. 4, 2001	370295 C
Orange (FEMA Docket No. D–7513).	Town of Carrboro	May 21, 2001, May 28, 2001, *Chapel Hill Herald*.	Mr. Robert W. Morgan, Manager of the Town of Carrboro,301 West Main Street,Carrboro, North Carolina 27510.	Aug. 27, 2001	370275 C
Wake (FEMA Docket No. D–7513).	Town of Garner	July 18, 2001, July 25, 2001, *The News and Observer*.	Ms. Mary Lou Rand, Town Manager, P.O. Box 446, 900 Seventh Avenue,Garner, North Carolina 27529.	July 11, 2001	370240 D
Wake (FEMA Docket No. D–7513).	City of Raleigh	July 18, 2001, July 25, 2001, *The News and Observer*.	The Honorable Paul Y. Coble, Mayor of the City of Raleigh,P.O. Box 590,222 West Hargett Street,Raleigh, North Carolina 27602.	July 11, 2001	370243 D
Wake (FEMA Docket No. D–7513).	Unincorporated Areas.	July 18, 2001, July 25, 2001, *The News and Observer*.	Mr. David Cooke, Wake County Manager, Suite 1100,337 South Salisbury Street,Raleigh, North Carolina 27602.	July 11, 2001	370368 D
Ohio:					
Franklin (FEMA Docket No. D–7513).	Unincorporated Areas.	May 16, 2001, May 23, 2001, *Gahanna News*.	Mr. Dewey Stokes, President of the Franklin County Board of Commissioners,373 South High Street, 26th Floor,Columbus, Ohio 43215–6304.	Aug. 22, 2001	390167 G
Athens (FEMA Docket No. D–7511).	Village of Glouster	March 16, 2001, March 23, 2001, *The Athens Messenger*.	The Honorable David L. Angle, Mayor of the Village of Glouster,16½ Front Street, Glouster, Ohio 45732.	July 20, 2001	390018 B
Guernsey (FEMA Docket No. D–7511).	Unincorporated Areas.	April 20, 2001, April 27, 2001, *The Jeffersonian*.	Mr. Thomas J. Laughlin, President of the Guernsey County,Board of Commissioners, 128 East 8th Street, Suite 101,Cambridge, Ohio 43725.	July 27, 2001	390198 C
Lake (FEMA Docket No. D–7509).	Unincorporated Areas.	February 16, 2001, February 23, 2001, *News-Herald*.	Mr. Daniel Troy, President of the Lake County,Board of Commissioners, 105 Main Street, Painesville, Ohio 44077.	May 25, 2001	390771 C
Lake (FEMA Docket No. D–7511).	Unincorporated Areas.	March 3, 2001, March 10, 2001, *News-Herald*.	Mr. Daniel Troy,President of the Lake County,Board of Commissioners,105 Main Street,Painesville, Ohio 44077.	Aug. 9, 2001	390771 C
Pennsylvania:					
Montgomery (FEMA Docket No. D–7511).	Township of Abington.	March 28, 2001, April 4, 2001, *The Record*.	Ms. Barbara Ferrara, President,Township of Abington, Board of Commissioners,1176 Old York Road, Abington, Pennsylvania 19001.	Mar. 16, 2001	420695 E
Schuylkill (FEMA Docket No. D–7511).	City of Pottsville ...	April 6, 2001, April 13, 2001 *Pottsville Republican*.	The Honorable John D. W. Reiley, Mayor of the City of Pottsville,P.O. Box 50, Pottsville, Pennsylvania 17901.	Mar. 23, 2001	420785 B
Puerto Rico:					

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
(FEMA Docket No. D–7511).	Commonwealth	March 22, 2001, March 29, 2001, *San Juan Star*.	The Honorable Sila Maria Calderon, Governor of the Commonwealth ofPuerto Rico, P.O. Box 82, La Fortaleza,San Juan, Puerto Rico 00901.	June 11, 2001	720000 E
(FEMA Docket No. D–7511).	Commonwealth	March 22, 2001, March 29, 2001, *San Juan Star*.	The Honorable Sila Maria Calderon, Governor of the Commonwealth of Puerto Rico, P.O. Box 82, La Fortaleza, San Juan, Puerto Rico 00901.	June 11, 2001	720000 E
Rhode Island:					
Providence (FEMA Docket No. D–7509).	City of Cranston ...	March 1, 2001, March 8, 2001, *Cranston Herald*.	The Honorable John O'Leary, Mayor of the City of Cranston, City Hall,869 Park Avenue, Cranston, Rhode Island 02910.	June 7, 2001	445396 B
South Carolina:					
Anderson (FEMA Docket No. D–7513)	Unincorporated Areas.	June 20, 2001, June 27, 2001, *Anderson Independent*.	Mr. Joey Preston, Anderson County Administrator,100 South Main Street, P.O. Box 8002,Anderson, South Carolina 29622.	Sept. 26, 2001	450013 B
Kershaw (FEMA Docket No. D–7509).	Unincorporated Areas.	March 21, 2001, March 28, 2001, *The Kershaw News-Era*.	Mr. Gordon Hartwig, Kershaw County Administrator,1121 Broad Street,Camden, South Carolina 29020.	June 27, 2001	450115 D
Richland (FEMA Docket No. D–7513).	Unincorporated Areas.	June 28, 2001, July 5, 2001, *The State*.	Mr. T. Cary McSwain, Richland County Administrator, 2020 Hampton Street,P.O. Box 192, Columbia, South Carolina 29202.	June 21, 2001	450170 G
Tennessee:					
Montgomery (FEMA Docket No. D–7509).	City of Clarksville	March 23, 2001, March 30, 2001, *The Leaf-Chronicle*.	The Honorable Johnny Piper,Mayor of the City of Clarksville, 102 Public Square,Clarksville, Tennessee 37040.	June 29, 2001	470137 C
Maury (FEMA Docket No. D–7511).	City of Columbia ..	May 9, 2001, May 16, 2001, *Daily Herald*.	The Honorable Barbara McIntyre, Mayor of the City of Columbia,707 North Main Street, Columbia, Tennessee 38401.	Aug. 15, 2000	475423 D
Williamson (FEMA Docket No. D–7511).	City of Franklin	April 11, 2001, April 18, 2001, *Review Appeal*.	The Honorable Jerry Sharber, Mayor of the City of Franklin,P.O. Box 305, Franklin, Tennessee 37065.	July 18, 2001	470206 D
Wilson (FEMA Docket No. D–7513).	City of Lebanon	June 21, 2001, June 28, 2001, *The Lebanon Democrat*.	The Honorable Don Fox, Mayor of the City of Lebanon, 200 Castle Heights Avenue North, Suite 100 Lebanon, Tennessee 37087–2845.	Sept. 27, 2001	470208 C
Maury (FEMA Docket No. D–7511).	Unincorporated Areas.	May 9, 2001, May 16, 2001, *Daily Herald*.	Mr. Edward Harlam Executive for Maury County, County Courthouse Basement, Public Room 101, Columbia, Tennessee 38401.	Aug. 15, 2001	470123 B
Montgomery (FEMA Docket No. D–7509).	Unincorporated Areas.	March 23, 2001, March 30, 2001, *The Leaf-Chronicle*.	Mr. Douglas Weiland Montgomery County Executive, 126 Main Street, Clarksville, Tennessee 37041.	June 29, 2001	470136 B
Virginia:					
Augusta (FEMA Docket No. D–7511).	Unincorporated Areas.	May 25, 2001, June 1, 2001, *The Daily News Record*.	Mr. Patrick J. Coffield, Augusta County Administrator, P.O. Box 590, Verona, Virginia 24482.	May 11, 2001	510013 B
Fauquier (FEMA Docket No. D–7511).	Unincorporated Areas.	March 29, 2001, April 5, 2001, *Fauquier Citizen*.	Mr. G. Robert Lee, Fauquier County Administrator, 40 Culpeper Street, Warrenton, Virginia 20186.	July 5, 2001	510055 A
Independent City (FEMA Docket No. D–7511).	City of Roanoke ...	March 30, 2001, April 6, 2001, *Roanoke Times*.	The Honorable Ralph Smith, Mayor of the City of Roanoke, 215 Church Avenue, S.W., Room 452 Roanoke, Virginia 24011.	July 6, 2001	510130 D
Prince William (FEMA Docket No. D–7511).	Unincorporated Areas.	April 20, 2001, April 27, 2001, *The Potomac News*.	Mr. Craig S. Gerhart, Prince William County Executive, 1 County Complex Court, Prince William, Virginia 22192.	Apr. 4, 2001	510119 D
Spotsylvania (FEMA Docket No. D–7511).	Unincorporated Areas.	March 30, 2001, April 6, 2001, *Free Lance Star*.	Mr. L. Kimball Payne III, Spotsylvania County Administrator, P.O. Box 99, Spotsylvania, Virginia 22553.	Sept. 21, 2001	510308 C

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Wisconsin: Pierce (FEMA Docket No. D–7511).	Unincorporated Areas.	March 21, 2001, March 28, 2001, *Pierce County Herald*.	Mr. Richard Wilhelm, Chairman of the Pierce County Board, P.O. Box 128, Ellsworth, Wisconsin 54011.	June 27, 2001	555571 C

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

Dated: December 11, 2001.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 01–31032 Filed 12–17–01; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each 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).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations 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 table below.

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

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

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 final or modified base flood elevations 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 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 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is 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.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
FLORIDA	
Daytona Beach (City), Volusia County (FEMADocket Nos. 7311 and D–7514)	
Atlantic Ocean:	
Approximately 450 feet northeast of the intersection of Harvey Avenue and Ocean Avenue South	*10
Approximately 300 feet east of the intersection of Hartford Avenue and Atlantic Avenue North	*13
Intracoastal Waterway:	
Approximately 500 feet west of the intersection of Glenview Boulevard and Halifax Avenue North	*5

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 700 feet east of the intersection of San Juan Avenue and North Beach Street	*8
BB–19 Canal Tributary No. 7:	
At confluence with B–19 Canal	*30
Approximately 150 feet upstream of Beville Road/State Route 400	*30
B–19 Canal:	
Approximately 1,100 feet upstream of the confluence of B–19 Canal Tributary No. 3 with B–19 Canal	*29
Approximately 100 feet upstream of State Route 400	*30
Tomoka River:	
Approximately 0.8 mile downstream of Eleventh Street	*14
Approximately 400 feet downstream of Interstate 4	*25
Eleventh Street Canal:	
At confluence with Tomoka River	*16
Aproximately 2,810 feet upstream of Clyde Morris Boulevard North	*26
Eleventh Street Canal Tributary No. 2:	
At confluence with Eleventh Street	*26
Approximately 2,800 feet upstream of LPGA Boulevard	*26
Just upstream of Clyde Morris Boulevard North	*26
At confluence of Eleventh Street Canal Tributary No. 2A	26
Eleventh Street Canal Tributary No. 2A:	.....
At confluence with Eleventh Street Canal Tributary No. 2	*26
Approximately 2,600 feet upstream of confluence with Eleventh Street Canal Tributary No. 2	*26
Shooting Range Canal:	
At confluence with Tomoka River	*13
At a point just upstream of Clyde Morris Boulevard North	*26
Maps available for inspection at Daytona Beach Public Works Complex, Engineering Department, 950 Bellevue Avenue, Daytona Beach, Florida	
Daytona Beach Shores (City), Volusia County (FEMA Docket No. 7311)	
Atlantic Ocean:	
Approximately 400 feet east of the intersection of Ridge Road and Atlantic Avenue South	*10
Approximately 500 feet east of the intersection of VanAvenue and Atlantic Avenue South	*12
Intracoastal Waterway:	
Approximately 400 feet west of the intersection of Richards Lane and Peninsula Drive South	*6
At the intersection of Demott Street and Peninsula Drive South	*6
Maps available for inspection at the City of Daytona Beach Shores City Hall, Building Division, 3050 South Atlantic Avenue, Daytona Beach,Florida.	
Edgewater (City), Volusia County (FEMA Docket No. 7311)	
Indian River North/Intracoastal Waterway:	
Just on the Easterly side of the intersection of Boston Road and Riverside Drive	*7
Approximately 100 feet east of the intersection of Knapp Avenue and Riverside Drive South	*9
Maps available for inspection at the City of Edgewater Planning Department, 104 North Riverside Drive, Edgewater, Florida.	
Edgewater (City), Volusia County (FEMA Docket No. 7311)	
Indian River North/Intracoastal Waterway:	
Just on the Easterly side of the intersection of Boston Road and Riverside Drive	*7
Approximately 100 feet east of the intersection of Knapp Avenue and Riverside Drive South	*9
Maps available for inspection at the City of Edgewater Planning Department, 104 North Riverside Drive, Edgewater, Florida.	
New Smyrna Beach (City), Volusia County (FEMA Docket No. 7311)	
Atlantic Ocean:	
Approximately 400 feet east of the intersection of 3rd Avenue East and Atlantic Avenue South	*10
Approximately 0.8 mile north of the intersection of Peninsula Avenue North and Ocean Drive	*12
Indian River North/Intracoastal Waterway:	
At the intersection of Ocean Drive and Peninsula Avenue North	*7
Approximately 1,500 feet east of the intersection of Conrad Drive and Redland Drive	*9
Maps available for inspection at the New Smyrna Beach City Hall, 210 Sams Avenue, New Smyrna Beach, Florida.	
Oak Hill (City), Volusia County (FEMA Docket No. 7311)	
Atlantic Ocean:	
Approximately 120 feet east of the intersection of State Route A1A and Volusia County/Oak Hill corporate limits	*11
Approximately 500 feet from the southern Volusia County/Oak Hill corporate limits along State Route A1A north, then approximately 350 feet east	*12
Indian River North/Intracoastal Waterway:	
Approximately 1,500 feet southwest of the intersection of South Street and State Route A1A in Volusia County	*6
Approximately 500 feet east of the intersection of Cheyenne Drive and Golden Bay Boulevard	*8
Maps available for inspection at the Oak Hill City Hall, 234 South U.S. Highway 1, Oak Hill, Florida.	
Ormond Beach (City), Volusia County (FEMA Docket Nos. 7311 and D–7514)	
Atlantic Ocean:	
Approximately 350 feet east of the intersection of Ann Rustin Drive and Ocean Shore Boulevard	*10
Approximately 600 feet east of the intersection of Harvard Drive and Florence Street	*12
Halifax River/Intracoastal Waterway:	

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
At the intersection of John Anderson Drive and St. Mark Circle	*4
Approximately 100 feet east of the intersection of Seville Street and Beach Street South	*7
Approximately 200 feet west of intersection of John Anderson Drive and Buckingham Drive	*4
Tomoka River:	
Approximately 1.1 miles downstream of confluence of of Thompson Creek	*5
Approximately 1,500 feet upstream of State Route 40	*10
Misner Branch:	
At confluence with Tomoka River	*8
Approximately 100 feet upstream of Handy Avenue	*15
Little Tomoka River:	
At confluence with Tomoka River	*10
At State Route 40	*28
Groover Branch:	
At confluence with Tomoka River approximately 1,300 feet downstream of Tymber Run Road	*20
Approximately 340 feet upstream of Tymber Creek Road North	*10
Thompson Creek:	
Approximately 470 feet downstream of U.S. Route 1 North	*7
Approximately 0.45 mile upstream of Tomoka Avenue	*8
Eleventh Street Canal Tributary No. 2:	
At confluence with Eleventh Street	*26
Approximately 2,800 feet upstream of LPGA Boulevard	*26
Just upstream of Clyde Morris Boulevard North	26
At confluence of Eleventh Street Canal Tributary No. 2A	26
Eleventh Street Canal Tributary No. 2A:	
At confluence with Eleventh Street Canal Tributary No. 2	*26
Approximately 2,600 feet upstream of confluence with Eleventh Street Canal Tributary No. 2	*26
Maps available for inspection at Ormond Beach City Hall, Planning Department, 22 South Beach Street, Room 104, Ormond Beach Florida.	

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Ponce Inlet (Town), Volusia County (FEMA Docket No. 7311)	
Atlantic Ocean:	
Approximately 300 feet east of the intersection of Old Carriage Road and Atlantic Avenue South	*10
Approximately 750 feet east of the Beach Street and Atlantic Avenue South intersection	*12
Intracoastal Waterway:	
At the intersection of Maura Court and Peninsula Drive South	*7
Approximately 2,500 feet south of the intersection of Beach and Sailfish Drive	*9
Maps available for inspection at the Ponce Inlet Town Hall, 4680 South Peninsula Drive, Ponce Inlet, Florida.	

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Port Orange (City), Volusia County (FEMA Docket No. 7311)	
B–19 Canal:	
Approximately 300 feet upstream of confluence with Spruce Creek	*5
Approximately 150 feet downstream of the confluence of B–19 Canal Tributary No. 5 with B–19 Canal	*29
B–19 Canal Tributary No. 2:	
At the confluence with B–19 Canal	*28
Approximately 1,500 feet upstream of confluence with B–19 Canal	*28
Intracoastal Waterway:	
At the intersection of Riverview Lane and Simpson Avenue	*6
At the intersection of Portobello Drive and Riverside Drive	*9
Maps available for inspection at the Port Orange City Hall, 1000 City Center Circle, Port Orange, Florida.	

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
South Daytona (City), Volusia County (FEMA Docket No. 7311)	
Intracoastal Waterway:	
At the intersection of Sea Isle Circle and Palmetto Avenue	*6
Approximately 600 feet east of the intersection of Venture Drive and U.S. Route 1 (Ridgewood Avenue South)	*8
Approximately 125 feet southwest of the intersection of Reed Canal Road and Ridgewood Avenue South/U.S. Route 1	*6
Maps available for inspection at the South Daytona City Hall, 1672 Ridgewood Avenue, South Daytona, Florida.	

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Volusia County (Unincorporated Areas) (FEMA Docket Nos. 7311 and D–7514)	
Atlantic Ocean:	
Approximately 350 feet east of the intersection of Plaza Drive and Ocean Shore Boulevard	*10
Approximately 300 feet southeast of the intersection of Kingfish Avenue and Atlantic Avenue South	*12
Approximately 500 feet southeast of intersection of Ocean Shore Boulevard and northern county boundary ..	*12
Halifax River/Intracoastal Waterway:	
Approximately 100 feet southwest of the intersection of John Anderson Drive and Highridge Road	*4
Approximately 2,750 feet west of intersection of Cardinal Boulevard and Major Street	*9
Indian River North/Intracoastal Waterway:	
Approximately 1,000 feet east of intersection of Pelican Place and Riverside Drive	*7
Approximately 50 feet west of the intersection of Trout Avenue and Atlantic Avenue ...	*6
Groover Branch:	
Approximately 1,250 feet upstream of Tymber Run	*10
Approximately 340 feet upstream of Tymber Creek Road North	*20
Tomoka River:	
Approximately 1.17 miles downstream of confluence of Thompson Creek	*5
Approximately 0.96 mile upstream of U.S. Route 92	*25
Little Tomoka River:	

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
At confluence with Tomoka River, approximately 1,850 feet downstream of Main Trail Road	*10
Approximately 200 feet upstream of State Route 40	*30
B–19 Canal:	
At the confluence of B–19 Canal Tributary No. 2	*28
Approximately 550 feet northeast of the confluence of B–19 Canal Tributary No. 3 with B–19 Canal	*29
Crescent Lake:	
Approximately 6,000 feet northeast of the intersection of Ducan Road and Raulerson Road No. 7	*7
Approximately 2.84 miles northeast of the intersection of Ducan Road and Raulerson Road No. 7	*7
Eleventh Street Canal Tributary No. 2:	
At confluence with Eleventh Street	*26
Approximately 2,800 feet upstream of LPGA Boulevard	*26
Just upstream of Clyde Morris Boulevard North	*26
At confluence of Eleventh Street Canal Tributary No. 2A	*26
Eleventh Street Canal Tributary No. 2A:	
At confluence with Eleventh Street Canal Tributary No. 2	*26
Approximately 2,600 feet upstream of confluence with Eleventh Street Canal Tributary No. 2	*26
Shooting Range Canal:	
At confluence with Tomoka River	*13
At a point just upstream of Clyde Morris Boulevard North	*26
Maps available for inspection at the Volusia County Emergency Operations Center, 49 Keyton Drive, Daytona, Florida.	
GEORGIA	
Morgan County (Unincorporated Areas) (FEMA Docket No. D–7510)	
Apalachee River:	
Approximately 2.98 miles downstream of State Route 186	*574
Just downstream of State Route 186	*623
Maps available for inspection at the Morgan County Building Inspector's Office, 384 Hancock Street, Madison, Georgia.	
MAINE	
Princeton (Town), Washington County (FEMA Docket No. D–7512)	
Grand Falls Flowage:	
Entire shoreline within the Town of Princeton	*204
Lewy Lake:	
Entire shoreline within the Town of Princeton	*204
Long Lake:	
Entire shoreline within the Town of Princeton	*204
Maps available for inspection at the Princeton Town Office, 15 Depot Street, Princeton, Maine.	
NEW HAMPSHIRE	
Strafford (Town), Strafford County (FEMA Docket No. D–7512)	
Bow Lake:	
Entire shoreline in the Town of Strafford	*517
Maps available for inspection at the Town Office, Route 202A, Center Strafford, New Hampshire.	
NEW JERSEY	
Summit (City), Union County (FEMA Docket No. D–7510)	
Passaic River:	
Approximately 200 feet upstream of Old Highway 24/corporate limits	*180
Approximately 0.62 mile (3,250 feet) upstream of Stanley Avenue	*207
Maps available for inspection at the Summit City Hall, 512 Springfield Avenue, Summit, New Jersey.	
NEW YORK	
Kiryas Joel (Village), Orange County (FEMA Docket No. D–7510)	
Coronet Brook:	
At the confluence with Tributary No. 25	*612
Approximately 340 feet upstream of Israel Zupnik Drive	*649
Forest Brook:	
At the confluence with Tributary No. 25	*604
Approximately 0.44 mile upstream of Schunnemunk Road	*760
Highland Brook:	
At the confluence with Tributary No. 25	*609
Approximately 1,470 feet upstream of Bakertown Road	*654
Palm Brook:	
Approximately 980 feet downstream of Koznits Road	*677
Approximately 0.38 mile upstream of an Access Road	*833
Tributary No. 25:	
Approximately 600 feet downstream of the confluence of Forest Brook	*601
Approximately 200 feet upstream of Krolla Drive	*734
Maps available for inspection at the Kiryas Joel Village Hall, 51 Forest Road, Monroe, New York.	
Port Jervis (City), Orange County (FEMA Docket No. D–7512)	
Neversink River:	
Downstream corporate limits	*427
Approximately 0.05 mile downstream of Main Street	*427
Delaware River:	
Downstream corporate limits	*448
Upstream corporate limits	*426
Maps available for inspection at the Port Jervis Municipal Building, 14 Hammond Street, Port Jervis, New York 12771.	
OHIO	
Montezuma (Village), Mercer County (FEMA Docket No. D–7512)	
Grand Lake-St. Marys:	
At intersection of Wyatt Street and Canal Street	*873
Maps available for inspection at the Montezuma Village Hall, 69 West Main Street, Montezuma, Ohio	
Willoughby Hills (City), Lake County (FEMA Docket No. D–7510)	
Euclid Creek North Tributary:	
Approximately 2,800 feet downstream of Bishop Road	*827
Approximately 4,020 feet upstream of Lamplight Lane	*873
Euclid Creek South Tributary:	

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
At confluence with Euclid Creek North Tributary	*832
Approximately 1.1 miles upstream of Bishop Road	*877
Maps available for inspection at the Willoughby Hills City Hall, 35405 Chardon Road, Willoughby Hills, Ohio.	
PENNSYLVANIA	
Langhorne Manor (Borough), Bucks County (FEMA Docket No. D–7512)	
Chubb Run:	
At Comly Avenue	*96
Approximately 90 feet upstream of Gillam Avenue	*197
Maps available for inspection at the Langhorne Borough Building, 618 Hulmeville, Langhorne Manor, Pennsylvania.	
Middletown (Township), Bucks County (FEMA Docket No. D–7512)	
Chubb Run:	
At confluence with Neshaminy Creek	*40
Approximately 90 feet upstream of Gillam Avenue	*197
Maps available for inspection at the Middletown Township Zoning and Planning Office, 2140 Trenton Road, Levittown, Pennsylvania.	
Penndel (Borough), Bucks County (FEMA Docket No. D–7512)	
Chubb Run:	
Approximately 70 feet upstream of Hulmeville Road	*62
Just downstream of CONRAIL	*80
Maps available for inspection at the Penndel Borough Office, 300 Bellevue Avenue, Penndel, Pennsylvania.	
SOUTH CAROLINA	
Cayce (City), Lexington County (FEMA Docket No. 7311)	
Congaree River:	
Approximately 100 feet upstream of the confluence of Congaree Creek	*135
Approximately 75 feet upstream of Blossom Street	*153
Congaree Creek:	
Approximately 125 feet upstream of the confluence with the Congaree River	*135
Approximately 750 feet downstream of the confluence of Six Mile Creek	*141
Maps available for inspection at the City Hall, 1800 12th Street, Cayce, South Carolina.	
Colleton County (Unincorporated Areas) (FEMA Docket No. 7295)	
Ashepoo River:	
Approximately 2.38 miles downstream of CSX Transportation	*8
Approximately 225 feet upstream of Ritter Road	*12
Chessey Creek:	
At confluence with Horseshoe Creek	*8
Approximately 75 feet upstream of Charleston Highway	*10
Edisto River:	
Approximately 2,000 feet downstream of U.S. Route 17	*11
Approximately 400 feet upstream of upstream corporate limits (Bamburg/Colleton)	*92
Great Swamp:	
Approximately 3.84 miles downstream of South Jeffries Boulevard	*21
Approximately 335 feet upstream of I–95 southbound	*38
Horseshoe Creek:	
At confluence with Ashepoo River	*8
Approximately 40 feet upstream of Charleston Highway(State Route 64)	*12
Ireland Creek:	
Approximately 500 feet upstream of South Jeffries Boulevard	*32
Approximately 75 feet upstream of Industrial Boulevard	*50
Wolf Creek:	
At confluence with Jones Swamp Creek	*44
Approximately 180 feet upstream of Quail Drive	*65
Maps available for inspection at the Colleton County Building Inspector's Office, Benson Street, Walterboro, South Carolina.	
Columbia (City), Lexington and Richland Counties (FEMA Docket No. 7311)	
Gills Creek:	
Upstream side of State Route 48 (Bluff Road)	*137
At the Southern Railway Bridge	*138
Saluda River:	
At the confluence with the Broad and Congaree Rivers	*155
Approximately 1,625 feet upstream of USGS Gage No. 2–1690	*172
Rocky Branch:	
Approximately 75 feet downstream of Olympia Avenue	*149
Approximately 475 feet upstream of Olympia Avenue	*151
Congaree River (with levee):	
Approximately 360 feet upstream of the CSX Transportation crossing	*152
At confluence of Broad and Saluda Rivers	*155
Broad River:	
At the confluence with Saluda and Congaree Rivers	*155
Approximately 1,550 feet upstream of the confluence with Saluda and Broad Rivers	*158
Maps available for inspection at the Columbia City Hall, 1225 Laurel Street, Columbia, South Carolina.	
Lexington County (Unincorporated Areas) (FEMA Docket No. 7311)	
Congaree River:	
At the county boundary	*128
At the confluence of Broad and Saluda Rivers	*155
Saluda River:	
At the confluence with the Congaree River	*155
Approximately 0.95 mile upstream of the confluence with the Congaree River	*156
Congaree Creek:	
At the confluence with the Congaree River	*135
Approximately 750 feet downstream of the confluence of Six Mile Creek	*141
Maps available for inspection at the Planning Department, County Administration Building, 212 South Lake Drive, Lexington, South Carolina.	

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Richland County (Unincorporated Areas) (FEMA Docket No. D–7506)	
Gills Creek:	
At the confluence with the Congaree River	*133
At the Southern Railway bridge	*138
Rocky Branch:	
At the confluence with Congaree River	*149
Approximately 475 feet upstream of Olympia Avenue	*151
Tributary G–1:	
At the confluence with Gills Creek	*136
Approximately 810 feet upstream of Bluff Road	*141
Reeder Point Branch:	
At the confluence with Black Lake	*134
Approximately 140 feet upstream side of State Route 48 (Bluff Road)	*135
Congaree River (with levee):	
Approximately 2.66 miles downstream of the confluence with Gills Creek	*128
Approximately 0.5 mile upstream of the CSX Transportation crossing	*152
Congaree River (without levee):	
Approximately 42.2 miles upstream of mouth	*131
Approximately 2.3 miles upstream of the Southeastern Beltway (West Bound)	*140
Spears Creek:	
Downstream side of Jacobs Mill Pond Road	*221
Approximately 0.5 mile upstream Spears Creek Church Road	*311
Lake Murray:	
Entire shoreline within county	*363
Maps available for inspection at the Richland County Planning Department, 2020 Hampton Street, Columbia, South Carolina.	
West Columbia (City), Lexington County (FEMA Docket No. 7311)	
Congaree River:	
Approximately 1,250 feet upstream of Blossom Street	*153
Approximately 220 feet downstream of Jarvis Klapman Boulevard	*154
Saluda River:	
Approximately 0.93 mile upstream of the confluence with the Congaree River	*156
Approximately 900 feet upstream of the confluence of Double Branch	*172
Maps available for inspection at the City Hall, 1053 Center Street, West Columbia, South Carolina.	
TENNESSEE	
Selmer (City), McNairy County (FEMA Docket No. D–7512)	
Cypress Creek:	
Approximately 1,700 feet downstream of South Fourth Street	*433
Approximately 1,855 feet upstream of Purdy Road	*444
Crooked Creek:	
At the confluence with Cypress Creek	*439
Approximately 0.5 mile upstream of Highschool Road	*459
Maps available for inspection at the City Hall, 144 North Second Street, Selmer, Tennessee.	
VERMONT	
Woodstock (Town and Village), Windsor County (FEMA Docket No. D–7510)	
Ottauquechee River:	
Approximately 550 feet upstream U.S. Route 4	*697
At the upstream corporate limits	*812
Maps available for inspection at Town Hall, 31 The Green, Woodstock, Vermont.	
VIRGINIA	
Berryville (Town), Clarke County (FEMA Docket No. D–7510)	
Town Run:	
Approximately 1,220 feet downstream of Springsbury Road (State Route 613)	*553
Approximately 80 feet upstream of Lincoln Avenue	*599
Maps available for inspection at the Town of Berryville Office, 23 East Main Street, Berryville, Virginia.	

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

Dated: December 11, 2001.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 01–31034 Filed 12–17–01; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each 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).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final 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 table below.

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 BFEs and modified BFEs for each community listed. The proposed BFEs and proposed modified BFEs were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed BFEs and proposed modified BFEs were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

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 final 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 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 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 amended to read 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.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD).
CALIFORNIA	
Martinez (City), Contra Costa County, (FEMA Docket No. B–7408)	
Arroyo Del Hambra Creek:	
Just upstream of John Muir Parkway	*116
Approximately 2, 000 feet upstream of Alhambra Avenue	*180
Line A. DA–40:	
Approximately 950 feet downstream of Howe Road	*22
Approximately 75 feet downstream of Howe Road	*23
Maps are available for inspection at City of Martinez, City Hall, 525 Henrietta Street, Martinez, California.	
MISSOURI	
Newton County (Unincorporated Areas), (FEMA Docket No. B–7258)	
Culpepper Creek:	
Approximately 1,150 feet downstream of Webert Road	*1,037
Approximately 100 feet downstream of Old County Highway East	*1,050
Approximately 2,800 feet upstream of Main Street	*1,075
Wolf Creek:	
At confluence with Culpepper Creek	*1,044
Approximately 3,050 feet upstream of confluence with	*1,059
Maps are available for inspection at Newton County Courthouse, Emergency Management Office, 101 South Wood Street at Main Street, Neosho, Missouri.	
Grandby (City), Newton County, (FEMA Docket No. B–7270)	
Culpepper Creek:	
Approximately 400 feet upstream of confluence with Shoal Creek	*1,034
Approximately 100 feet downstream of Old County Highway E	*1,050
Approximately 120 feet upstream of Main Street	*1,072
Wolf Creek:	
Approximately 3,450 feet downstream of Vance Street	*1,048
Approximately 1,150 feet upstream of Vance Street	*1,082
Maps are available for inspection at the City of Grandby, City Hall, 302 North Main Street, Grandby, Missouri.	
OREGON	
Gresham (City), Multnomah County, (FEMA Docket No. B7417)	
Kelly Creek:	
Approximately 130 feet downstream of Division Street	*335
Approximately 400 feet upstream of NE Kane Road	*353
Approximately 410 feet downstream of SE El Camino Drive	*355
Approximately 430 feet upstream of Powell Valley Road	*387
Approximately 670 feet downstream of SE Ironwood Way	*416
Approximately 630 feet upstream of 282nd Street	*446
Maps are available for inspection at the Community and Economic Development Department, 1333 NW Eastman Parkway, Gresham, Oregon.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD).	Communities affected
IOWA		
FEMA Docket No. (B–7401)		
Missouri River:		
Approximately 5.3 miles downstream of McCandles Cleghorn outlet	*1,032	Monona County (Uninc. Areas).
Approximately 17.9 miles upstream of Iowa Highway 175(I)	*1,065	Monona County (Uninc. Areas).

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD).	Communities affected
McCandless Cleghorn Drainage Ditch:		
At its confluence with the Missouri River	*1,039	Monona County (Uninc. Areas).
At 235th Street	*1,044	Monona County (Uninc. Areas), City of Onawa.
Approximately 1,000 feet downstream of 220th Street	*1,051	Monona County (Uninc. Areas), City of Onawa.
At intersection of West Street and Walnut Street	*1,058	Monona County (Uninc. Areas), City of Whiting.
Approximately 1,400 feet upstream of County Highway 45	*1,061	Monona County (Uninc. Areas), City of Whiting.
Just downstream of County Highway 45	*1,063	Monona County (Uninc. Areas).

ADDRESSES

Monona County (Unincorporated Areas)

Maps are available for inspection at the Monona County Zoning Office, Chairman, Monona County Board of Supervisors, 610 Iowa Avenue, Onawa, Iowa.

City of Onawa

Maps are available for inspection at the Leon Valley City Hall, 914 Diamond Street, Onawa, Iowa.

City of Whiting

Maps are available for inspection at City Hall, 605 Whittier Street, Whiting, Iowa.

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

Dated: December 11, 2001.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 01–31033 Filed 12–17–01; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 00–39; FCC 01–330]

Broadcast Services; Digital Television

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document resolves a number of petitions for reconsideration of the Federal Communications Commissions' Report and Order and Further Notice of Proposed Rule Making (R&O). This document addresses a number of issues related to the conversion of the nation's broadcast television system from analog to digital television (DTV), including when to require election by licensees of their post-transition DTV channel, whether to require replication by DTV licensees of their NTSC Grade B service contours, whether to require DTV licensees to place enhanced service contours over their principal communities, and how to process mutually exclusive applications. The document also modifies the minimum hours of operation of certain DTV stations and establishes guidelines for television stations that may seek an extension of the deadlines for construction of DTV facilities. Our intention in revising some of the decisions reached in the Report and Order is to revise certain requirements that may be having the unintended consequence of hindering, rather than furthering, the DTV transition, and to prioritize those elements most important to the transition. The decisions reached in this document should maximize the number of DTV stations providing service to at least all consumers in their community of license by allowing DTV stations to go on the air initially with lower-powered, and therefore less expensive, facilities.

DATES: The decisions and rules adopted herein shall be effective February 19, 2002, except for FCC Form 337 which contains information collection requirements that have not been approved by OMB. Written comments on this new information collection are due February 19, 2002. The FCC will publish a document announcing the effective date of FCC Form 337 once OMB approval is received. This form appears as an appendix to this document.

ADDRESSES: Federal Communications Commission, Washington, DC, 20554. In addition to filing comments with the Office of the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Kim Matthews, Policy and Rules Division, Mass Media Bureau, (202) 418–2130. For additional information concerning the information collections contained in this document, contact Judy Boley at 202–418–0214, or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order on Reconsideration (MO&O), FCC 01–330, adopted November 8, 2001, released November 15, 2001. The full text of the Commission's MO&O is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room TW–A306), 445 12th Street, SW., Washington, DC 20554. The complete text of this MO&O may also be purchased from the Commission's copy contractor, Qualex International, (202) 863–2893, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The text of the MO&O is also available from the FCC's Internet website: *www.fcc.gov.*

Paperwork Reduction Act

This MO&O contains either a new or modified information collection. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and other government agencies to comment on the information collection contained

in this MO&O as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due February 19, 2002. Comments should address: (a) Whether the new or modified 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 estimates; (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.

OMB Control Number: 3060–XXXX.

Title: Application for Extension of Time to Construct a Digital Television Broadcast Station.

Form No.: FCC 337.

Type of Review: New collection.

Respondents: Business or other for-profit; not-for-profit institutions.

Number of Respondents: 600 (400 extensions; 200 requests for special temporary authority).

Estimated Time per Response: 1.5 hours extensions (0.5 hours respondent; 1 hour attorney); 4.0 hours. STA (1 hour respondent; 1 hour attorney; 2 hours consulting engineer).

Total Annual Burden: 400 hours.

Total Annual Costs: $207,000.

Needs and Uses: The MO&O revises the circumstances under which an extension of time to construct a digital television broadcast station can be requested. The Commission has developed the FCC 337 to be used by DTV permittees to apply for an extension of time. Applicants must retain documentation fully detailing and supporting their representations made on this form. In addition, the MO&O adopted a provision for special temporary authority for licensees that have not been granted a construction permit for allotted or maximized DTV facilities to commence digital operations. The request for special temporary authority must specify the technical facilities requested. The data is used by FCC staff to determine, on a case-by-case basis, whether a broadcaster should be afforded additional time to construct its facilities and to ensure that operation will not exceed allotted parameters.

Synopsis of Memorandum Opinion and Order on Reconsideration

I. Introduction

1. In this MO&O, we revise a number of the determinations we made in the R&O, affirm other decisions, and provide clarification of certain rules and policies. We also modify, on our own motion, the minimum hours of operation of certain DTV stations and establish guidelines for television stations that may seek an extension of our deadlines for construction of DTV facilities. We will resolve several major technical issues raised in the R&O, including the issues of receiver performance standards, DTV tuners, revisions to the ATSC transmission standard (including the PSIP standard), and labeling requirements for television receivers, in a separate R&O.

II. Background

2. In the Commission's digital television proceeding (MM Docket No. 87–268), we indicated our intention to hold periodic reviews of the progress of the conversion to digital television and to make any mid-course corrections necessary to ensure the success of that conversion. In the Fifth Report and Order in MM Docket 87–268 (63 FR 135461, May 20, 1998) (Fifth R&O), we stated that we would conduct such a review every two years in order to ''ensure that the introduction of digital television and the recovery of spectrum at the end of the transition fully serves the public interest.'' We commenced this first periodic review with a Notice of Proposed Rule Making in MM Docket 00–39 (65 FR 15600, March 23, 2000) (NPRM), adopted March 6, 2000. In the NPRM, we invited comment on a number of issues that we considered essential to resolve in order to ensure continued progress on the conversion. We also sought comment generally on various aspects of the transition, such as the pace of DTV receiver sales and the availability of financing for digital facilities.

3. Based on the comments we received in response to the NPRM, we made a number of determinations in the R&O that we believed would further progress on the transition. Among other things, we established a December 31, 2003 deadline by which commercial television stations that have both their NTSC and DTV operations on in-core channels must elect which of their two core channels to use for DTV operations after the transition. We gave non-commercial stations that have both their NTSC and DTV operations on in-core channels until the end of 2004 to elect their post-transition DTV channel. We determined that this early channel election would allow us to identify more quickly channels that will be available to accommodate DTV licensees with out-of-core transition channels as well as new entrants. In addition, to provide broadcasters with an incentive to provide full replication of NTSC coverage with DTV service, we determined that, after December 31, 2004, whatever portion of a commercial broadcaster's NTSC Grade B contour is not replicated with its digital television signal will cease to be protected in the DTV Table of Allotments. Noncommercial DTV licensees were given until December 31, 2005 in which to replicate or lose such DTV interference protection. We also imposed a principal community coverage requirement that is stronger than the DTV service contour requirement that we adopted as an initial obligation in the Fifth R&O. This new city-grade service requirement, which becomes effective December 31, 2004 for commercial stations and December 31, 2005 for noncommercial stations, was intended to improve the availability of service in the community of license and to prevent undue migration of stations from their communities of license.

4. In addition, in our R&O we adopted DTV application cut-off procedures and determined how we would resolve any mutually exclusive applications. We also made a number of technical decisions, including our determination that there is no persuasive information to indicate that there is any deficiency in the 8-VSB modulation system of the DTV transmission standard that would warrant adding COFDM to the current standard. Finally, we declined to adopt technical performance standards for DTV receivers, although we indicated we would continue to monitor receiver issues throughout the transition and would take appropriate action on receiver standards if necessary.

5. Upon further consideration, and after careful review of the petitions for reconsideration, we believe that some of the requirements that we adopted in the R&O may be having the unintended consequence of hindering, rather than furthering, the DTV transition. In particular, we believe that the Commission's current channel election and replication requirements and deadlines may be imposing substantial burdens on broadcasters without sufficient countervailing public benefits, and may in fact be contributing to difficulties faced by a substantial number of stations in meeting their DTV construction deadlines.

6. The DTV build-out dates have passed for the top-30-market major network affiliate stations. As of September 2001, thirty-seven of the 40 major network affiliate stations in the top 10 television markets are on the air with DTV service, 36 with licensed

facilities and one with special temporary authority (''STA''). In addition, 71 of the 79 major network affiliate stations in markets 11–30 are providing digital service, 61 with licensed facilities and 10 with STAs. By May 1, 2002, all remaining commercial television stations are required to complete construction and commence DTV operations. Noncommercial stations have until May 1, 2003 to complete construction.

7. The National Association of Broadcasters (NAB) recently conducted a survey of all full-power commercial TV stations to determine how many anticipate they will have a digital signal on the air by May 2002. The results of the survey show that more than two thirds (68.2%) of responding stations reported that they either are operating now in digital format or expect to have a digital signal on the air by May 2002. Stations that anticipate meeting the deadline would provide at least one digital signal by next May in 164 television markets. According to the NAB, these markets include 95.8 % of all television households.

8. While these survey results are encouraging, it nonetheless appears that slightly less than one-third (31.8%) of all stations responding to the NAB survey anticipate that they will not be able to provide a digital signal by the May 2002 deadline. A larger percentage (81.9%) of responding stations in the top 50 markets anticipate that they will meet the deadline, while a smaller percentage (49.1%) of stations in markets 100 and above indicated they will complete construction on time. Three-quarters of those stations that do not anticipate meeting the May 2002 deadline indicated they plan to seek an extension of this deadline from the FCC. Generally, smaller market broadcasters that filed petitions in this proceeding assert that they are unable to obtain financing to construct DTV facilities sufficient to replicate their analog service area. These broadcasters also claim that they will not have sufficient operational experience by December 2004 to determine which core channel is superior for DTV transmission. Broadcasters that are not capable of constructing full replication facilities by the deadline established in the R&O may be postponing construction altogether. Thus, while the Commission's current replication deadline was intended to provide an incentive to stations to construct DTV facilities capable of reaching their entire service area, this deadline may in fact be causing stations to delay construction, thus slowing transition progress.

9. As discussed more fully below, upon reconsideration we have decided to allow stations to construct initial DTV facilities designed to serve at least their communities of license, while still retaining DTV interference protection to provide full replication at a later date. Thus, we will temporarily defer the replication protection and channel election deadlines we established in the R&O. In our next periodic review of the progress of the DTV transition, we intend to establish a firm date by which broadcasters must either replicate their NTSC service areas or lose DTV service protection of the unreplicated areas, and by which broadcasters with two in-core allotments must elect which channel they will eventually use at the end of the transition. These replication protection and channel election deadlines may be earlier than but will in no event be later than the latest of either the end of 2006 or the date by which 85% of the television households in a licensee's market are capable of receiving the signals of digital broadcast stations. During the next periodic review, we intend to develop a record on the progress of the transition and how such progress relates to such issues as band clearing and the goal of the rapid recovery of spectrum for public safety and other wireless services, as well as other issues related to the successful conclusion of the DTV transition. In order to provide parity to analog UHF stations, we will also allow these stations to construct initial facilities that serve their principal communities while retaining for the time being DTV interference protection to their maximized service areas, subject to the interference protection deadline we intend to establish in the next periodic review. We will not alter, however, our decision to require stations to provide a stronger signal to their communities of license than that adopted as an initial requirement in the Fifth R&O. As established in the R&O, this new city-grade service requirement will become effective December 31, 2004 for commercial stations and December 31, 2005 for noncommercial stations.

10. Our intention in making these revisions to the decisions reached in the R&O is to prioritize those elements that are most important to the DTV transition. At this point, we believe our primary goal should be to maximize the number of DTV stations providing service to at least all consumers in their community of license. Relaxing our channel election and replication requirements will allow stations to go on the air with lower-powered, and therefore less expensive, facilities, while also providing broadcasters additional time to consider their post-transition facilities. The reduced build-out requirements we adopt today will allow broadcasters to save both on construction and operating costs, including lower power expenses. Indeed, the ability to transmit at lower power may permit many of these stations to transmit from existing towers, rather than being forced to build new facilities immediately. In addition, we will allow DTV stations that are not yet required to be on the air with a digital signal—*i.e.,* those that are subject to the May 1, 2002 or May 1, 2003 deadlines, including stations subject to those deadlines that are currently on the air early—to operate initially at a reduced schedule by providing, at a minimum, a digital signal during prime time hours, consistent with their simulcast obligations. This is consistent with our recognition that such stations, as an initial matter, may need the flexibility to adopt a more graduated approach to the transition. We believe that this approach may permit more stations to meet the build-out deadlines and help advance the digital transition. This minimum will effectively be increased under the Commission's existing simulcast obligations, which require DTV licensees to simulcast 50% of their analog schedule by April 1, 2003, 75% of their analog schedule by April 2004, and 100% of their analog schedule by April 2005. Stations that were subject to the earlier construction deadlines (top four network affiliates in the top thirty markets) will remain subject to the previous rule—*i.e.,* they must operate their DTV station at any time that the analog station is operating. This distinction is consistent with our prior treatment of these stations. In establishing earlier build-out deadlines for these stations in the Fifth R&O, we noted that ''the most viewed stations in the largest television markets can be expected to lead the transition to DTV'' and that these stations are ''likely to have substantial revenues that may be used to fund the conversion.''

11. In the end, we believe that reconsidering these rules will help further the DTV transition while actually promoting the goals of replication and of maximizing the digital service provided to the public. Getting more stations on the air will help drive DTV set penetration. Increasing the number of DTV sets in production and in the hands of consumers will bring prices down and provide an incentive for content producers and advertisers to invest in

DTV. Ultimately, an expanding DTV marketplace will help further the expansion of DTV into unserved areas in the future.

III. Issue Analysis

A. Channel Election

12. After the transition, DTV service will be limited to a ''core spectrum'' consisting of current television channels 2 through 51. Although some stations received transition channels out of the core, and a few have both their NTSC and DTV channels outside the core, we believe that there will be sufficient spectrum so that at the end of the transition all DTV stations will be operating on core channels. However, as we indicated in the R&O, it now appears that there will be more out of core stations that must be accommodated with a core channel than we initially anticipated because new applicants will be allowed to convert their single NTSC channels to DTV operation and those on NTSC and DTV channels outside the core will be provided a post-transition channel inside the core. Also, the recent establishment of primary Class A television stations may limit availability of core channels in some areas.

13. These factors influenced our decision in the R&O to mandate early election of DTV channels for that category of licensees with both their NTSC and DTV channels within the core. Specifically, we gave commercial television licensees with both their NTSC and DTV operations on in-core channels until December 31, 2003 to decide which of their two in-core channels to use for DTV operations after the transition. We noted that this is more than one and a half years after the last commercial station construction deadline (*i.e.,* May 1, 2002), and stated our belief that this gave stations time in which to decide which of their two in-core channels would be most suitable for use in digital broadcasting. We stated that setting this channel election deadline would enable us to determine at an early date, on a market-by-market basis, what in-core channels would be available for use by stations having two out-of-core channels. We also stated our belief that an early final channel election would help speed the transition by making the final local channel alignments clear. We gave non-commercial stations that have both their NTSC and DTV operations on in-core channels until the end of 2004 to elect their channels, or more than one and a half years after their construction deadline (*i.e.,* May 1, 2003).

14. As we indicated above, upon reconsideration we have determined to temporarily defer the imposition of a channel election deadline until the next periodic review. We intend to monitor closely the progress of the transition and, based on developments between now and the conclusion of the next review, we will establish a channel election deadline that may be earlier than but in no event will be later than the latest of either the end of 2006 or the date by which a market meets the 85% digital penetration target. We believe that this action is consistent with, and necessitated by, our decision today to allow stations to construct initial DTV facilities designed to serve their communities of license, while still preserving DTV interference protection to provide full replication or maximization service at a later date.

15. We expect that a number of stations will choose to meet our May 2002 construction deadline by building less than full facilities initially, or by operating at lower power, and increasing power over time in relation to the demand for digital programming. We are today permitting stations to commence service with facilities that meet the minimum requirements set forth in § 73.625(a)(1) of our rules. By December 31, 2004, commercial stations must meet the increased city-grade signal strength requirements we imposed in the R&O. Noncommercial stations have until December 31, 2005 to meet this city-grade service obligation. At the same time, on our own motion, we will allow television stations subject to the May 1, 2002 and May 1, 2003 DTV construction deadlines to operate digitally at a reduced schedule by providing, at a minimum, a digital signal during prime time as specified in § 79.3(a)(6) of our rules. With respect to these stations, this replaces our current rule that requires that DTV licensees and permittees transmit at least one DTV signal at any time the licensee or permittee transmits an analog signal. This modified rule does not reduce the simulcast obligations of these licensees, described in § 73.624(f) of our rules. Thus, for example, by April 1, 2003, a DTV station that was required to be on the air by May 1, 2002 must provide a digital signal at least 50 percent of the time it transmits an analog signal, and under the requirements of § 73.624(b)(i), a portion of the simulcasting must occur during prime time.

16. We believe that permitting stations to elect a more graduated approach to providing DTV service will foster the early introduction of DTV service to core service areas, and allow stations to grow into their full DTV facilities as the transition progresses. Because we are permitting stations greater flexibility to increase digital power and hours of service over time, we believe stations must be given an opportunity to increase power and gain experience at those higher power levels before they can make an educated choice about which of their two channels will provide optimal DTV service. We believe that this concern outweighs the benefits we discussed in the R&O that would result from an early election date. Accordingly, we will temporarily defer the imposition of an election deadline until the next periodic review.

B. Replication and Maximization

1. Replication

17. We established NTSC service replication as a goal in the creation of the initial DTV Table of Allotments. Each DTV channel allotment was chosen to best allow its DTV service to match the Grade B service contour of the NTSC station with which it was paired. As we stated in the R&O, we continue to believe that this approach provides important benefits to both viewers and broadcasters and ''will ensure that broadcasters have the ability to reach the audiences that they now serve and that viewers have access to the stations that they can now receive over-the-air.''

18. In the R&O, we stated our expectation that DTV broadcasters would eventually choose to replicate their NTSC service areas to serve their viewers. However, we concluded we would not require replication because we wanted to give broadcasters a measure of flexibility as they build their DTV facilities to collocate their antennas at common sites, thus minimizing potential local difficulties locating towers and eliminating the cost of building new towers. We also recognized, among other things, that, in the absence of a Commission-mandated replication requirement and because we provided licensees a certain amount of transmitter location flexibility, some licensees may have already built their initial DTV facilities in locations that are unsuitable for full replication.

19. While we concluded we would not expressly require full replication of NTSC coverage with DTV service, we determined we would provide an incentive to broadcasters to provide such replication in order to assure that viewers do not lose service and to speed the transition. Specifically, we decided to cease to give DTV interference protection to commercial broadcasters' unreplicated service areas as of December 31, 2004. Thus, under the decision we reached in the R&O,

commercial broadcasters that did not replicate their NTSC Grade B service area as of that date left the unreplicated portions of their DTV service area unprotected in the DTV Table of Allotments against other DTV broadcasters seeking to maximize their own service areas or analog full or low-power broadcasters, including Class A licensees, seeking to expand the service area of their existing stations. We gave noncommercial DTV licensees until December 31, 2005 to replicate or lose interference protection.

20. As we indicated above, upon reconsideration we have decided to temporarily defer until the next periodic review the replication deadlines established in the R&O. We agree with those petitioners who believe that, even as an incentive, a fixed date of 2004 (or 2005 for noncommercial stations) may be too soon to reasonably expect all stations to have constructed full replication facilities. However, during the next periodic review of the progress of the DTV transition, we will establish a new interference protection deadline that, as with the channel election deadline discussed above, may be earlier than but will not be later than the end of 2006 or the date by which a market meets the 85% digital penetration target, whichever is later. Our consideration of the issue of the appropriate interference protection deadline during the next periodic review will be informed by the progress that has occurred on issues such as band-clearing and recovering the spectrum for public safety use and other services.

21. Under the approach we are adopting today, stations will be allowed, without loss of full service area protection, to commence digital operations by constructing and operating facilities that at least provide the required level of digital signal strength to their communities of license. This will allow stations to focus their energies initially on providing digital service to their core communities, while permitting them later to expand their coverage area as the DTV transition progresses. We believe that this approach more closely reflects the marketplace realities, such as DTV receiver penetration, upon which the financial decisions of broadcasters and those who offer them financing are based. Because of the large costs of building and operating digital facilities, we recognize that some broadcasters, and particularly those in smaller markets, may need to take a more graduated approach to implementing digital service. The requirement that broadcasters serve their communities of license will ensure that, for most stations, the majority of their analog service populations will receive initial digital service. Once all broadcast stations have commenced at least the minimal level of service to their communities, we believe that DTV set penetration levels will increase and marketplace forces will work to further speed the transition and provide an incentive to broadcasters to expand to provide service to outlying areas. We are hopeful that this approach will prompt broadcasters to build out to their allotted power in response to consumer demand and competition from other stations. Thus, we will continue to protect the replication service areas in the DTV Table of Allotments until the replication protection deadline we establish in our subsequent periodic review.

2. Maximization

22. We agree with those petitioners that argue that licensees seeking to construct maximized DTV facilities should be treated the same for purposes of interference protection as licensees seeking to construct allotted DTV facilities. Our goal in permitting DTV stations to apply to maximize was to ensure that they could increase their DTV signal coverage and provide DTV service competitively within their respective markets. The Commission was particularly concerned that it not artificially limit the size of DTV service areas for UHF analog licensees as an artifact of UHF analog service constraints. In enacting the Community Broadcasters Protection Act of 1999, Congress recognized the importance of preserving the right of DTV stations to maximize and established specific measures to ensure the protection of maximized service areas against new Class A stations.

23. The construction deadlines for remaining television licensees are May 1, 2002 (commercial) and May 1, 2003 (noncommercial), which are also the respective construction deadlines for outstanding construction permits for maximized facilities granted by the Commission. For the same reasons we temporarily deferred our regulatory replication incentive, we will continue to provide DTV interference protection for the time being to the maximized service area specified in outstanding DTV construction permits for facilities in excess of those specified in the DTV Table of Allotments. We intend in our next periodic review to establish a date by which broadcasters with authorizations for maximized digital facilities must either provide service to the coverage area specified in their maximization authorizations or lose DTV service protection to the uncovered portions of those areas. As with the channel election and replication deadlines for allotted DTV facilities discussed above, this deadline for completion of maximization facilities may be earlier than but will not be later than the latest of either the end of 2006 or the date by which 85% digital penetration is achieved.

24. By the action we take today, we give DTV licensees seeking to maximize facilities the same flexibility to implement graduated construction plans as licensees of facilities specified in the DTV Table of Allotments. Thus, licensees seeking to maximize may choose initially to construct and operate digital facilities that provide service only to their communities of license while retaining assurance that the maximized coverage area will be available in the future, until the deadline established in the next periodic review. We agree that this flexibility is especially important for UHF analog licensees that may face greater financial difficulty in constructing digital facilities than their analog VHF counterparts. We believe that providing flexibility to stations seeking to maximize will help speed the transition by allowing them to implement digital service with less costly facilities initially while still providing service to their core communities. Once these digital stations are on air, we expect that consumer demand for digital sets and signals will increase and that marketplace forces will act to encourage these stations to expand service to their maximized coverage area.

3. DTV STAs

25. Licensees must construct at least the minimum initial facilities required to serve their community of license by May 1, 2002 (commercial) or May 1, 2003 (noncommercial). Licensees with an existing construction permit for a larger facility may elect to commence digital operation with a DTV facility that complies only with these minimum initial build-out requirements and is fully subsumed by the permitted facilities. We will also permit licensees that have not yet been granted a construction permit for allotted or maximized DTV facilities to request an STA to commence digital operation. Licensees choosing to request an STA should file their request with the Commission as early as possible and, in any event, at least 10 days before they plan to commence operation. The STA request must specify the technical facilities requested, including the

station's ERP, HAAT, antenna pattern, if any, geographic coordinates, and tower registration number, if any. The STA request must also include a certification that the facilities are in compliance with the FCC's rules and that the coverage in any direction does not exceed that resulting from the allotted parameters in Appendix B or in an outstanding construction permit. In this regard, we urge licensees to pay special attention to compliance with FAA and FCC tower requirements, the community of license coverage requirement, and the FCC's environmental rules governing radio frequency (''RF'') radiation.

26. Once the Commission has granted a DTV STA request, the licensee or permittee will be authorized to commence digital service as specified in the STA. The Commission will make every effort to act on DTV STA requests within 10 days, absent oppositions or unusual circumstances. STAs will be granted for a period up to six months. The Commission delegates authority to the Mass Media Bureau to continue to extend STAs for additional periods not to exceed six months each until such time as the Commission determines otherwise (for example, by requiring that licensees either construct full replication or maximization facilities or relinquish interference protection). Under our rules, STAs are revocable at will.

27. Commercial and noncommercial stations that are operating pursuant to a DTV STA by their respective construction deadlines (May 1, 2002 or May 1, 2003) will be considered to have met this construction deadline, and their outstanding construction permits will be extended automatically until such time as the Commission determines otherwise (for example, by requiring that licensees either construct full replication or maximization facilities or relinquish interference protection). A copy of the STA issued by the FCC must be maintained in the station's local public inspection file. Periodically, the staff will issue public notices identifying the stations authorized to operate on DTV STAs and the parameters under which they are or will be operating. Stations operating pursuant to a DTV STA must comply with the enhanced community coverage requirement by December 2004 (December 2005 for noncommercial stations). Until the Commission determines otherwise, we will continue to provide interference protection to the facilities specified in outstanding DTV construction permits issued to permittees operating pursuant to a DTV STA as of their applicable construction deadlines, in addition to protection to the allotted facilities.

C. City Grade Coverage

28. In the Fifth R&O we allowed DTV licensees to build initial facilities that placed the required DTV service level over their principal community of license. In turn, the required DTV service level was based on the level of service that they would provide at the edge of their authorized service areas (*i.e.,* at the edge of their NTSC Grade B contours) were they operating with full allotted DTV power and antenna height. In the R&O, we imposed a principal community coverage requirement that is stronger than the DTV service contour requirement that we adopted as an initial obligation in the Fifth R&O. We explained that the signal strength increase would improve the availability of service in the city of license and help prevent the migration of licensees from their community of license, thus furthering the purposes of section 307(b) of the Communications Act. The required level of service must be achieved by December 31, 2004 for commercial stations and December 31, 2005 for noncommercial stations. Operating DTV stations must be providing this level of service over their principal communities at that time.

29. We have decided to retain our enhanced principal community signal strength standard. The purpose of our revised requirement is to improve the availability and reliability of DTV service in the community of license and provide an extra measure of protection from interference to DTV service in the community. In addition, by requiring a higher level of service over the community of license, we will limit the extent to which licensees can migrate from their current service contour. These goals are consistent with the fundamental obligation of licensees to serve the needs and interests of their communities of license.

30. The 7dB increment in DTV service contour values that we adopted in the R&O was less than what we proposed in the NPRM. We explained that we chose a lower signal strength increase in order to provide broadcasters with flexibility in locating their transmitters while still improving the reliability of service to the community. While we recognized that some stations' currently authorized DTV facilities might not be able to encompass their principal communities with the increased city-grade signal level, we continue to believe that the less burdensome requirement that we adopted will not force many licensees to increase their power or to move their antenna. Even in cases where licensees have already constructed facilities that do not meet our increased city-grade coverage requirement, we believe that, given the location of most DTV towers, the cost of making the necessary changes to achieve compliance will be minimal in most instances.

D. Construction Deadlines

31. Despite the arguments made by a number of petitioners, we decline to issue a blanket extension of the remaining DTV construction deadlines. As noted above, the NAB survey notes that more than two-thirds of responding commercial stations expect to be on the air in digital format by May 2002. Thus, there is substantial evidence that the conversion is progressing and that television stations are working hard to construct digital facilities. In view of the number of stations that have already made a commitment to complying with our deadlines and that have made a substantial investment in conversion, we do not believe that a blanket extension of the remaining deadlines is appropriate. Further, given the reduced build-out requirements we adopt herein, and the clear additional protection we will afford stations meeting these requirements, we believe that a large number of the stations that did not anticipate meeting the deadline will now be able to do so. One leading manufacturer, for instance, states that it can equip a small market station with minimal DTV facilities (500 watts) for less than $160,000, depending upon the size of the coverage area or other signal propagation characteristics.

32. It is possible, however, that a number of stations will not be in a financial position to provide digital service by next May, even with the reduced initial build-out requirements, and will be forced to request an extension of time to construct. In view of the limited financial resources of many of these stations, we believe that it is appropriate at this time to reconsider our standards for granting DTV extension requests.

33. In the Fifth R&O, we announced our willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously. We indicated that such circumstances include, but are not limited to, the inability to construct and place in operation a facility necessary for transmitting DTV, such as a tower, because of delays in obtaining

zoning or FAA approvals, or similar constraints, or the lack of equipment necessary to transmit a DTV signal. We stated explicitly that we did not anticipate that the circumstances of ''lack of equipment'' would include the cost of such equipment. However, we also stated that we would take into account problems encountered that are unique to DTV conversion and would modify our existing policies regarding extensions accordingly.

34. As indicated by a number of petitioners and commenters, we recognize that some broadcasters, despite their reasonable good faith efforts, may not be in a financial position to timely complete the construction of their DTV facilities. We also recognize that, particularly for stations in smaller markets, the capital costs of conversion may be very high relative to the station's anticipated revenue. As a result, stations with lower revenues may find it more difficult to cover these costs in time to meet the construction deadline.

35. For many broadcasters, these financial obstacles will be alleviated by the reduced initial build-out requirements we have adopted today. We expect that even smaller market stations generally should be able to afford to finance the minimum DTV facilities required under our rules. Some broadcasters, however, may be unable to complete construction of even these minimum permitted facilities by the applicable deadline. Accordingly, we have determined that we will consider, on a case-by-case basis, in addition to the extension criteria outlined in the Fifth R&O, whether a broadcaster should be afforded additional time to construct its DTV facilities because the cost of meeting the minimum build-out requirements exceeds the station's financial resources. To qualify under this standard, the applicant must provide an itemized estimate of the cost of meeting the minimum build-out requirements and a detailed statement explaining why its financial condition precludes such an expenditure. We caution broadcasters that a brief downturn in the economy or advertising revenues will not be considered a sufficient showing of financial hardship. Rather, the showing must reflect the particular station's financial status over an economically significant period of time. In addition, the applicant must detail its good faith efforts to meet the deadline, including its good faith efforts to obtain the requisite financing, and explain why those efforts were unsuccessful. To the extent that the applicant's description of its financial condition sets forth information that is proprietary and not customarily disclosed to the public, the applicant may request that the Commission treat the information as confidential. Applicants must retain underlying documentation fully detailing and supporting their financial representations as well as any steps taken to overcome the circumstances preventing construction. Applicants will also be required to indicate when they reasonably expect to complete construction.

36. Applicants seeking an extension of time to construct a digital television station must file their extension request with the Commission at least sixty days, but no more than ninety days, prior to the applicable construction deadline. The Mass Media Bureau will issue a standard form (FCC Form 337) to be used to apply for an extension of time to construct a DTV station. As under the current standard, the Commission staff may grant no more than two extensions to any permittee, each for a period not exceeding six months. We direct the Mass Media Bureau to examine closely each extension request under the standards we adopt today, and promptly to notify applicants of any denial of an extension so that the applicant can timely complete construction in order to meet the applicable construction deadline. Subsequent extension requests will be referred to the Commission.

E. Mutually Exclusive Applications

37. In the R&O, we decided to take a bifurcated approach to cut-off protection for DTV area expansion applications. With respect to all currently pending DTV expansion applications, we established cut-off protection as of the date of the adoption of the R&O (January 18, 2001). Thus, all DTV expansion applications pending as of the adoption date of the R&O are cut off and protected against later-filed DTV applications. We explained in the R&O that this approach would provide a measure of fairness to all applicants that filed DTV expansion applications prior to the adoption of the R&O by allowing all of them to be considered as part of one cut-off group. As for future DTV expansion applications filed after the adoption date of the R&O, we determined we would consider such applications cut-off as of the close of business on the day they are filed. We concluded that day-to-day cut-off processing for new DTV expansion applications would help to avoid a larger number of mutually exclusive (''MX'') applications and thus expedite processing of these applications and the provision of DTV service to the public. Day-to-day cut-off procedures also encourage potential applicants to file quickly for improved facilities, thereby speeding the introduction of improved DTV service to the public.

38. We find no reason to reverse our decision in this area. Our justification for adopting a single cut-off date rather than to utilize first-come first-serve processing with respect to the hundreds of pending DTV applications has not changed. In the R&O, we found that the main advantage of first-come first-serve processing—the elimination of mutually exclusive (MX) applications—would not be achieved in this case, as a large number of pending DTV applications were filed on certain critical DTV filing dates. Therefore, even if we were to have applied first-come first-serve processing, it would not have resulted in the elimination of numerous MX groups of applications that were filed on these dates. While Paxson and Fox both maintain that only a few of their applications were filed on these key dates, this does not change the fact that numerous other parties did file applications on those dates resulting in a large number of MX groups.

39. We reject Paxson and Fox's argument that adopting a single cut-off date was contrary to customary Commission processing procedures. As Barry Telecommunications, Inc. notes, the Commission has adopted a variety of different processing schemes over the years, each time determining that the particular scheme was appropriate for the service and circumstances in question, including single cut-off date lists, filing windows and first-come first-serve processing. Under the circumstances in this case, our approach to processing pending DTV applications, which balanced the needs of the licensees, the public and our interest in the orderly administration of spectrum, did not diverge from our prior practices.

40. As further justification for our decision, we recognized that there was an extended period of time over the several months leading to the adoption of the R&O during which we permitted DTV applications to be filed without indication that applicants needed to expedite their filings or lose out on an opportunity to expand their DTV allotments. Therefore, we found that first-come first-serve processing would unfairly prejudice those licensees, particularly smaller market and noncommercial educational licensees, that, as permitted, waited until their later deadlines to file their DTV applications. Contrary to the arguments raised by Paxson and Fox, we continue to find that the equities favor processing of the hundreds of DTV applications,

including expansion applications, which were timely filed in reliance on the Commission's processing system. Barry notes that the Commission's DTV processing system included publication of deadlines for the filing of DTV applications that would be considered on an equal footing with prior filings. Noncommercial educational licensees like Barry have invested substantial resources in their proposals and we agree that Paxson's and Fox's proposals are no more entitled to priority consideration than these later-filed applications. As Barry points out, the Commission never provided any applicant assurance of protection beyond that which was provided in the DTV Table of Allotments. Any applicant that is trying to maximize its allocation was never guaranteed success on that filing and has no claim to favorable action based simply on the timing of its application. Having considered and rejected the arguments of the petitioners, we affirm our application of a single cut-off date to the DTV applications pending on January 18, 2001.

41. In the R&O, we gave priority to pending DTV expansion applications over all NTSC applications except NTSC applications that fell into one of three special categories—post-auction applications, applications proposed for grant in pending settlements, and any singleton applications cut-off from further filings. These applications must have been accepted for filing in order to be protected from DTV expansion applications. We stated that, in the future, when an applicant files a DTV expansion application, it must determine whether there are NTSC applications on file in any of the three categories and provide interference protection to them. As for pending DTV expansion applications, when one conflicts with an NTSC application in one of these categories, we stated that we would treat the applications as mutually exclusive (''MX'') and follow the procedures adopted in the R&O for MX applications—that is, we will require that the parties resolve their MX within 90 days or we will subsequently dismiss both applications.

42. We revise the procedures announced in the R&O in the following respects. First, we note that, by application of section 309(l) of the Communications Act, pending NTSC application groups on file prior to July 1, 1997, are entitled to compete in an auction that does not include applications filed on or after July 1, 1997. Therefore, pursuant to that statutory directive, we may not find DTV expansion applications (all of which were filed after June 30, 1997) to be mutually exclusive with NTSC application groups on file prior to July 1, 1997, regardless of whether these groups involve locations inside or outside the freeze areas or whether or not the groups have been settled. This is the case also where there is an NTSC application that was cut-off as part of a group of NTSC applications filed before July 1, 1997, but that is now a singleton because the other applications in the group have been dismissed. NTSC applications in these two categories shall be protected against DTV maximization applications. We believe these revisions to the procedure address the concerns of KM and ALF. DTV maximization applicants will be permitted to file minor amendments to resolve conflicts with NTSC applications in these categories. In addition, our decision today does not affect the ability of those DTV broadcasters whose maximization applications may interfere with NTSC applications in these categories from applying to maximize at the close of the transition on their analog allotment.

F. Technical Issues

43. We have adopted a 2 percent de minimis interference standard for changes to DTV stations and allotments. In his petition for reconsideration, Donald G. Everist (Everist) seeks clarification regarding the analysis the Commission uses for determining whether the amount of interference caused by a DTV application to another DTV station is de minimis. Specifically, Everist is concerned with protection to a DTV station that has been authorized facilities that cover more people than the station's underlying DTV allotment (the Appendix B population) (DTV Table of Allotments, Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders, 64 FR 4322, January 28, 1999, at Appendix B). Everist notes that predicted interference is to be determined to any people in the station's increased service area but indicates that the current Commission analysis seems to compare that interference population with the smaller Appendix B population to determine if the interference exceeds the 2% de minimis standard.

44. We clarify that the analysis comparison in this situation is to the station's Appendix B population, as Everist surmised. To the extent he is implying that the analysis should be changed, such a suggestion is beyond the scope of this reconsideration. The analysis was not adopted, altered, or even explained in the R&O. Furthermore, midstream changes to the analysis process raise issues of fair and consistent treatment of applicants and stations. It may be appropriate to consider a new approach at the time that protection of the Appendix B allotment ends. As decided elsewhere in this document, we are not currently establishing a date to end protection of that ''replication'' facility.

45. Fox also seeks clarification concerning the DTV interference analysis for determining that other DTV stations are protected. Fox urges the Commission to ''only protect the stronger of either the allotted facilities or the currently authorized facilities.'' Fox contends that protecting both makes the computation of protection unnecessarily complex by requiring analysis of all possible combinations of station facilities.

46. As Fox requests, we clarify that protection need not be determined for authorized DTV facilities that are smaller than, and encompassed by, the corresponding DTV allotment facilities. Specifically, applicants need not determine that protection is provided to other DTV station applications or authorizations that meet the technical criteria for ''checklist'' processing. The technical ''checklist'' criteria are: (1) proposed transmitter site within 5.0 kilometers of underlying DTV allotment reference coordinates, (2) proposed antenna HAAT not exceeding underlying DTV allotment HAAT by more than 10 meters, and (3) proposed ERP in every azimuthal direction not exceeding underlying DTV allotment ERP for that direction, (with a small ERP adjustment if the proposed HAAT differs from the DTV allotment HAAT). In general, a ''checklist'' application will produce a DTV service area that is contained within the replication service area of the underlying DTV allotment. In addition to ''checklist'' applications and authorizations, there are applications and resulting DTV authorizations that are considered ''checklist-like.'' These applications and authorizations do not meet one or more of the technical ''checklist'' criteria, but produce a DTV service area that is contained with the replication service area of the underlying DTV allotment. As with ''checklist'' applications and authorizations, ''checklist-like'' applications and authorization need not be protected by applications from other DTV stations. Protection of the underlying DTV allotment is required.

47. We note that the Fox request also could be interpreted to request a more extensive limitation on the DTV facilities that must be protected, and we do not find such a limitation warranted.

For example, a DTV station might have authorized facilities that are neither ''checklist'' nor ''checklist-like,'' where such authorization extends the underlying DTV allotment service contour in some directions and contracts the service contour in other directions. Under such a circumstance, the authorized contour would not be entirely contained within the allotment contour and conversely, the allotment contour would not be entirely contained within the authorized contour. One interpretation of the Fox request would be to only protect the authorized service if it reaches more people or area than the allotment. Similarly, that interpretation would only protect the allotment service if it reaches more people or area than the authorized facility. For two reasons, we are not accepting this more limited protection calculation. First, it is inconsistent with our decision in the replication section of the R&O. There we decide to continue to protect DTV allotment service. The Fox proposal would only continue that allotment protection if that service area or population is larger than the authorized (or applied for) service. Second, where a DTV authorization allows a service area to be shifted from the DTV allotment service area, we do not believe it is fair or appropriate to deny protection to that authorized service area if it reaches fewer people or less overall area than the allotment facility would reach.

48. We have established tables and formulas for determining maximum effective radiated power (ERP) limits for various antenna heights, channels and zones. In the R&O, we clarified our process for applying an alternative determination of a DTV station's maximum ERP based on matching the coverage area of the largest station in the market. We indicated that the provision is triggered only where a station in a market is covering a larger area than could be covered with standard maximum power and antenna height. KM seeks additional clarification regarding the reference to standard maximum power and antenna height, asking if it refers to the largest station in the market or to the DTV station proposing to maximize. KM also asks if the standard refers to the DTV Table of Allotment parameters, or some other parameters that may be permitted under the Commission's rules.

49. We clarify that the standard maximum facilities are the power and antenna height limits specified in § 73.622(f)(6)–(8) of our Rules. For example, for UHF DTV stations, the standard maximum ERP is 1000 kilowatts (kW) if the antenna HAAT is 365 meters (m) or less (365 m is approximately 1200 feet). For antennas located at higher HAATs, the standard maximum ERP is reduced, with the standard maximum UHF DTV ERP being 750 kW at an HAAT of 425 m and 316 kW at 610 m. We also clarify that the largest station provision is applied when a DTV application requests an ERP greater than the rule allows for its requested HAAT on its channel. Thus it is the standard maximum ERP of the DTV station proposing to maximize that triggers applicability of the ''largest station'' provision.

G. DTV Translators and Repeaters

50. As we stated in the R&O, while we recognize the desire to initiate DTV operations on translator and booster facilities, we believe there are fundamental issues surrounding their authorization and protection that must be addressed in a more comprehensive manner than can be accomplished based on the limited record on this issue in this proceeding. Accordingly, we will defer consideration of these issues to a separate rulemaking proceeding on digital LPTV, translator and booster stations. We hope to initiate this proceeding in the near future.

IV. Conclusion

51. In this MO&O, we revise a number of the determinations we made in the R&O to ensure continued progress in the transition to digital broadcasting. By temporarily deferring the channel election and replication deadlines established in the R&O, and by extending interference protection to maximized service areas, our intention is to prioritize those elements that are most important to the DTV transition. Our primary goal is to maximize the number of DTV stations on the air and provide service to most, if not all, consumers. We believe that our actions today will help further the transition and promote the goal of replication by increasing the number of DTV stations on the air and the number of DTV receivers in the hands of consumers. Once set penetration rates increase, we believe that marketplace forces will provide further incentives that will result in the expansion of DTV service in the future.

V. Administrative Matters

52. Regulatory Flexibility Analysis. Pursuant to the Regulatory Flexibility Act of 1980, as amended, the Commission's Supplemental Final Regulatory Flexibility Analysis has been completed and attached.

53. Paperwork Reduction Act Analysis. The actions taken in this MO&O have been analyzed with respect to the Paperwork Reduction Act of 1995 (''Act'') and found to impose new or modified reporting and recordkeeping requirements or burdens on the public. Implementation of these new or modified reporting and recordkeeping requirements will be subject to approval by the Office of Management and Budget (''OMB'') as prescribed by the Act.

54. Comments. As part of our continuing effort to reduce paperwork burdens, we invite the general public to take this opportunity to comment on the information collections contained in this MO&O, as required by the Paperwork Reduction Act of 1996. Public and agency comments are due February 19, 2002. Comments should address: (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) ways to enhance the quality, utility, and clarity of the information collected; and (c) 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. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, 445 Twelfth Street, S.W., Room C–1804, Washington, D.C. 20554, or via the Internet to *jboley@fcc.gov* and to Edward Springer, OMB Desk Officer, 10236 NEOB, 725 17th Street, N.W., Washington, D.C. 20503 or via the Internet to *edward.springer@omb.eop.gov.*

Supplemental Final Regulatory Flexibility Analysis

55. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rule Making (NPRM) and a Final Regulatory Flexibility Analysis (FRFA) was incorporated in the R&O. The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. No comments were received in response to the IRFA or the FRFA. The present Supplemental Final Regulatory Flexibility Analysis (''Supplemental FRFA'') conforms to the RFA.

A. Need for, and Objectives of, the Memorandum Opinion and Order on Reconsideration

56. In January 2001, we released an R&O and Further Notice of Proposed Rule Making in MM Docket 00–39 (66 FR 9973, February 13, 2001) (R&O), addressing a number of issues related to the conversion of the nation's broadcast television system from analog to digital television (DTV). Among the issues addressed in the R&O were: when to require election by licensees of their post-transition DTV channel; whether to require replication by DTV licensees of their NTSC Grade B service contours (thereby providing coverage to those who receive the station's analog signal); whether to require DTV licensees to place enhanced service contours over their principal communities (thereby serving these communities with a stronger signal); and how we should process mutually exclusive applications. We expressed our belief that resolution of these issues would provide licensees with a measure of certainty that would help them plan facilities, order equipment, and arrange for construction of facilities, all of which will speed the transition to digital service.

57. We received a number of petitions for reconsideration of the R&O. In this Memorandum Opinion and Order on Reconsideration (MO&O), we revise a number of the determinations we made in the R&O, affirm other decisions, and provide clarification of certain rules and policies. We also modify, on our own motion, the minimum hours of operation of certain DTV stations and establish guidelines for television stations that may seek an extension of our May 1, 2002 and May 1, 2003 deadlines for construction of DTV facilities. We will resolve several major technical issues raised in the R&O and Further Notice of Proposed Rule Making, including the issues of receiver performance standards, DTV tuners, revisions to certain components of the DTV transmission standard, and labeling requirements for television receivers, in a separate Report and Order.

B. Summary of Significant Issues Raised by Public Comments

58. No comments were received in response to the IRFA, and no petitions or comments were received in response to the FRFA contained in the R&O. However, a number of parties that filed petitions for reconsideration or comments in response to the R&O and Further Notice of Proposed Rule Making raised concerns about the impact of the channel election and replication protection deadlines on broadcasters, and particularly broadcasters in smaller television markets. Generally, smaller market broadcasters assert that they will not be able to obtain the financing to construct DTV facilities sufficient to replicate their analog service area, and that they will not have sufficient operational experience by December 2004 (the channel election deadline for commercial stations) to determine which core channel is superior for DTV transmission.

59. In this MO&O, we respond to these concerns by allowing stations to construct more minimal initial DTV facilities designed to serve their communities of license while still retaining, for the time being, DTV interference protection to the full replication facility. We also temporarily defer the deadline by which broadcasters with two in-core allotments (television channels 2–52) must elect which channel they will eventually use for DTV at the end of the transition. In our next periodic review of the progress of the DTV transition, the Commission intends to establish a firm date by which broadcasters must either replicate their NTSC service areas or lose DTV service protection of the unreplicated areas, and by which broadcasters with two in-core allotments must elect which channel they will use post-transition. These replication protection and channel election deadlines may be earlier than but will in no event be later than the latest of either the end of 2006 or the date by which 85% of the television households in a licensee's market are capable of receiving the signals of digital broadcast stations. In addition, we also allow DTV stations required to complete construction of DTV facilities by May 1, 2002 or May 1, 2003 to operate initially at a reduced schedule by providing, at a minimum, a digital signal during prime time hours, consistent with their simulcast obligations. In order to provide parity to analog UHF stations, we will also allow stations to construct initial DTV facilities that serve their principal communities while retaining DTV interference protection to their maximized service areas for the time being, subject to the interference protection deadline we intend to establish in the next periodic review.

60. We do not alter, however, our decision to require stations to provide a stronger DTV signal to their communities of license than that adopted as an initial requirement in the Fifth R&O in MM Docket 87–268 63 FR 135461, May 29, 1998). As established in the R&O, this new city-grade service requirement will become effective December 31, 2004 for commercial stations and December 31, 2005 for noncommercial stations. The majority of petitioners that addressed this issue did not object to the Commission's increased city grade signal requirement as long as it was implemented in conjunction with a waiver policy that affords broadcasters flexibility in certain circumstances. Some commenters pointed out that broadcasters face many different configurations of terrain and geography, not all of which lend themselves to siting towers that both provide the widest possible service and cast a stronger signal over the principal community. Other commenters noted that some broadcasters have already built DTV facilities that may have to be moved or expensively reconfigured to meet the new principal community coverage requirement.

61. The purpose of the stronger city-grade signal strength requirement is to improve the availability and reliability of DTV service in the community of license and provide an extra measure of protection from interference to DTV service in the community. In addition, by requiring a higher level of service over the community of license, we will limit the extent to which licensees can migrate from their current service contour. These goals are consistent with the fundamental obligation of licensees to serve the needs and interests of their communities of license. The 7dB increment in DTV service contour values that we adopted in the R&O was less than what we proposed in the NPRM. We explained that we chose a lower signal strength increase in order to provide broadcasters with flexibility in locating their transmitters while still improving the reliability of service to the community. While we recognized that some stations' currently authorized DTV facilities might not be able to encompass their principal communities with the increased city-grade signal level, we continue to believe that the less burdensome requirement that we adopted will not force many licensees to increase their power or to move their antenna. Even in cases where licensees have already constructed facilities that do not meet our increased city-grade coverage requirement, we believe that, given the location of most DTV towers, the cost of making the necessary changes to achieve compliance will be minimal in most instances.

62. We also received comments and petitions requesting an extension of the remaining deadlines (May 1, 2002 commercial and May 1, 2003 noncommercial) to complete

construction of DTV facilities. Generally, these parties argue that stations in smaller markets need additional time to plan and construct their DTV facilities given the expense involved in conversion and the lower level of profitability of these stations. Petitioners also argue that it is unreasonable to expect small market broadcasters to commence digital service in the midst of the uncertain market conditions created by, among other things, the issues surrounding the DTV transmission standard and the low rate of DTV receiver penetration. In addition, parties claim that many stations have yet to receive their DTV permits with only a few months left before the construction deadline, which has made it difficult for broadcasters to schedule highly-demanded tower construction crews and to coordinate the purchase of costly equipment. Several petitioners support extending the construction deadline to May 1, 2003 (the same deadline as noncommercial educational stations) for stations in markets 50–100, and to May 1, 2004 for stations in markets above 100. Others propose tying build-out requirements to a market-defined milepost, such as DTV receiver penetration levels.

63. In response to these views, we modify in the MO&O our guidelines for television stations that may seek an extension of our May 1, 2002 and May 1, 2003 deadlines for construction of DTV facilities, making extensions available to broadcasters that can demonstrate that the cost of meeting the minimum build-out requirements exceeds the station's financial resources.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Apply

64. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

65. *Small TV Broadcast Stations.* The SBA defines small television broadcasting stations as television broadcasting stations with $10.5 million or less in annual receipts.

66. The digital television rules we address in the MO&O apply to commercial and noncommercial television stations. There are approximately 1,304 existing commercial television stations and 374 existing noncommercial television stations of all sizes that may be affected by the digital television rules addressed in the MO&O.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

67. The MO&O directs the FCC's Mass Media Bureau to issue a standard form (FCC Form 337) to be used to apply for an extension of time to construct a DTV station. We estimate that it will take applicants 1 hour and 30 minutes to complete the form.

E. Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

68. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance reporting requirements under the rule for small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

69. We made a number of determinations in the R&O that we believed would further progress on the transition from analog to digital television. Among other things, we established a deadline of December 31, 2003 by which commercial television stations that have both their NTSC and DTV operations on in-core channels must elect which of their two core channels to use for DTV operations after the transition. We gave non-commercial stations that have both their NTSC and DTV operations on in-core channels until the end of 2004 to elect their post-transition DTV channel. We determined that this early channel election would allow us to identify more quickly channels that will be available to accommodate DTV licensees with out-of-core transition channels as well as new entrants. In addition, to provide broadcasters with an incentive to provide full replication of NTSC coverage with DTV service, we determined that, after December 31, 2004, whatever portion of a commercial broadcaster's NTSC Grade B contour is not replicated with its digital television signal will cease to be protected in the DTV Table of Allotments. Noncommercial DTV licensees were given until December 31, 2005 in which to replicate or lose such DTV interference protection.

70. Upon further consideration, we determine in the MO&O that the channel election and replication requirements may be imposing substantial burdens on broadcasters, and especially on smaller stations, without sufficient countervailing public benefits, and may in fact be contributing to difficulties faced by a substantial number of stations, particularly smaller stations, in meeting their DTV construction deadlines. A survey conducted by NAB indicates that slightly less than one-third of all stations responding to the NAB survey anticipate that they will not be able to provide a digital signal by the May 2002 deadline. A larger percentage (81.9%) of responding stations in the top 50 markets (larger market stations) anticipate that they will meet the deadline, while a smaller percentage (49.1%) of stations in markets 100 and above (smaller-market stations) indicated they will complete construction on time. Three-quarters of those stations that do not anticipate meeting the May 2002 deadline indicated they plan to seek an extension of this deadline from the FCC. Generally, smaller market broadcasters that filed petitions in this proceeding assert that they are unable to obtain financing to construct DTV facilities sufficient to replicate their analog service area. These broadcasters also claim that they will not have sufficient operational experience by December 2004 to determine which core channel is superior for DTV transmission. Broadcasters that are not capable of constructing full replication facilities by the deadline established in the R&O may be postponing construction altogether.

71. Upon reconsideration, we decide in the MO&O to allow stations to construct initial DTV facilities designed to serve at least their communities of license, while still retaining DTV interference protection to provide full replication until such deadline as the Commission shall establish in its next periodic review of the progress of the DTV transition. Thus, we temporarily defer both the replication protection and channel election deadlines we established in the R&O. In our next periodic review of the progress of the

DTV transition, the Commission intends to establish a firm date by which broadcasters must either replicate their NTSC service areas or lose DTV service protection of the unreplicated areas, and by which broadcasters with two in-core allotments must elect which channel they will use post-transition. These replication protection and channel election deadlines may be earlier than but will in no event be later than the latest of either the end of 2006 or the date by which 85% of the television households in a licensee's market are capable of receiving the signals of digital broadcast stations. In order to provide parity to analog UHF stations, many of which are smaller stations, we will also allow stations to construct initial facilities that serve their principal communities while retaining DTV interference protection to their maximized service areas until the maximization deadline to be established by the Commission in its next periodic review. This alternative significantly reduces the costs associated with constructing and operating initial DTV facilities as compared to the requirements adopted in the R&O.

72. In contrast, the Commission could have retained its channel election and replication protection deadlines established in the R&O. However, we have determined that those deadlines may be too burdensome, and that the Commission should reexamine what deadlines are appropriate in its next periodic review in light of the record developed in the interim regarding the progress of the DTV transition. The alternative selected herein works to benefit smaller stations by facilitating their compliance with the May 1, 2002 (commercial) and May 1, 2003 (noncommercial) construction deadlines.

73. The MO&O also allows stations required to construct and operate DTV facilities by May 1, 2002 or May 1, 2003 to operate initially in digital format at a reduced schedule by providing, at a minimum, a digital signal during prime time hours, consistent with their simulcast obligations. This alternative also significantly reduces the costs associated with initial operation of DTV facilities for these smaller stations. In contrast, the Commission could have retained the requirement for these stations that they operate in digital format whenever they transmit in analog format, greatly increasing their costs. Although the Commission considered reducing the minimum operating hours for all digital stations, we believe that the prime time obligation adopted in the MO&O for smaller stations appropriately balances our concern to reduce the burden on these broadcasters where possible with our goal of furthering progress in the transition to digital broadcasting.

74. In addition, in the MO&O we modify our guidelines for television stations that may seek an extension of the DTV construction deadlines. In the Fifth R&O, we announced our willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously. We indicated that such circumstances include, but are not limited to, the inability to construct and place in operation a facility necessary for transmitting DTV, such as a tower, because of delays in obtaining zoning or FAA approvals, or similar constraints, or the lack of equipment necessary to transmit a DTV signal. We stated explicitly that we did not anticipate that the circumstances of ''lack of equipment'' would include the cost of such equipment.

75. As indicated by a number of petitioners and commenters, we recognize that some broadcasters, despite their reasonable good faith efforts, may not be in a financial position to timely complete the construction of their DTV facilities. Many stations are finding it difficult to obtain the substantial sums required to construct digital television facilities. Many stations are also experiencing decreasing revenues in part as a result of the slowdown in the overall economy, which has slowed even further in the wake of the events of September 11, 2001. We also recognize that, particularly for stations in smaller markets, the capital costs of conversion may be very high relative to the station's anticipated revenue. As a result, stations with lower revenues may find it more difficult to cover these costs in time to meet the construction deadline.

76. For some broadcasters, these financial obstacles may be alleviated by the reduced initial build-out requirements adopted in the MO&O. Other broadcasters, however, may be unable, for purely financial reasons, to complete construction of even these minimum permitted facilities by the May 1, 2002 deadline. Accordingly, in the MO&O we determine that we will consider, on a case-by-case basis, in addition to the extension criteria outlined in the Fifth R&O, whether a broadcaster should be afforded additional time to construct its DTV facilities because the cost of meeting the minimum build-out requirements exceeds the station's financial resources. This new waiver standard should be particularly beneficial to smaller market broadcasters and those with fewer resources.

77. This relaxation of our extension standard will benefit small entities by giving additional leeway to stations in smaller markets that need more time to construct because of their lower revenues. By permitting these stations to delay the transition for a brief period of time, they will be able to spread the large investments needed to convert over more years. By delaying the transition for a short period for those stations that face the greatest financial challenges, these stations may also benefit from further progress overall in the transition, including greater consumer demand for digital television signals and greater advertising revenue.

78. We considered but declined in the MO&O to issue a blanket extension of the remaining DTV construction deadlines. It appears that more than two-thirds of commercial stations will be on the air in digital format by May 2002. Thus, there is substantial evidence that the conversion is progressing and that television stations are working hard to construct digital facilities. In view of the number of stations that have already made a commitment to complying with our deadlines and that have made a substantial investment in conversion, we do not believe that a blanket extension of the remaining deadlines is appropriate. Further, given the reduced build-out requirements we adopt herein, and the clear additional protection we will afford stations, including smaller stations, meeting these requirements, we believe that many of the stations that did not anticipate meeting the deadline will now be able and willing to do so.

Report to Congress

79. The Commission will send a copy of the MO&O, including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the MO&O, including the Supplemental FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the MO&O and Supplemental FRFA (or summaries thereof) will also be published in the **Federal Register**.

VI. Ordering Clauses

80. Pursuant to authority contained in sections 1, 4(i), 303, and 336(f) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 303,

and 336(f), Part 73 of the Commission's rules, 47 CFR Part 73, ARE AMENDED as set forth in the Rule Changes below.

81. The amendments set forth in the Rule Changes SHALL BE EFFECTIVE February 19, 2002. FCC Form 337 contains information collection requirements that have not been approved by OMB. Public and agency comments on these information collections are due February 19, 2002. The FCC will publish a document announcing the effective date of FCC Form 337 once OMB approval is received.

82. The petitions for reconsideration or clarification received in response to the R&O *Are Granted* to the extent provided herein and otherwise *Are Denied*.

83. The Commission's Consumer Information Bureau, Reference Information Center, *Shall Send* a copy of this MO&O, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

84. This proceeding *Is Terminated*.

List of Subjects in 47 CFR Part 73

Television, broadcasting.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

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

PART 73—RADIO BROADCAST SERVICES

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

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

2. Section 73.623 is amended by revising paragraph (h) to read as follows:

§ 73.623 DTV applications and changes to DTV allotments.

* * * * *

(h) *DTV Application Processing.* (1) DTV applications for a construction permit or a modified construction permit pending as of January 18, 2001:

(i) Shall be afforded the interference protection set forth in paragraph (c) or (d) of this section, as applicable:

(A) By all NTSC minor change applications;

(B) By NTSC new station applications, except those covered by paragraphs (h)(1)(ii)(G) and (h)(1)(iii)(D) of this section;

(C) By all rulemaking petitions to amend the NTSC TV table of allotments;

(D) By DTV applications filed after January 18, 2001; and

(E) By rulemaking petitions to amend the DTV table of allotments filed after January 18, 2001;

(ii) Must demonstrate the requisite interference protection set forth in paragraph (c) or (d) of this section, as applicable, to:

(A) DTV licensed stations;

(B) DTV construction permits;

(C) Existing DTV allotments;

(D) Rulemaking petitions to amend the DTV table of allotments for which a Notice of Proposed Rule Making has been released and the comment deadline specified therein has passed prior to the filing date of the DTV application;

(E) NTSC stations with licenses covering construction permits that were granted before the DTV application was filed;

(F) NTSC construction permits that were granted before the DTV application was filed;

(G) Applications for new NTSC television stations that were in groups of mutually exclusive applications on file prior to July 1, 1997, regardless of whether they are the only applications that remain pending from their group.

(iii) That do not provide the requisite interference protection set forth in paragraph (c) or (d) of this section, as applicable, to the following applications and petitions will be deemed mutually exclusive with those applications and petitions:

(A) Other DTV applications pending as of January 18, 2001;

(B) Rulemaking petitions to amend the DTV table of allotments filed on or before January 18, 2001 for which a Notice of Proposed Rule Making had been released and the comment deadline specified therein had not passed prior to the filing date of the DTV application;

(C) Rulemaking petitions to amend the DTV table of allotments filed on or before January 18, 2001 for which a Notice of Proposed Rule Making had not been released; and

(D) Applications for new NTSC stations that are not covered by paragraph (h)(1)(ii)(G) of this section and were filed and accepted for filing on or before January 18, 2001 that:

(*1*) Were filed by post-auction winners pursuant to § 73.5005.

(*2*) Are part of a settlement agreement on-file with the Commission that would result in the grant of the NTSC application; or

(*3*) Are cut-off singletons.

(2) DTV applications for a construction permit or a modified construction permit filed after January 18, 2001:

(i) Shall be afforded the interference protection set forth in paragraph (c) or (d) of this section, as applicable:

(A) By all NTSC minor change applications;

(B) By NTSC new station applications, except those covered by paragraph (h)(2)(ii)(H) and (I) of this section;

(C) By all rulemaking petitions to amend the NTSC TV table of allotments except those filed by NTSC applicants in those groups defined in (h)(2)(ii)(I) of this section for which a Notice of Proposed Rule Making has been released and the comment deadline specified therein has passed prior to the filing date of the DTV application;

(D) By later-filed DTV applications; and

(E) By later-filed rulemaking petitions to amend the DTV table of allotments;

(ii) Must demonstrate the requisite interference protection set forth in paragraph (c) or (d) of this section, as applicable, to:

(A) DTV licensed stations;

(B) DTV construction permits;

(C) Earlier-filed DTV applications;

(D) Existing DTV allotments;

(E) Rulemaking petitions to amend the DTV table of allotments for which a Notice of Proposed Rule Making has been released and the comment deadline specified therein has passed prior to the filing date of the DTV application;

(F) NTSC stations with licenses covering construction permits that were granted before the DTV application was filed;

(G) NTSC construction permits that were granted before the DTV application was filed; and

(H) Earlier-filed and accepted for filing applications for new NTSC stations that are not covered by paragraph (h)(2)(ii)(I) of this section, and that:

(*1*) Were filed by post-auction winners pursuant to § 73.5005.

(*2*) Are part of a settlement agreement on-file with the Commission that would result in the grant of the NTSC application; or

(*3*) Are cut-off singletons;

(I) Applications for new NTSC television stations that were in groups of mutually exclusive applications on file prior to July 1, 1997, regardless of whether they are the only applications that remain pending from their group;

(J) Rulemaking petitions to amend the NTSC table of allotments filed by applicants defined in (h)(2)(ii)(I) of this section for which a Notice of Proposed Rule Making has been released and the comment deadline specified therein has

passed prior to the filing of the DTV application.

(iii) That do not provide the requisite interference protection set forth in paragraph (c) or (d) of this section, as applicable, to the following applications and petitions will be deemed mutually exclusive with those applications and petitions:

(A) Other DTV applications filed the same day;

(B) Rulemaking petitions to amend the DTV table of allotments for which a Notice of Proposed Rule Making had been released and the comment deadline specified therein had not passed prior to the filing date of the DTV application; and

(C) Earlier-filed rulemaking petitions to amend the DTV table of allotments for which a Notice of Proposed Rule Making had not been released.

(3) DTV applicants, DTV applicants and NTSC applicants, or DTV applicants and DTV rulemaking petitioners that are mutually exclusive pursuant to this section will be notified by Public Notice and provided with a 90-day period of time to resolve their mutual exclusivity via engineering amendment or settlement. Those applications and petitions that remain mutually exclusive upon conclusion of the 90-day settlement period will be dismissed.

3. Section 73.624 is amended by revising paragraphs (b), (d)(3)(ii), and (d)(3)(iv) to read as follows:

§ 73.624 Digital television broadcast stations.

* * * * *

(b) DTV broadcast station permittees or licensees must transmit at least one over-the-air video program signal at no direct charge to viewers on the DTV channel. Until such time as a DTV station permittee or licensee ceases analog transmissions and returns that spectrum to the Commission, and except as provided in paragraph (i) of this section; at any time that a DTV broadcast station permittee or licensee transmits a video program signal on its analog television channel, it must also transmit at least one over-the-air video program signal on the DTV channel. In addition, the DTV broadcast station permittee or licensee is subject to the simulcasting requirements in paragraph (f) of this section. The DTV service that is provided pursuant to this paragraph must be at least comparable in resolution to the analog television station programming transmitted to viewers on the analog channel.

(1) DTV broadcast station permittees or licensees required to construct and operate a DTV station by May 1, 2002 or May 1, 2003 pursuant to paragraph (d) of this section must, at a minimum, beginning on the date on which the DTV station is required to be constructed, provide a digital video program signal, of the quality described in paragraph (b) above, during prime time hours as defined in § 79.3(a)(6) of this chapter. These licensees and permittees must also comply with the simulcasting requirements in paragraph (f) of this section.

(2) DTV licensees or permittees that choose to commence digital operation before the construction deadline set forth in paragraph (d) of this section are not subject to any minimum schedule for operation on the DTV channel.

* * * * *

(d) * * *

(3) * * *

(ii) Such circumstances shall include, but shall not be limited to:

(A) Inability to construct and place in operation a facility necessary for transmitting digital television, such as a tower, because of delays in obtaining zoning or FAA approvals, or similar constraints;

(B) the lack of equipment necessary to obtain a digital television signal; or

(C) where the cost of meeting the minimum build-out requirements exceeds the station's financial resources.

* * * * *

(iv) Applications for extension of time shall be filed no earlier than 90 and no later than 60 days prior to the relevant construction deadline, absent a showing of sufficient reasons for filing within less than 60 days of the relevant construction deadline.

* * * * *

4. Section 73.625 is amended by revising paragraph (a)(1) to read as follows:

§ 73.625 DTV coverage of principal community and antenna system.

(a) * * *

(1) The DTV transmitter location shall be chosen so that, on the basis of the effective radiated power and antenna height above average terrain employed, the following minimum F(50,90) field strength in dB above one uV/m will be provided over the entire principal community to be served:

Channels 2–6	35 dBu
Channels 7–13	43 dBu
Channels 14–69	48 dBu

Note to paragraph (a)(1): These requirements above do not become effective until December 31, 2004 for commercial television licensees and December 31, 2005 for noncommercial television licensees. Prior to those dates, the following minimum F(50,90) field strength in dB above one uV/m must be provided over the entire principal community to be served:

Channels 2–6	28 dBu
Channels 7–13	36 dBu
Channels 14–69	41 dBu

BILLING CODE 6712–01–P

Appendix—Form 337

Note: This appendix will not appear in the Code of Federal Regulations.

Federal Communications Commission
Washington, D. C. 20554

NOT Approved by OMB
3060-XXXX

APPLICATION FOR EXTENSION OF TIME TO CONSTRUCT A DIGITAL TELEVISION BROADCAST STATION

GENERAL INSTRUCTIONS

A. This FCC Form is to be used by all permittees to apply for an extension of time within which to construct a commercial or noncommercial educational digital television (DTV) broadcast station. The DTV construction timetable established by the Commission is set forth in 47 C.F.R. Section 73.624(d)(1). FCC Form 337 should be filed at least 60 days, but no more than 90 days, prior to the applicable construction deadline. See 47 C.F.R. Section 73.624(d)(3).

B. Electronic Filing of Application Forms. The Commission is currently developing electronic versions of various broadcast station application and reporting forms, such as this application form. As each application form and report goes online, the Commission will by Public Notice announce its availability and the procedures to be followed for accessing and filing the application form or report electronically via the Internet. For a six-month period following the issuance of the Public Notice, the subject application form or report can be filed with the Commission either electronically or in a paper format. Electronic filing will become mandatory, on a form-by-form basis, six months after each application form or report becomes available for filing electronically.

C. Applicants that prepare this application in paper form should file an original and two copies of this application and all exhibits. Applicants should follow the procedures set forth in Part 0 (Commission Organization) and Part 73 (Radio Broadcast Services) of the Commission's Rules, which are set forth in Title 47 of the Code of Federal Regulations.

D. Applicants should provide all information requested by this application. If any portions of the application are not applicable, the applicant should so state. **Defective or incomplete applications will be returned without consideration.** Inadvertently accepted applications are also subject to dismissal.

E. In accordance with 47 C.F.R. Section 1.65, applicants have a continuing obligation to advise the Commission, through amendments, of any substantial and material changes in the information furnished in this application. This requirement continues until the FCC action on this application is no longer subject to reconsideration by the Commission or review by any court.

F. A copy of the completed application and all related exhibits shall be made available for inspection by the public in the applicant's public inspection file pursuant to 47 C.F.R. Sections 73.3526 or 73.3527, unless the applicant requests confidentiality consistent with 47 C.F.R. Section 0.459.

G. **The applicant must sign the application.** Depending on the nature of the applicant, the application should be signed as follows: if a sole proprietorship, personally; if a partnership, by a general partner; if a corporation, by an officer; for an unincorporated association, by a member who is an officer; if a governmental entity, by such duly elected or appointed official as is competent under the laws of the particular jurisdiction. Counsel may sign the application for his or her client, but only in cases of the applicant's disability or absence from the United States. If the application is filed electronically, the signature will consist of the electronic equivalent of the typed name of the individual. See Report and Order in MM Docket No. 98-43. 13 FCC Rcd 23056, 23064 (1998), on reconsideration, 14 FCC Rcd 17525 (1999).

QUESTION-BY-QUESTION INSTRUCTIONS

A. **Item 1: Applicant Name.** The legal name of the applicant must be stated exactly in Item 1. If the applicant is a corporation, the applicant should list the exact corporate name; if a partnership, the name under which the partnership does business; if an unincorporated association, the name of an executive officer, his/her office, and the name of the association; and, if an individual applicant, the person's full legal name.

Applicants should use only those state abbreviations approved by the U.S. Postal Service.

FCC Registration Number (FRN). To comply with the Debt Collection Improvement Act of 1996, the applicant must enter its FRN number, a ten-digit unique entity identifier for anyone doing business with the Commission. The FRN can be obtained through the FCC webpage at http://www.fcc.gov or by manually submitting FCC Form 160. FCC Form 160 is available for downloading from http://www.fcc.gov/formpage.html or by calling 1-800-418-3676. Questions concerning the FCC Registration Number can be directed to the Commission's Registration System help desk at http://www.CORES@fcc.gov or by calling 1-877-480-3201.

Facility ID Number. TV Facility ID Numbers can be obtained at the FCC's Internet Website at www.fcc.gov/mmb. Once at this website, scroll down and select CDBS Public Access. You can also obtain your TV Facility ID Number by calling (202) 418-1600. Further, the Facility ID Number is now included on all TV authorizations and postcards.

B. **Item 2: Contact Representative.** If the applicant is represented by a third party (for example, legal counsel), that person's name, firm or company, mailing address and telephone/electronic mail address may be specified in Item 2.

C. **Item 3. Facility Information.** This question asks the applicant to specify: (1) whether commercial or noncommercial educational DTV operation is proposed; and (2) the community to which the station will be licensed.

D. **Item 4: Purpose of Application.** This question asks whether FCC Form 337 is being filed for additional time within which to construct a new DTV station or to modify the facilities authorized in an outstanding construction permit. It also requires that the applicant identify the permit covered.

E. **Item 5: Reason for Delay in Construction.** In the Fifth Report and Order in MM Docket No. 87-268, 12 FCC Rcd 12809 (1997), on reconsideration, 13 FCC Rcd 6860 (1998), the Commission announced its willingness to grant, on a case-by-case basis, an extension to the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously. The Commission also stated that it would modify its existing policies regarding extensions, taking into account problems encountered that are unique to the DTV conversion.

In responding to this question, the applicant should attest to the nature of the problem(s) preventing the timely completion of construction and provide a detailed explanation of the reason(s) requiring an additional time to construct its station's DTV facilities.

Among the problems found in specific instances to warrant the granting of additional time to construct have been such technical obstacles as equipment delivery delays, unavailability of work or tower crews, and tower safety and other construction delays; and such legal obstacles as delays in obtaining required governmental (e.g., FAA, Canadian and Mexican) clearances, outstanding judicial litigation involving zoning, and the pendency of DTV channel change rulemakings and DTV construction permit applications. See Digital Television Construction Deadline, 16 FCC Rcd 8122 (2001). In addition, such natural disasters as floods, tornadoes, hurricanes, earthquakes and other calamities would be unforeseeable events warranting additional time to construct. Finally, in Memorandum Opinion and Order on Reconsideration (MM Docket No. 00-39), FCC 01-330 (adopted November 8, 2001), the Commission recognized that some broadcasters, despite their reasonable, good faith efforts and the Commission's reduced build-out requirements, may be financially unable to timely complete the construction of their DTV facilities. The Commission will therefore consider, on a case-by-case basis, whether a broadcaster should be afforded additional time to construct its DTV facilities because the cost of meeting the minimum build-out requirements would create an undue financial hardship. In this regard, the applicant should provide an itemized estimate of the cost of meeting the minimum build-out requirements and a detailed statement explaining why its financial condition precludes such an expenditure. The applicant should also describe its good faith efforts to meet the deadline, including its good faith efforts to obtain the requisite financing, and why those efforts were unsuccessful. To the extent that an applicant's description of its financial condition sets forth information that is proprietary and not customarily disclosed to the public, the applicant may request that the Commission treat the information as confidential. See 47 C.F.R. Section 0.459.

NOTE: Underlying documentation need not be filed with FCC Form 337. However, such documentation fully detailing and supporting the representations and descriptions provided in response to question 5 and, if applicable, question 6 below shall be kept at the station for as long as the extension of time is in effect and shall be made available upon request by the Commission. With respect to a station's claimed financial condition, the applicant should have available an audited profit and loss statement for its most recent fiscal year at the time of the filing of FCC Form 337 or similar probative financial documentation.

F. **Item 6: Most Recent Construction Period.** Where the station had previously received an extension of time to construct, the "most recent construction period" is the period between the grant date and the expiration date of the latest extension. This application for extension of time will be evaluated according to the progress and efforts made, or circumstances which occurred, during the most recent construction period. See, Rainbow Broadcasting Company, 11 FCC Rcd 1167 (1995).

G. **Item 7: Construction Completion Date.** In accordance with its station's DTV construction plan, the applicant should set forth the date by which it reasonably expects, under its circumstances, to complete construction. Pursuant to the Commission's rules, the staff may grant no more than two, six-month extensions of time to construct DTV facilities. See 47 C.F.R. 73.624(d)(3). Where the applicant is unable now to project its

anticipated construction completion date, it should describe the reasonable, good faith measures it is and will be taking to expeditiously resolve its incapacity to construct the station's DTV facilities.

H. **Item 8: Anti-Drug Abuse Act Certification.** This question requires the applicant to certify that neither it nor any party to the application is subject to denial of federal benefits pursuant to the Anti-Drug Act of 1988, 21 U.S.C. Section 862.

Section 5301 of the Anti-Drug Abuse Act of 1988 provides federal and state court judges the discretion to deny federal benefits to individuals convicted of offenses consisting of the distribution or possession of controlled substances. Federal benefits within the scope of the statute include FCC authorizations. A "Yes" response to Item 8 constitutes a certification that neither the applicant nor any party to this application has been convicted of such an offense or, if it has, it is not ineligible to receive the authorization sought by this application because of Section 5301.

NOTE: With respect to this question, the term "party to the application" includes if the applicant is an individual, that individual; if the applicant is a corporation or unincorporated association, all officers, directors, or persons holding 5 percent or more of the outstanding stock or shares (voting and/or non-voting) of the applicant; all members if a membership association; and if the applicant is a partnership, all general partners and all limited partners, including both insulated and non-insulated limited partners, holding a 5 percent or more interest in the partnership.

FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPERWORK REDUCTION ACT

The FCC is authorized under the Communications Act of 1934, as amended, to collect the personal information we request in this form. We will use the information provided in the application to determine whether approving this application is in the public interest. If we believe there may be a violation or potential violation of a FCC statute, regulation, rule or order, your application may be referred to the Federal, state or local agency responsible for investigating, prosecuting, enforcing or implementing the statute, rule, regulation or order. In certain cases, the information in your application may be disclosed to the Department of Justice or a court or adjudicative body when (a) the FCC or (b) any employee of the FCC; or (c) the United States Government is a party to a proceeding before the body or has an interest in the proceeding. In addition, all information provided in this form will be available for public inspection.

If you owe a past due debt to the federal government, any information you provide may also be disclosed to the Department of Treasury Financial Management Service, other federal agencies and/or your employer to offset your salary, IRS tax refund or other payments to collect that debt. The FCC may also provide this information to these agencies through the matching of computer records when authorized.

If you do not provide the information requested on this form, the application may be returned without action having been taken upon it or its processing may be delayed while a request is made to provide the missing information. Your response is required to obtain the requested authorization.

We have estimated that each response to this collection of information will take 1 hour and 30 minutes. Our estimate includes the time to read the instructions, look through existing records, gather and maintain the required data, and actually complete and review the form or response. If you have any comments on this estimate, or on how we can improve the collection and reduce the burden it causes you, please write the Federal Communications Commission, AMD-PERM, Paperwork Reduction Project (3060-XXXX), Washington, DC 20554. We will also accept your comments via the Internet if you send them to jboley@fcc.gov. Please DO NOT SEND COMPLETED APPLICATIONS TO THIS ADDRESS. Remember - you are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number of if we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060-XXXX.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1974, 5 U.S.C. 552a(e)(3), AND THE PAPERWORK REDUCTION ACT OF 1995, P.L. 104-13, OCTOBER 1, 1995, 44 U.S.C. Section 3507.

Federal Communications Commission
Washington, D. C. 20554

NOT Approved by OMB
3060-XXXX

FOR FCC USE ONLY	

FCC 337

APPLICATION FOR EXTENSION OF TIME TO CONSTRUCT A DIGITAL TELEVISION BROADCAST STATION

FOR COMMISSION USE ONLY
FILE NO.

1.

Legal Name of the Applicant			
Mailing Address			
City		State or Country (if foreign address)	ZIP Code
Telephone Number (include area code)		E-Mail Address (if available)	
FCC Registration Number	Call Sign	Facility Identifier	

2.

Contact Representative (if other than Applicant)		Firm or Company Name	
Mailing Address			
City		State or Country (if foreign address)	ZIP Code
Telephone Number (include area code)		E-Mail Address (if available)	

3. **Facility Information.**

a. ☐ Commercial b. ☐ Noncommercial Educational

c. Community of License:

City	State

4. **Purpose of Application.** Applicant requests an extension of time in which to complete the construction authorized pursuant to (check one):

☐ a permit for a new DTV station Permit No. _____ Expiration Date _____

☐ a modification of a DTV construction permit Permit No. _____ Expiration Date _____

5. Applicant certifies that construction cannot be completed due to (check all that apply):

☐ technical (e.g., equipment delays)

☐ legal (e.g., litigation)

☐ financial (e.g.,inability to finance)

☐ other reasons (e.g., natural disasters)

Describe in an Exhibit the specific reason(s) requiring additional time to construct, including the steps taken by the applicant to solve or mitigate the problem(s). Exhibit No. 1

6. Has the construction period for this station been previously extended? ☐ Yes ☐ No

a. If Yes, describe in an Exhibit the applicant's diligent efforts during the most recent construction period to overcome the circumstance(s) preventing construction. Exhibit No. 2

7. Applicant requests that the time within which to complete construction be extended until: _____

a. If applicant is not able to state now when construction is expected to be completed, describe in an Exhibit the reasonable steps it is taking to resolve the problem(s) preventing timely construction. Exhibit No. 3

8. **Anti-Drug Abuse Act Certification.** Applicant certifies that neither applicant nor any party to the application is subject to denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. Section 862. ☐ Yes ☐ No

I certify that the statements in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith. I acknowledge that all certifications and attached Exhibits are considered material representations. I hereby waive any claim to the use of any particular frequency as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and request an authorization in accordance with this application. (See Section 304 of the Communications Act of 1934, as amended.)

Typed or Printed Name of Person Signing	Typed or Printed Title of Person Signing
Signature	Date

WILLFUL FALSE STATEMENTS ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

DRAFT FCC 337 (Page 2)
November 2001

[FR Doc. 01–30433 Filed 12–17–01; 8:45 am]
BILLING CODE 6712–01–P

Proposed Rules

Federal Register

Vol. 66, No. 243

Tuesday, December 18, 2001

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 54

[Docket No. PRM 54–1]

Union of Concerned Scientists; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking submitted by the Union of Concerned Scientists (UCS or the petitioner) (PRM 54–1). The petitioner requested that the NRC amend its regulations to address concerns about potential aging degradation of liquid and gaseous radioactive waste management systems. The bases for the denial are that the liquid and gaseous radioactive waste management systems are not involved in design and licensing basis events considered for license renewal and that the existing regulatory process is acceptable for maintaining the performance of the radioactive waste systems throughout the period of extended operation in order to keep exposures to radiation at the current levels below regulatory limits consistent with the conclusions made in the applicable regulations.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, and the NRC's letter of denial to the petitioner are available for public inspection or copying for a fee, at the NRC's Public Document Room, at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. These documents are also available at the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.*

FOR FURTHER INFORMATION CONTACT: Stephen S. Koenick, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1239, e-mail *ssk2@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Background

By letter dated May 3, 2000, UCS submitted a petition for rulemaking (PRM) seeking to revise 10 CFR parts 54 and 51. The petitioner requested that the NRC regulations governing requirements for renewal of operating licenses for nuclear power plants be amended to address concerns about potential aging degradation of liquid and gaseous radioactive waste systems. The petitioner believes the degradation from aging of piping and components of liquid and gaseous radioactive waste systems at nuclear power facilities may result in increased probability of and/or consequences from design and licensing bases events. In addition, the petitioner believes that the conclusions made in Appendix B to 10 CFR part 51, subpart A, that public and occupational exposures to radiation will continue at the current levels below regulatory limits would only be valid if these systems are covered by aging management programs throughout the license renewal term.

A notice of receipt of the petition was published in the **Federal Register** on July 10, 2000 (65 FR 42305). The comment period closed on September 25, 2000. The NRC received letters from 12 commenters. Eleven of the comment letters opposed the petition. Ten of those letters were from nuclear utilities and the 11th was from the Nuclear Energy Institute (NEI). The 12th commenter, a member of the public, supported the petition. A discussion of the comments is provided in this document.

This rulemaking petition was included as part of a petition pursuant to 10 CFR 2.206 in which the petitioner detailed concerns related to the review of the license renewal application submitted by the owner of the Hatch Nuclear Plant. Specifically, the petitioner was concerned that the license renewal application for the Hatch facility did not address deficiencies it believed existed in the aging management of the liquid and gaseous radioactive waste systems. The petitioner concluded that the requirements pertaining to renewal of operating licenses for Hatch and other nuclear power plants do not adequately address degradation from aging of liquid and gaseous radioactive waste systems. The NRC issued an October 18, 2000, letter to UCS, ''Director's Decision Under 10 CFR 2.206.'' The Director's Decision disagreed with the petitioner's contentions and concluded that the Hatch Nuclear Plant was being operated consistent with its design and licensing bases because the material condition of piping, tanks, and other components of the liquid and gaseous radioactive waste management systems was being properly inspected and maintained.

The Petition

UCS requests the NRC revise 10 CFR part 54, and part 51 if appropriate, to specify that the liquid and gaseous radioactive waste management systems must be covered by aging management programs during the license renewal term. With respect to 10 CFR part 54, the petitioner states that potential aging degradation of the liquid and gaseous radioactive waste management systems at the Hatch Nuclear Plant identified in the accompanying 10 CFR 2.206 petition, may result in an increase in the probability of and/or consequences of design and licensing bases events. In addition, the petitioner states that the potential aging degradation may also apply to liquid and gaseous radioactive waste management systems at other plants in the United States. The petitioner cites 10 CFR 54.4 (a)(1)(iii) [1] as the scoping criterion that has been interpreted in previous license renewal applications to exclude the liquid and gaseous radioactive waste management systems from aging management consideration under the rule. The petitioner also requests 10 CFR part 51 be revised, if appropriate, to clarify that the liquid and gaseous radioactive waste management systems must be covered by aging management programs during the license renewal term. The petitioner states that the conclusions made in Appendix B to 10 CFR part 51, subpart A, that radiation exposures to the public and occupational exposures to workers during the license renewal term will continue at current levels below regulatory limits, were predicated on the liquid and gaseous radioactive waste management systems not experiencing greater failure rates throughout the

[1] ''The capability to prevent or mitigate the consequences of accidents which could result in potential offsite exposures comparable to those referred to in § 50.34(a)(1), [§ 50.67(b)(2); sic], or § 100.11 of this chapter, as applicable.''

license renewal term. However, aging degradation of the radioactive waste management systems could lead to an increase in component failure rates, thereby, invalidating the conclusions.

Public Comments on the Petition

The NRC received letters from 12 commenters. Eleven of the comment letters opposed the petition. Ten of those letters were from nuclear utilities and the 11th was from NEI. The comments opposed to the petition were similar in nature and will be discussed together. The 12th comment was from a member of the public who supported the petition. Summaries of the comments and NRC's responses follow.

Comments opposed to the petition: The NEI comments were endorsed by each of the utilities providing comments. NEI recommended that the NRC deny the petition on the following basis: ''The design and licensing basis of the liquid and gaseous radwaste systems are sufficiently conservative such that the required analyses demonstrate that the assumed catastrophic failure of components in the systems will result in doses substantially below 10 CFR Part 100 guidelines and consistent with 10 CFR part 20 guidelines [emphasis added]. In other words, the radiological inventory in these systems is controlled and limited, and a postulated event or malfunction will not adversely impact public health or safety. Thus, there is no safety benefit to including these systems within the scope of license renewal for either aging management reviews (part 54) or environmental impacts (part 51).''

Response: The NRC agrees in principle with the comments opposing the petition because the liquid and gaseous radioactive waste management systems are conservatively designed to ensure that the consequences of catastrophic failures of components will be well below the scoping threshold for license renewal. However, the commenters provide a limited basis for denying the petition and do not address the petitioner's assertion about the conclusions made in appendix B to 10 CFR part 51, subpart A. However, as set forth below in the ''Reasons for Denial,'' the NRC staff has concluded that the current regulatory process is adequate to manage the performance of these systems without additional aging management consideration, so that radiation exposures to members of the public and occupational exposures will remain at current levels below regulatory limits throughout the license renewal term.

Comment supporting the petition: The commenter generally supported the petition and was also concerned about coatings in general, their application, and their degradation. In addition, the commenter discussed the application of coatings to dry casks for storing spent nuclear fuel and the hydrogen gas ignition event at Point Beach Nuclear Plant on May 28, 1996.

Response: The commenter did not provide any additional information on coatings as they apply to radioactive waste management systems. The commenter's discussion on coatings, in general, and the application to dry casks for storing spent nuclear fuel are not relevant to the issue of radioactive waste management system functionality. Therefore, they do not support the petition. However, for information on use of coatings under nuclear plant operating licenses, the NRC issued Generic Letter 98–04, ''Potential for Degradation of the Emergency Core Cooling System and the Containment Spray System After a Loss-of-Coolant-Accident Because of Construction and Protective Coating Deficiencies and Foreign Material in Containment,'' dated July 14, 1998, and Regulatory Guide 1.54, Revision 1, ''Service Level I, II, and III Protective Coatings Applied to Nuclear Plants,'' dated July 2000. Both of these regulatory documents are relevant to coatings under nuclear plant operating licenses.

With respect to coatings for dry cask storage, specifically, the hydrogen gas ignition event at Point Beach Nuclear Plant related to dry cask storage, the NRC issued NRC Bulletin 96–04, ''Chemical, Galvanic, or Other Reactions in Spent Fuel Storage and Transportation Casks,'' dated July 5, 1996. The information requested in the bulletin and the subsequent safety evaluations of the requested information are relevant to the commenter's concerns.

Reasons for Denial

1. Potential Aging Degradation of the Radioactive Waste Management Systems May Increase the Probability of and/or Consequences of Design and Licensing Bases Events

The petitioner argues that radioactive waste management systems should be covered by aging management because potential aging degradation may increase the probability of and/or consequences from design and licensing bases events.

The NRC does not agree that aging degradation of these systems would increase the probability of and/or consequences of design basis events that would necessitate consideration within the scope of the license renewal. The scope of license renewal was based on the NRC's determination that with the possible exception of certain plant systems, structures, and components, the regulatory process is adequate to ensure that the licensing bases of all currently operating plants provide and maintain an acceptable level of safety. Also, the plant-specific licensing basis must be maintained during the renewal term in the same manner and to the same extent as during the original licensing term. Based on this determination, the scope of the rule focuses on systems, structures, and components that are of principal importance to the safety of the plant.[2] As the petitioner concedes, the liquid and gaseous radioactive waste management systems have no intended functions which are considered by the Commission to be of principal importance to the safety of the plant (that is why these systems do not fall within the scope of systems, structures, and components for which aging management must be considered for license renewal). Furthermore, the consequences of any failure of a radioactive waste component were analyzed during the initial license review and are bounded by the 0.5 rem acceptance criterion, which is a small fraction of the 10 CFR part 100 limits used in the scoping criteria of license renewal cited by the petitioner.

In the related 10 CFR 2.206 petition on the Hatch Nuclear Plant, the petitioner did not identify any new failure mechanisms or consequences associated with operations of the liquid or gaseous radioactive waste management systems or any intended functions that prevent or mitigate consequences of design basis accidents that would cause the NRC to reconsider its determination not to specifically include radioactive waste management systems within the scope of license renewal pursuant 10 CFR part 54. In the absence of such new information, the NRC continues to believe that the current regulatory process is acceptable to manage the performance of these systems throughout the license renewal term without the need for additional aging management considerations. Therefore, part 54 adequately maintains public health and safety as issued and does not need to be revised to include radioactive waste management systems.

[2] ''Statements of Consideration,'' for 10 CFR part 54 [60 FR 22464; May 8, 1995].

2. Aging Degradation of the Radioactive Waste Management Systems Could Lead to an Increase in Component Failure Rates; thereby, Invalidating the Conclusions Made in Appendix B to 10 CFR Part 51, Subpart A

The petitioner claims that the conclusions made in Appendix B to 10 CFR part 51, subpart A are predicated on the assumption that components of the liquid and gaseous waste management systems do not experience greater failure rates throughout the license renewal term.

In addressing environmental effects in Appendix B to 10 CFR part 51, the Commission determined that the impact of radiological exposures to the pubic and occupational exposures would be ''small.'' In the context of assessing radiological impacts, this ''small'' significance determination was defined in Footnote 3 of Table B–1 of Appendix B to 10 CFR part 51, Subpart A as impacts that do not exceed permissible levels in the Commission's regulations. The data supporting Appendix B were contained in NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants'' (hereinafter the GEIS).

Contrary to the petitioner's assertion, the conclusions in the GEIS relied on the current regulatory process which manages the performance of the radioactive waste management systems to control radioactivity in effluents to below permissible levels, irrespective of any system degradation. For radiation exposures to the public, the GEIS states, ''Radiation doses to members of the public from current operation of nuclear power plants have been examined from a variety of perspectives and the impacts were found to be well within design objectives and regulations in each instance. No effect of aging that would significantly affect the radioactive effluents has been identified.'' The GEIS concludes, ''No mitigation measures beyond those implemented during the current term license would be warranted because current mitigation practices have resulted in declining public radiation doses and are expected to continue to do so.'' For occupational exposures, the GEIS concludes, ''the average dose increase of 5 to 8 percent to the typical plant worker would still maintain doses well below regulatory limits. Therefore, occupational radiation exposure during the term of the renewed license meets the standard of small significance. No mitigation measures beyond those implemented during the current term license would be warranted because the ALARA process continues to be effective in reducing radiation doses [emphasis added].'' These GEIS findings were therefore based upon the existence of and successful implementation of radiation control and mitigation practices by licensees to comply with the NRC regulatory requirements with respect to radiation exposures, irrespective of the cause.

For general protection against ionizing radiation, licensees must comply with 10 CFR part 20, ''Standards for Protection Against Radiation.'' The regulations contain requirements for radiation protection programs and specify both occupational and public exposure limits. The underlying requirement governing radiation protection is to maintain occupational doses and doses to members of the public as low as is reasonably achievable (ALARA). In addition to complying with NRC standards, licensees must comply with the Environmental Protection Agency's environmental radiation standards contained in 40 CFR part 190, ''Environmental Radiation Protection Standards for Nuclear Power Operations.''

Early industry experience demonstrated that licensees generally maintained exposures to radiation and releases of radioactivity in effluents at levels well below 10 CFR part 20 limits. To enhance the regulatory framework for 10 CFR part 20 for assuring that releases of radioactivity in effluents are ALARA, the NRC issued 10 CFR 50.34a, 10 CFR 50.36a,[3] and Appendix I to 10 CFR part 50.[4] To comply with these regulations, licensees must identify design objectives, and the means to be employed, for keeping levels of radioactive material in effluents to unrestricted areas ALARA during normal operations, including expected operational occurrences. The licensees' Technical Specifications require that operating procedures for the control of effluents be established and followed; that equipment installed in the radioactive waste system is maintained and used; and that effluent releases are reported. To implement the Technical Specifications, the licensees are required to establish a surveillance and monitoring program to detect and measure radioactivity levels in effluents. If there is an increase of radioactivity in effluents beyond Technical Specifications, irrespective of the cause, then a licensee must identify the cause, take corrective actions, and return the radioactivity levels in effluents to within Appendix I to 10 CFR part 50 design objectives. Subsequent to the Technical Specifications being exceeded, the licensee must submit a report to the NRC.

For occupational radiation exposures, 10 CFR part 20 contain both occupational exposure limits and the ALARA requirement. To meet these requirements, licensees have radiation protection programs which routinely monitor plant workers for radiation exposure when working in radiation areas, including areas that contain the radioactive gaseous and liquid waste management systems. Operational experience has demonstrated that the licensees have been effective in maintaining occupational doses ALARA. There is nothing to suggest—and the petitioner cites no new information in support of a supposition—that licensees are unable or unwilling to address ALARA taking into account any possible failures of radioactive waste management systems resulting from aging degradation.

Aside from the licensees practices and programs for ALARA and Technical Specifications compliance, the NRC has an inspection program that includes the liquid and gaseous radioactive waste management systems. Although these systems have historically been considered to have a low risk significance because of the nuclear industry's compliance with the ALARA design objectives in appendix I to 10 CFR part 50, routine, periodic inspections are required in order to maintain confidence that the systems are actually maintaining doses from radioactive effluents ALARA. Thus, the liquid and gaseous radioactive waste management systems are explicitly identified in NRC Inspection Procedure 71122, ''Public Radiation Safety.'' The objective of the inspection is to verify that the licensee is providing adequate protection of public health and safety from exposure to radioactive material released into the public domain as a result of the routine operation of nuclear power plants. The inspections focus on both the gaseous and liquid effluent treatment systems and the radiological environmental monitoring programs. There is also a corresponding inspection procedure for occupational radiation safety. The primary objective of NRC Inspection Procedure 71121, ''Occupational Radiation Safety,'' is to

[3] 10 CFR 50.34a, ''Design Objectives for Equipment to Control Releases of Radioactive Material in Effluents—Nuclear Power Reactors,'' and § 50.36a, ''Technical Specifications on Effluents From Nuclear Power Reactors'' [35 FR 18385; December 3, 1970].

[4] Appendix I to 10 CFR Part 50, ''Numerical Guides for Design Objectives and Limiting Conditions for Operation To Meet the Criterion ''As Low As Is Reasonably Achievable'' for Radioactive Material in Light-Water-Cooled Nuclear Power Reactor Effluents' [40 FR 19442; May 5, 1975].

gather information to verify that a licensee is meeting the objective of ensuring adequate protection of worker health and safety from exposure to radiation from radioactive material during routine operation.

In addition to performing these inspection procedures, NRC resident inspectors regularly tour the plant, including areas containing radioactive waste management systems. If a degraded condition is identified by the licensee or reported to the licensee by the NRC, the condition is evaluated and corrective action taken as appropriate in accordance with the plant's corrective action program. In addition, condition reports are trended by licensees. Further evaluation is done and appropriate corrective actions are taken if an adverse trend is identified. Periodic inspections of the corrective action program are conducted in accordance with NRC Inspection Procedure 71152, ''Identification and Resolution of Problems,'' to verify that licensees are identifying and correcting plant problems. The regulatory oversight process increases public confidence and complements the performance-based regulations that establish exposure limits and design objectives to not only meet those limits but to keep radiological dose levels ALARA.

In summary, the NRC has regulatory requirements and licensees implement programs and practices that provide reasonable assurance that exposures to radiation will remain within permissible levels consistent with Appendix I to 10 CFR part 50 design objectives for public exposures and within 10 CFR part 20 limits and ALARA for occupational exposures, irrespective of the cause. The Commission has determined that maintaining doses within these design objectives and dose limits represent ''small'' environmental consequences. The petitioner did not raise any information that would challenge the conclusions of the GEIS that the impacts of radiation doses to the public and occupational exposures will be ''small'' for the license renewal term.

Conclusion

The NRC staff finds that the information presented in the petition does not support rulemaking to revise 10 CFR parts 51 and 54 to include aging management of the liquid and gaseous radioactive waste management systems during the license renewal term. If new information in the future provides a basis that aging degradation of the liquid and gaseous radioactive waste management systems needs aging management consideration under 10 CFR parts 51 and 54, then the NRC may revisit the need for rulemaking.

For the reasons cited in this document, the NRC denies the petition.

Dated at Rockville, Maryland, this 5th day of December, 2001.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 01–30927 Filed 12–17–01; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 360

RIN 3064–AB92

Payment of Post-insolvency Interest in Receiverships With Surplus Funds

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Deposit Insurance Corporation is publishing for notice and comment a proposed rule regarding the payment of post-insolvency interest in insured depository institution receiverships with surplus funds. The purpose of the rule is to establish a single uniform interest rate, calculation method, and payment priority for post-insolvency interest. The proposed rule provides that where funds remain after the satisfaction of the principal amount of all creditor claims, post-insolvency interest will be paid in the order of priority set forth in section 11(d)(11)(A) of the Federal Deposit Insurance Act; paid at the coupon equivalent yield of the average discount rate set on the three-month Treasury bill at the last auction held by the United States Treasury Department during the preceding calendar quarter; adjusted each quarter after the receivership is established; and based on a simple interest method of calculation.

DATES: Comments must be received by February 19, 2002.

ADDRESSES: Send written comments to Robert E. Feldman, Executive Secretary, Attention: comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to the guard station located at the rear of the 17th Street building on F Street on business days between 7 a.m. and 5 p.m. Comments may also be faxed or emailed (FAX number (202) 898–3838; Internet address: *comments@FDIC.gov*). Comments may be posted on the FDIC internet site at *http://www.fdic.gov/regulations/laws/ Federal/propose.html* and may be inspected and photocopied at the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC between 9 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Thomas Bolt, (202) 736–0168; or Rodney Ray, (202) 898–3556.

SUPPLEMENTARY INFORMATION:

I. Background

For receiverships established after August 10, 1993, payment of receivership claims is governed by section 11(d)(11)(A) of the Federal Deposit Insurance Act, which section is also known as the national depositor preference statute. Because the national depositor preference statute does not specifically mention post-insolvency interest, and in the absence of a regulation regarding its payment, the FDIC's practice in receiverships subject to the national depositor preference statute that have surplus funds has been to follow the common law rule. The common law rule is that post-insolvency interest should be paid pro rata to all creditors regardless of priority. The exception to this approach is the case of an institution subject to a state law that specifically provides for a different distribution priority. (Several states' statutes provide that after the principal amounts of all claims within the same class have been satisfied, interest is to be paid at the same priority as the claim on which it accrues.) With respect to the interest rate for post-insolvency interest, the FDIC, in receiverships subject to the national depositor preference statute, has used the federal judgment rate for federal or ''federalized'' institutions (state-chartered institutions where the FDIC has exercised its self-appointment authority under section 11(c) of the FDI Act). For state institutions, the FDIC used the applicable rate provided for by state law. Consequently, different distribution priorities and interest rates have been used depending on the type of institution involved and the applicable law.

In December 2000, Congress granted the FDIC express rulemaking authority regarding the payment of post-insolvency interest in receiverships with surplus funds. The American Homeownership and Economic Opportunity Act of 2000 added new subparagraph (C) to section 11(d)(10) of the FDI Act, which reads as follows:

(C) Rulemaking Authority of Corporation. The Corporation may prescribe such rules, including definitions of terms, as it deems appropriate to establish a single uniform

interest rate for or to make payment of post-insolvency interest to creditors holding proven claims against the receivership estates of insured Federal or State depository institutions following satisfaction by the receiver of the principal amount of all creditor claims.

By virtue of this rulemaking authority, the proposed rule regarding post-insolvency interest would preempt any inconsistent state law by providing a single uniform interest rate and priority of distribution for post-insolvency interest in receiverships established after the rule becomes effective. *See City of New York v. FCC,* 486 U.S. 57, 63 (1988) (regulation promulgated by federal agency acting within the scope of its congressionally delegated authority may preempt state law). The proposed rule will apply to receiverships established after the effective date of the rule. Historically, relatively few receiverships have generated sufficient recoveries to enable post-insolvency interest to be paid. Consequently, the proposed rule will probably apply to only a small number of receiverships in the future.

II. The Proposed Rule

New section 11(d)(10)(C) of the FDI Act provides that post-insolvency interest will be paid after satisfaction of the principal amount of all creditor claims. The proposed rule provides that after the satisfaction of the principal amount of all creditor claims, post-insolvency interest will be paid in the order of priority set forth in section 11(d)(11)(A), the national depositor preference statute. This differs from the FDIC's existing practice of following the common law rule that post-insolvency interest should be paid pro rata to all creditors regardless of priority, except in the case of an institution subject to a state law that specifically provides for a different distribution priority. Nevertheless, the approach in the proposed rule appears to be more consistent with Congress's objective, as expressed in the national depositor preference statute, that the deposit liabilities be preferred over other liabilities in the liquidation of an insured depository institution.[1]

The alternative approach would be to follow the common law rule and pay post-insolvency interest on a pro rata basis to all creditors, without regard to the priority of payment of the principal amount of a creditor's claim under section 11(d)(11)(A). Depending on the amount of assets available in a receivership to pay post-insolvency interest, either approach could affect the recoveries of certain classes of creditors.[2]

If post-insolvency interest was paid to receivership creditors based on the priority accorded the principal amount of a creditor's claim under section 11(d)(11)(A), creditors holding deposit claims (including the FDIC's subrogated deposit claim against the receivership) would receive all of their post-insolvency interest payments, before the receivership creditors holding claims in the lower priority classes received any post-insolvency interest payments. This approach, therefore, would result in post-insolvency interest payments being made to the depositors of the failed institution, but it may also result in little or no post-insolvency interest payments being made to creditors holding claims in the lower priority classes. Also, if federal income tax claims have been allowed against the receivership estate, this approach, combined with federal tax laws and tax regulations, may result in the federal income tax claims being paid pro rata with post-insolvency interest payments to the general creditors of the receivership estate.[3]

Alternatively, if post-insolvency interest was paid to all receivership creditors holding allowed claims on a pro rata basis, regardless of the priority accorded the principal amount of the underlying claim under section 11(d)(11)(A), all of the receivership's creditors (except the Internal Revenue Service) would receive a pro rata share of the assets available for post-insolvency interest payments. Again, a combination of this approach with federal tax laws and tax regulations, however, may result in the federal income tax claims against the receivership being paid only after all of the other receivership creditors (including subordinated debt holders) had received post-insolvency interest payments, but before any distributions were made to the equityholders of the failed institution.

Another component of the proposed rule involves the interest rate to be applied for purposes of calculating post-insolvency interest payments. The FDIC believes a publicly available, market-based rate would be preferable to a single numerical interest rate because the market-based rate should be more reflective of the interest rate environment in existence during the life of future receiverships. In addition, as indicated earlier, the FDIC has utilized the federal judgment rate in receiverships of federally chartered institutions and in federalized receiverships of state institutions to calculate post-insolvency interest payments. In the proposed rule, however, the post-insolvency interest rate for all FDIC-administered receiverships would be based on the coupon equivalent yield of the average discount rate set on the three-month Treasury bill, rather than the federal judgment rate. This rate was selected, instead of the federal judgment rate, because the three-month Treasury bill is considered to be widely recognized as a cash management investment performance benchmark and its yield has historically tracked, to some degree, changes in the rate of inflation.

Whether the interest rate should be fixed or ''float'' is also an issue addressed in the proposed rule. Presently, when a new receivership is established, if assets ultimately become available for post-insolvency interest payments, the rate that exists on the date the receivership is established is fixed for purposes of calculating post-insolvency interest. This approach is consistent with the way the federal judgment rate is applied to judgments entered by the federal courts because the allowance of a claim against a receivership estate has been viewed as the general equivalent of a judgment being entered against the receivership estate. This approach may not be reflective, however, of the economic conditions and interest rate environment in existence during the life of the receivership. Therefore, the proposed rule provides that the post-insolvency interest rate would be adjusted quarterly. This is being proposed to mitigate interest rate risk

[1] According to the legislative history, Congress enacted depositor preference primarily to reduce the FDIC's cost of resolving failed institutions by increasing its recoveries as subrogee of insured deposit claims, thereby benefiting the deposit insurance funds. ''Under depositor preference, the FDIC and RTC will have a first claim on the assets of all failed banks and thrifts, thereby increasing the savings to the Federal deposit insurance funds.'' 139 Con. Rec. H6150 (daily ed. Aug. 5, 1993) (statement of Rep. Gonzalez). Furthermore, Congress was aware that depositor preference would result in diminished recoveries for general creditors. *See* H.R. Rep. No. 111, 103d Cong., 1st Sess. 1993, U.S.C.C.A.N. 378.

[2] The following discussion is provided to illustrate the potential impact that selecting one distribution method over the other could have on different classes of receivership creditors. The FDIC believes, however, that the actual impact of either approach will depend significantly on the particular facts and circumstances surrounding future receiverships, therefore, the following discussion is based on generalized observations of how receivership distributions in future FDIC-administered receiverships might be affected and is not an attempt to describe definitively how any particular class of creditors will be affected by either approach.

[3] The proposed rule would not affect the calculation or accrual of interest on any federal income tax liability pursuant to sections 6601 and 6621 of the Internal Revenue Code.

due to changes in economic conditions during the life of the receivership.

Finally, the proposed rule provides that post-insolvency interest distributions would be calculated using a simple interest method, rather than a compound interest method. The simple interest method is proposed because it appears to provide a reasonable amount of interest to compensate receivership creditors for the time value of money owed from the time the receivership is established until dividend payments are received.

III. Request for Public Comment

The FDIC hereby solicits comments on all aspects of the proposed rule, and specifically whether post-insolvency interest should be paid according to the order of priority described in the national depositor preference statute or alternatively pro rata to all creditors regardless of priority.

IV. Paperwork Reduction Act

The proposed rule will not involve any collection of information under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Consequently, no information has been submitted to the Office of Management and Budget for review.

V. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the FDIC certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed rule will only apply to FDIC-administered receiverships established after the effective date of the rule, and it does not impose new reporting, recordkeeping or other compliance requirements on receivership creditors. The proposed rule continues the FDIC's existing practice of making post-insolvency interest distributions to creditors holding proven claims in surplus receiverships prior to making distributions to equityholders, based on their equity interests, in a failed insured depository institution. In addition, the proposed rule will provide interested parties, including small entities, with greater certainty in future FDIC-administered receiverships by establishing a single uniform interest rate and method for making post-insolvency interest distributions. Accordingly, the Act's requirements relating to an initial regulatory flexibility analysis are not applicable.

VI. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The FDIC has determined that the proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Public Law 105–277, 112 Stat. 2681).

List of Subjects in 12 CFR Part 360

Banks, banking, Savings associations.

For the reasons set forth in the preamble, the FDIC Board of Directors proposes to amend 12 CFR part 360 as follows:

PART 360—RESOLUTION AND RECEIVERSHIP RULES

1. The authority for part 360 is revised to read as follows:

Authority: 12 U.S.C. 1821(d)(1), 1821(d)(10)(C), 1821(d)(11), 1821(e)(1), 1821(e)(8)(D)(i), 1823(c)(4), 1823(e)(2); Sec. 401(h), Pub. L .101–73, 103 Stat. 357.

2. Section 360.7 is added to part 360 to read as follows:

§ 360.7 Post-insolvency interest.

(a) *Purpose and scope.* This section establishes rules governing the calculation and distribution of post-insolvency interest to creditors with proven claims in all FDIC-administered receiverships established after [effective date of final rule].

(b) *Definitions*—(1) *Equityholder.* The owner of an equity interest in a failed depository institution, whether such ownership is represented by stock, membership in a mutual association, or otherwise.

(2) *Post-insolvency interest.* Interest calculated from the date the receivership is established on proven creditor claims in receiverships with surplus funds.

(3) *Post-insolvency interest rate.* For any calendar quarter, the coupon equivalent yield of the average discount rate set on the three-month Treasury bill at the last auction held by the United States Treasury Department during the preceding calendar quarter, and adjusted each quarter thereafter.

(4) *Principal amount.* The proven claim amount and any interest accrued thereon as of the date the receivership is established.

(5) *Proven claim.* A claim that is allowed by a receiver or upon which a final non-appealable judgment has been entered in favor of a claimant against a receivership by a court with jurisdiction to adjudicate the claim.

(c) *Post-insolvency interest distributions.* (1) Post-insolvency interest shall only be distributed following satisfaction by the receiver of the principal amount of all creditor claims.

(2) The receiver shall distribute post-insolvency interest at the post-insolvency interest rate prior to making any distribution to equityholders. Post-insolvency interest distributions shall be made in the order of priority set forth in section 11(d)(11)(A) of the Federal Deposit Insurance Act, 12 U.S.C. 1821(d)(11)(A).

(3) Post-insolvency interest distributions shall be made at such time as the receiver determines that such distributions are appropriate and only to the extent of funds available in the receivership estate. Post-insolvency interest shall be distributed on the outstanding balance of a proven claim, as reduced from time to time by any interim dividend distributions, from the date the receivership is established until such time as the principal amount of a proven claim has been distributed but not thereafter.

(4) Post-insolvency interest shall be determined using a simple interest method of calculation.

By order of the Board of Directors.

Dated at Washington, DC this 10th day of December, 2001.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 01–31162 Filed 12–17–01; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1750

RIN 2550–AA23

Risk-Based Capital

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Proposed regulation.

SUMMARY: The Office of Federal Housing Enterprise Oversight (OFHEO) is proposing to amend Appendix A to Subpart B of 12 CFR Part 1750 Risk-Based Capital. The effect of these amendments would be to modify provisions relating to counterparty haircuts, multifamily loans, and refunding and to make several technical

adjustments and corrections. These amendments are intended to refine the stress test model to tie capital more closely to risk.

DATES: Written comments must be received by January 17, 2002.

ADDRESSES: Send written comments concerning the proposal to Alfred Pollard, General Counsel, Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. Written comments may also be sent to Mr. Pollard by electronic mail at RegComments@ofheo.gov. OFHEO requests that written comments submitted in hard copy also be accompanied by the electronic version in MS Word or in portable document format (PDF) on 3.5″ disk.

FOR FURTHER INFORMATION CONTACT: Edward J. Szymanoski, Acting Associate Director, Office of Risk Analysis and Model Development, telephone (202) 414–3763 (not a toll-free number), or David Felt, Associate General Counsel, telephone (202) 414–3750 (not a toll-free number), Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Comments

The Office of Federal Housing Enterprise Oversight (OFHEO) invites comments on the proposed regulation and will take all comments into consideration before issuing the final regulation. Copies of all comments will be posted on the OFHEO internet web site at http://www.ofheo.gov. In addition, copies of all comments received will be available for examination by the public at the Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.

Background

On September 13, 2001, OFHEO published a final regulation setting forth a risk-based capital stress test, (Rule) [1] that is the basis for determining the risk-based capital requirement for the Federally sponsored housing enterprises—Federal National Mortgage Association (Fannie Mae) and Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises). The risk-based capital stress test set forth in the Rule simulates the performance of each Enterprise's assets, liabilities, and off-balance-sheet obligations under severe credit and interest rate stress for a period of ten years (stress period). The stress test projects rates of default and prepayment for the mortgages guaranteed by the Enterprises, as well as cash flows from these and other assets, liabilities, and off-balance-sheet obligations. Using these cash flows, the stress test produces monthly balance sheets for the 120 months of the stress period in order to determine the amount of starting capital that would be necessary to maintain positive capital during the ten-year stress period. Thirty percent of the amount of capital so determined is then added to that amount to protect against management and operations risk.

OFHEO continuously seeks to improve its measurements and formulas to tie capital more closely to risk and works to ensure that the Rule supports the safety and soundness regime created by Congress. In the preamble to the Rule, OFHEO expressed its intention to review, on an ongoing basis, the operation of the stress test and its various components and to evaluate the need for revisions and improvements. Also, OFHEO committed to act expeditiously to remedy any technical and operational issues that arise during the one-year implementation period following promulgation. OFHEO is now proposing to make refinements and technical adjustments and corrections to the Rule to tie capital more closely to risk. Technical changes are included in this proposal rather than issued as a final regulation to provide a comprehensive package of changes.

A. Proposed Changes to Counterparty Haircuts

The Rule gives the Enterprises credit for cash payments that would be received during the stress period from securities and various counterparties, such as mortgage insurance companies and derivative counterparties. However, because Enterprise counterparties are themselves likely to be adversely affected by the economic conditions of the stress period and to default on some or all of their obligations, the stress test discounts the value of cash payments received during the stress period by a specified percentage, based on the public credit rating of the security or counterparty. The amount by which cash payments from a counterparty or security are discounted in each month of the stress period is the haircut. The specified haircut percentages increase as the credit rating declines—the lower that rating, the more severe the haircut. In the Rule, the haircuts are phased in over the first five years of the stress period, except for haircuts for below-investment-grade providers and instruments, which are applied fully in the first month of the stress period.

The Rule applies one set of haircuts for non-derivative counterparties and securities, based on analysis of historical bond default rates, and a different set of haircuts for derivative counterparties, reflecting lower expected loss severities associated with the use of strong collateral agreements. To further refine the Rule's treatment of haircuts, OFHEO proposes to improve consistency between haircuts for derivative counterparties and securities and non-derivative counterparties and securities by specifying default and severity rates separately; to extend the phase-in period from five to ten years; to provide for netting of exposures to the same derivative counterparty; and to provide for an exception to the BBB haircut for certain unrated seller/servicers as described in the proposed rule.

Default Rates. OFHEO proposes to use the Rule's haircut rates for non-derivative counterparties and securities as the cumulative default rates for all counterparties and securities, but to lower slightly the default rate for AA-rated firms. After re-evaluating the historical data on differences in performance of AA-rated and AAA-rated firms, including data that recently has become available to OFHEO, the Rule's default ratio of three to one (based largely on the average exposure over the past 80 years) appears to be more than is warranted for a period of economic stress. Data were recently made available to OFHEO by Moody's Investors Service [2] for the worst annual cohorts of U.S. investment-grade issuers since 1920, the cohorts formed at the beginning of 1929, 1930, and 1931. The average 10-year default rate for AA-rated issuers (12.25 percent) was 2.6 times as large as the average default rate for AAA-rated issuers (4.72 percent), and the ratio for the worst of those years was only 2.2. Furthermore, a study of corporate bond quality by W. Braddock Hickman shows 12-year default rates for the cohort formed at the beginning of 1928 for AA-rated issuers (12.3 percent) to be 1.5 times as large as that for AAA-rated issuers (8.1 percent).[3] More recent data, in relatively favorable economic

[1] Risk-based Capital, 66 FR 47730 (September 13, 2001).

[2] For purposes of this proposal, Moody's Investors Service provided information on ''Letter Cumulative Default Rates (from 01/01/29 to 01/01/31)'' on October 16, 2001. Data may be obtained from Moody's Investors Service by contacting Mr. Steve Liebling at Liebling@Moody's.com.

[3] W. Braddock Hickman, ''Corporate Bond Quality and Investor Experience,'' 190 *National Bureau of Economic Research* (1958).

circumstances, also show greater similarity in the performance of issuers in these two rating categories. However, a partially offsetting factor is that Moody's data for both depression cohorts and averages of all cohorts show that defaults of AAA-rated issuers that occur within 10 years after the cohort is formed occur later in the 10-year period than those of AA-rated issuers.

The relationship between AA and AAA defaults is particularly relevant because most Enterprise counterparty and security exposures are either AAA- or AA-rated. An excessive differential between these ratings in the stress test could create inappropriate business incentives for the Enterprises. After weighing the above considerations, OFHEO proposes to lower the cumulative default rate for AA-rated counterparties and securities to 12.5 percent (from 15 percent), which will be 2.5 times the rate for AAA-rated counterparties and securities.

Severity Rates. To further refine risk measurement in the stress test, OFHEO proposes to take explicit account of potential recoveries in the event of default by introducing a loss severity factor. Before issuing the Rule, OFHEO received mixed comments regarding incorporation of recovery projections for non-derivative security and counterparty obligations after default. Such recoveries were not part of the proposed rule, however, and OFHEO decided not to include them at that time, pending further consideration. Historically, corporate bond recoveries have averaged about 40 percent (i.e., a 60 percent loss severity rate) over long periods of time. A study of default and recovery rates by Moody's shows an average recovery rate of 39 percent over the past 20 years.[4] A study of defaulted bond recoveries by Standard and Poor's shows an average recovery rate of 44 percent from 1981 to 1997.[5] The Hickman study shows an average recovery rate of 43 percent for large issues from 1900 to 1943.[6] Recoveries on Enterprise holdings of mortgage and other asset-backed securities and on mortgage insurance claims would likely be substantial also, benefiting from asset values in the former case and premium income in the latter.

Data on recoveries in unusually stressful times are less favorable. Hickman reported an average recovery rate of 34 percent for large issues for defaults in 1930 to 1943.[7] Moody's has reported average recovery rate estimates that are substantially lower during recessions, and fall as low as 20 percent during the 1930s.[8] For 1930 to 1943, Moody's average was 36 percent, despite higher rates during the latter years of that period. A somewhat lower projection for the stress period used in the rule is, therefore, appropriate.

All of the recovery studies show some differences in recovery rates depending on the presence or absence of secured or subordinated status. However, such status is a factor used in determining ratings. Moody's expressly states that securities with different status may have similar probabilities of default, but be rated differently in recognition of the effect of security or subordination on likely recoveries.[9] Thus, a secured instrument may have a somewhat higher probability of default than average for its rating, but also have a somewhat higher expectation of recovery. Accordingly, OFHEO proposes to specify a recovery rate of 30 percent (70 percent loss severity rate) for all non-derivative counterparties and securities with investment-grade ratings.

OFHEO also proposes to maintain, with alteration, special treatment for derivative counterparty exposures. Current exposures are marked to market at least weekly, and high quality collateral is posted against any significant exposures by counterparties with less than a AAA rating. The Enterprises retain the right to require substantial over-collateralization or to transfer the contract to a new counterparty if a counterparty's rating is lowered to low investment-grade levels or worse. Thus, the principal risk is that a relatively highly rated counterparty may fail suddenly and that exposures rise between the time a contract was last collateralized and the time the Enterprise takes action to transfer or replace the contract. This period may be as much as ten business days.

The credit exposures on fixed-floating interest rate swaps and swaptions (the vast majority of Enterprise derivative contracts) are closely tied to changes in market yields of securities with maturities equal to those of the swap or swaptions. When interest rates rise, an Enterprise's exposure rises on swaps for which it receives the floating-rate side of the swap. When interest rates fall, an Enterprises's exposure rises on swaps for which it receives the fixed-rate side.

To develop loss severity rates for defaulted derivative contracts, OFHEO examined changes in Treasury security interest rates over periods of ten business days during the past 25 years. For five-year Treasury securities, increases in yields of more than 7.5 percent and decreases of more than 5.0 percent, respectively, have occurred infrequently-roughly 1 percent and 4 percent, respectively, of the time.[10] Thus, severity rates that reflect losses associated with yield changes of these magnitudes should be reasonably conservative.

For application in the stress test's cash flow model, OFHEO must translate such changes into impacts on net derivative cash flows. During the stress period, net derivative cash flows are related to changes in the ten-year Treasury yield-75 percent in the up-rate scenario and 50 percent in the down-rate scenario. For example, in the up-rate scenario, with its flat yield curve, the pay side of a ten-year pay-fixed/receive-floating swap implemented just before the start of the stress test would remain at its original rate and the receive side would rise to 175 percent of the original pay-side rate. Thus, the swap would have net annual cash flows for the last nine years of the stress test roughly equal to 75 percent of the initial fixed rate used in the swap multiplied by the notional value. This is ten times the 7.5 percent market yield change that may be associated with losses on a derivative counterparty default in the up-rate scenario. Accordingly, OFHEO proposes to set severity rates for derivative exposures at ten percent.[11]

OFHEO recognizes that losses could be greater than ten percent if interest rates move exceptionally after a sudden default, or if an Enterprise failed to replace a contract with a defaulting counterparty and market yields

[4] ''Default Recovery Rates of Corporate Bond Issues: 2000,'' 26 *Moody's Investor's Service* (February 2001).

[5] ''Ratings Performance 1997: Stability of Transition,'' 3 *Standard and Poor's* (August 1998).

[6] Hickman, at 460.

[7] Hickman, at 119.

[8] ''Historical Default Rates of Corporate Bond Issuers, 1920–1996,'' 12 *Moody's Investor Service* (January 1997).

[9] *Moody's (2001), at 24–25.*

[10] These percentages correspond to absolute changes of 61 and 41 basis points, on average, during the period, but would be less than half as much at recent yield levels.

[11] Loss severities of counterparty defaults are typically expressed as percentages of derivative market value at the time of default. However, the stress test model reflects such losses as reductions in net derivative cash flows. For example, in the up-rate stress scenario, after a 75 percent increase in interest rates, a swap with a market value of zero at the start of the stress test (i.e., a fixed-pay rate equal to the then-market rate) will have a significantly increased market value during the stress period. Since short- and long-term rates are the same in the last nine years of the stress period in the up-rate scenario, net derivative cash flows roughly equal the scenario-based change in long-term interest rates multiplied by the notional value, and the market value of the swap is the discounted present value of these cash flows. A ten percent reduction in those cash flows thus reflects the impact on market value of a 7.5 percent change in interest rates.

continued to move unfavorably. However, OFHEO also recognizes that yield changes near the time of a default could easily be less unfavorable than the 7.5 percent increase or 5 percent decrease contemplated, and some recoveries beyond the collateral already held might be available. Thus, OFHEO judges that a ten percent severity rate for derivatives is adequate.

Haircuts. Under the proposal, haircuts would be determined by multiplying the default rate for each rating category by the severity rate. The resulting haircuts that are proposed are set forth in Table 1 below.

TABLE 1—STRESS TEST HAIRCUT BY RATINGS CLASSIFICATION

Ratings Classification	Derivative Contract Counterparties	Non-Derivative Contract Counterparties or Instruments
Cash	0%	0%
AAA	0.5%	3.5%
AA	1.25%	8.75%
A	2%	14%
BBB	4%	28%
Below BBB and Unrated	100%	100%

Phase-In. Under the Rule, haircuts for investment-grade counterparties and securities are phased-in over the first five years of the stress period, so that haircuts are close to zero in the first month of the stress period and rise to their maximums in the 60th month, where they remain for the last five years. In effect, all defaults occur within the first five years, and later haircuts to cash flows simply reflect the consequences of previous defaults, as defaulted counterparties are unable to meet their obligations. This conservative approach takes into account that the interest rate shocks and house price shocks all occur in the first half of the stress period. Long-term average historical data show more evenly distributed defaults over time, but available data for especially stressful periods (e.g., the 1910s and 1930s) give little indication of timing. The recently obtained unpublished data from Moody's shows that for the worst cohort (starting in the beginning of 1930), only 57 percent of ten-year investment-grade defaults occurred during the first five years. While the principal shocks may occur somewhat earlier in the stress period than they did for issuers in the 1930s, a closer approximation of the historical patterns may better reflect the ability of most highly rated firms to survive severe stresses for many years. Some of those that ultimately fail during the stress period may reasonably be expected to fail during its final years. Accordingly, OFHEO proposes to extend the phase-in period from five years to ten years for investment-grade counterparties and securities. Thus, for credit exposures to firms and securities rated BBB and higher, defaults will occur evenly throughout the stress period.

Netting of derivative counterparty exposures. The Enterprises regularly enter into derivatives contracts, typically swaps, for debt and portfolio risk management purposes. These contracts expose the Enterprises to the risk of failure by a derivative counterparty to perform its obligations as anticipated by the terms of the contract. The Enterprises, consistent with accepted risk management and market practice, attempt to mitigate their derivative counterparty credit exposure through a number of methods, including the use of master netting agreements. Master netting agreements are used by the Enterprises when they engage in multiple swap transactions with the same counterparty. A master netting agreement permits an Enterprise to determine its aggregate total credit exposure to a particular counterparty by netting the gains and losses across all of the contracts with that counterparty. This approach allows the Enterprises to net their exposures at the counterparty level, rather than netting at the individual contract level.

In NPR2, OFHEO proposed a methodology to recognize this practice by modeling the terms of master netting agreements and then applying specified haircuts to the resulting net amount due, if any, from each derivatives counterparty.[12] No comments were received on the proposal, and the Rule, reflecting OFHEO's intent to model master netting agreements, did not specify a change from NPR2. However, due to a technical omission, OFHEO's intent to model master netting agreements was not operationalized in the Rule. Recognition of master netting agreements would result in a more accurate measurement of the Enterprises' exposure to derivative counterparties. Further, recognition of master netting agreements is consistent with OFHEO's intent to model Enterprise contracts according to their respective terms, and such recognition allows OFHEO to tie capital to risk with greater precision. The proposal would amend the Rule to model master netting agreements explicitly, as originally contemplated in NPR2.

OFHEO notes that this technical correction will require an implementation period to allow for development and completion of the software changes that will allow OFHEO to model master netting agreements. Therefore, during the implementation of the technical correction, OFHEO will recognize the risk mitigation effects of such agreements by reducing the haircuts for derivatives contracts. Upon implementation of the technical correction, maximum haircuts for derivative contract counterparties will be readjusted and netting by counterparty will be implemented in the software. The interim treatment will remain effective only for the period

[12] NPR2 refers to the Second Notice of Proposed Rulemaking issued by OFHEO before the Rule. 64 FR 18084, 18159 (April 13, 1999).

required to complete the technical software modifications necessary to model master netting agreements. The interim and final haircuts for derivative contract counterparties are as shown in the Table 2 below:

TABLE 2—STRESS TEST HAIRCUTS FOR DERIVATIVE CONTRACT COUNTERPARTIES

Ratings Classification	Haircuts for Derivative Counterparties prior to Implementation of Netting	Haircuts for Derivative Counterparties upon Implementation of Netting	Number of Phase-in Months
Cash	0%	0%	N/A
AAA	0.3%	0.5%	120
AA	0.75%	1.25%	120
A	1.2%	2.0%	120
BBB	2.4%	4.0%	120
Below BBB and Unrated	100%	100%1	

Unrated Seller/servicers. The Rule treats unrated seller/servicers as BBB-rated counterparties. OFHEO recognizes that certain unrated seller-servicers to whom underwriting and servicing authority has been delegated enter into loss-sharing agreements with the Enterprises and collateralize these loss-sharing obligations with fully funded reserve accounts pledged to the Enterprise. OFHEO is proposing to amend the Rule to permit a higher rating than BBB for these seller-servicers if the fully funded reserve account is equal to or greater than an amount determined by OFHEO to be adequate to support the risk borne by the seller-servicer under the loss sharing agreement. For example, if the loss-sharing obligation of a seller-servicer participating in Fannie Mae's Delegated Underwriting and Servicing (DUS) Program is collateralized by a fully funded reserve account that is equal to or greater than one percent of the seller-servicer's aggregate unpaid principal balance covered by the loss-sharing agreement at the start of the stress test, the rating of the issuer of the instrument backing the reserve account may be used, in lieu of BBB, as the rating of the unrated seller-servicer, except that in no event will the rating exceed AA. Determinations of the required reserve amount and the rating permitted would be made on a program-by-program and Enterprise-by-Enterprise basis.

B. Proposed Changes to Multifamily Model

OFHEO is proposing a number of changes to the multifamily default model, multifamily loss severity parameters, and multifamily prepayment speeds specified in the Rule. Proposed changes to the default model include (1) a respecification of explanatory variables which has the effects of reducing the model's sensitivity to debt-service coverage ratios (DCRs) falling below one and reducing predicted cumulative default rates on adjustable rate mortgages (ARMs) in the up-rate stress test, and (2) an increase to the initial vacancy rate used to update DCR during the stress test making this rate consistent with the benchmark region's vacancy rate from the month prior to the start of the benchmark period.[13] OFHEO is also proposing changes for the multifamily loss severity parameters that reflect the costs, timing, and recoveries associated with a larger and more broad-based set of Enterprise foreclosures. The Rule reflects a decision not to model the complexities of prepayment premiums that may or may not be received by the Enterprises during stressful periods without further study. The proposed multifamily prepayment speeds are more consistent with that decision than existing pre-payment speeds. Each proposed change is discussed in turn.

Underwater Debt Coverage Ratio flag (UWDCRF). In the Rule, the multifamily default model included an Underwater Debt Coverage Ratio Flag (UWDCRF), intended to cover the additional default risk posed when the projected debt service coverage ratio-net operating income (NOI) divided by mortgage payment-falls below one during the stress test. A debt coverage ratio less than one means that the NOI is insufficient to cover the required mortgage payment, an occurrence that suggests a high probability of default. The stress test projects the DCR in each month of the stress period from the prior month's value by updating NOI, using rent growth rates and rental vacancy rates that reflect the economic conditions of the benchmark region and period, and adjusting mortgage payments monthly according to the note terms and the stress test interest rate scenario. When this method is used to project DCR, the types of loans for which the projected DCR falls below one tend to be fixed rate mortgages (FRMs) that started the stress test with a low DCR and, in the up-rate scenario, most ARM loans, resulting in comparatively high cumulative default rates for these loans in the stress test.

OFHEO has found that the UWDCRF adds value to the multifamily default model by capturing the additional risk of default when NOI is insufficient to cover mortgage payments, but is concerned that the sensitivity of predicted monthly defaults to projected DCR falling below one may be too great, for two reasons. First, the UWDCRF is an indicator that is only turned on when DCR is projected to be below one, and is turned off otherwise. There are no finer gradations for this explanatory variable such as those that might be captured if the projected DCR accounted for individual property dispersion around the mean.[14] In the application of

[13] The terms ''benchmark region and period'' refer to the regional credit loss experience identified by OFHEO in compliance with the ''Credit Loss'' parameters outlined in Title XIII of the Housing and Community Development Act of 1992, Pub. L. No. 102–550, known as the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (1992 Act), as described in additional detail in NPR2.

[14] In the Rule's single-family default and prepayment models, the level of borrower equity in the property (property value less mortgage debt) is analogous to multifamily DCR in that both measures capture economic stress. The circumstance of a single-family mortgage borrower having negative equity is similar to that of a multifamily loan having

the stress test, many multifamily loan groups will have DCRs projected to fall below one—some only slightly below one, while others fall well below one. The additional risk of default may be overstated for those loan groups with DCRs projected to fall only slightly below one by the abrupt transition of the UWDCRF variable. Second, even when a multifamily property's DCR does fall below one, only a fraction of borrowers default, indicating that those who do not default may carry their properties with funds from other sources for a period of time while they try to remedy the negative cash flow position.

For these reasons, OFHEO decided to re-estimate the multifamily default model with a revised definition of the UWDCRF that turns the flag on only when the DCR is projected to be well below one. As a result of that re-estimation, OFHEO proposes to redefine the UWDCRF to be equal to one (that is, to turn the flag on) when projected DCR is less than 0.98 (that is, when NOI is more than two percentage points below the mortgage payment), rather than setting the flag equal to one immediately when the projected DCR falls below one. The re-estimated multifamily default model has a slightly lower coefficient on UWDCR, and the coefficients for the other explanatory variables do not change materially. Simulations using the revised UWDCRF definition result in lower predicted default rates for ARMs in the up-rate scenario and for FRMs with low initial DCR in both scenarios, making the model less sensitive to the UWDCRF than the existing model. The revised definition does not substantially affect the predicted default rates for most FRMs or for ARMs in the down-rate scenario. OFHEO believes the respecified model more accurately captures the added risks associated with loans that have negative cash flow in the stress test.

ARM Flags. OFHEO is concerned that predicted cumulative default rates for ARM loans are excessive in the up-rate scenario. For example, a typical ARM purchased by an Enterprise could have a cumulative default rate of 95 percent in the up-rate scenario. These excessive default rates for ARMs in the up-rate stress test arise from two principal sources. First, the up-rate stress test projects declining DCRs for ARMs, and two explanatory variables in the default model translate declining DCRs into higher default rates: the DCR variable, itself, and the UWDCRF, where applicable. The second source is from the application of an ARM product-type flag—New Book ARM Flag (NAF)—which further raises the predicted ARM default rates. OFHEO included the ARM product flag in the Rule because it observed in the historical data from the Enterprises that ARM defaults appear to be higher than those of otherwise comparable FRMs even after controlling for DCR changes due to interest rate changes.

The stress test projects DCR in each month of the stress period from the prior month's value using rent growth rates and vacancy rates that reflect the economic conditions of the benchmark region and period along with monthly mortgage payment adjustments according to the note terms and the stress test interest rate scenarios. In the up-rate scenario, the mortgage payment adjustments on ARMs cause the projected DCR to fall much more than that of an otherwise comparable FRM. This more rapid decline in DCR causes predicted defaults on ARMs to be higher than those of otherwise comparable FRMs, as one would expect, because mortgage payments on an ARM may grow to exceed net operating income from the property. In addition, the NAF further raises new book ARM defaults relative to comparable new book FRMs to capture performance differences not related to projected changes in DCR.[15]

The theoretical justification for the inclusion of an ARM flag to account for performance differences not related to ARM payment changes is that ARM borrowers may possess higher credit risk qualities than their fixed-rate counterparts. Arguing against the inclusion of an ARM flag is the improvement in the Enterprises' multifamily ARM underwriting in recent years, which means that, over time, differences in risk between loan types due to differences in borrower characteristics will disappear. That is, the choice of ARM versus FRM in the multifamily mortgage market may be becoming a strategic business decision related to professional financial management considerations and may, as a result, have a declining relationship to borrower credit quality.

OFHEO decided that the excessive predicted default rates for ARM loans in the up-rate stress test warranted investigation of the default model's specification of ARM product type flags. OFHEO sought to determine if a respecification of the model could maintain a reasonable relationship to the historical data while producing more reasonable results in the stress test. First, the estimation was performed without either of the two product type flags, the NAF and the New Book Balloon Flag (NBLF). If the only additional risk associated with ARMs relative to FRMs resulted from the impact of rate changes on mortgage payments and DCR, then this specification for the default model might be appropriate. OFHEO found, however, that this model specification caused another explanatory variable, the Ratio Update Flag (RUF) to be no longer statistically significant. Next, OFHEO re-estimated the model without the Ratio Update Flag. The result of the second re-estimation produced, as expected, an averaging effect between New Book ARM and FRM default rates—that is, the size of the coefficient for New Book loans decreased (the coefficient remained negative but had a smaller absolute value), reflecting the fact that the NBF was now averaging the product type differences that are currently separated out by the product type flags in the Rule. This specification also reduced the sensitivity of defaults to the distinction between New Book and Old Book loans, holding other factors constant, because it no longer distinguished between loans for which loan-to-value ratio (LTV) and DCR ratios are updated and those for which they are not.[16]

a DCR below one because both are associated with increased likelihood of default. However, in the single-family model, negative equity is captured as a probability and enters the model as categorical variable having eight possible values. These eight gradations for the probability of negative equity improve the single-family model by avoiding abrupt predicted transitions from positive to negative equity. OFHEO is able to calculate the probability of negative equity for single-family loans because projected property value changes are based on OFHEO's House Price Index and its associated dispersion parameters. No similar measures of dispersion are currently available to project multifamily DCR or the probability of DCR falling below one.

[15] The Rule includes a New Book ARM flag (NAF) and a New Book Balloon flag (NBLF) as product-type offsets to the New Book flag (NBF), which is a categorical (or dummy) variable that distinguishes between ''Old Book'' loans that were made when the Enterprises first entered into the multifamily business (before 1988 for Fannie Mae and before 1993 for Freddie Mac) and ''New Book'' loans made under their more recent restructured programs. OFHEO's research indicates that New Book loans have shown lower defaults than Old Book loans in general, although the amount of improvement varies significantly among product types. Specifically, New Book fixed-rate balloon loans outperformed Old Book fixed-rate balloon loans to a lesser degree than their fixed-rate fully amortizing counterparts. ARM loan performance differentials were even smaller. These differences are reflected in the Rule in the NBLF and NAF offsets to the NBF.

[16] This effect is captured in the Rule by the Ratio Update Flag (RUF). Specifically, the RUF identifies a subset of New Book loans—those for which the loan-to-value ratio (LTV) and debt-service coverage ratio (DCR) have been calculated or delegated to have been calculated by the Enterprises at loan origination or for which the LTV and DCR have been recalculated or delegated to have been

Continued

OFHEO rejected the above model re-specification, which eliminates the NAF, the NBLF, and the RUF, because it ignored two important factors that OFHEO has observed in Enterprise historical data. First, OFHEO considered the evidence of higher Enterprise ARM default rates, compared with FRM default rates during historical periods when interest rates were flat to declining. Since flat-to-declining interest rates lead to stable or lower ARM payments and therefore stable or higher DCRs, all else equal, OFHEO suspected that factors unrelated to interest-rate-related ARM payment changes (such as borrower credit quality) may still be underlying the higher observed ARM default rates. Second, OFHEO found substantial differences in observed default rates for ratio-updated versus not-ratio-updated loans in Enterprise historical data. Ratio-updated loans appear to perform better than those that are not, holding other factors constant.

Therefore, OFHEO proposes to re-specify its multifamily default model as follows. The proposed model has the same explanatory variables as the model in the Rule, except that NAF, NBLF, and RUF are removed, and a respecified flag is introduced that captures both the distinction between ARMs and FRMs and the distinction between ratio-updated and not-ratio-updated loans. Specifically, the new variable OFHEO is proposing in its respecified default model is a Not-Ratio-updated ARM Flag (NRAF) which takes a value of one (that is, it is turned on) if a loan is both an ARM and not ratio-updated, and zero otherwise. Because nearly all of the ARM loans in Enterprise historical data are not ratio-updated, but nearly all of the FRMs are ratio-updated, OFHEO determined that it is statistically difficult to fully separate these effects as measures of historical performance. The proposed model with the NRAF variable would apply this new variable coefficient during the stress test simulation only to ARM loans that are not ratio-updated, capturing the historical performance differences of these ARMs after controlling for payment changes. ARM loans that have undergone the ratio-update process would not be subject to higher default risk imposed by the NRAF, thereby reducing the differential between ARM and FRM defaults in the up-rate scenario for those loans.

OFHEO believes that a similar distinction between ratio-updated FRMs and not-ratio-updated FRMs should exist even though there are too few not-ratio-updated FRMs in the Enterprises' historical data to confirm the hypothesis. As a result, OFHEO proposes to multiply monthly conditional default rates for not-ratio-updated FRMs by a factor of 1.2 times the rates for otherwise comparable ratio-updated FRMs to reflect the marginally higher risk expected with those loans.

OFHEO believes that, given the Enterprise data, the proposal handles a very complicated issue fairly and with statistical soundness and good judgment. If, in the future, Enterprise data show no differences between ARM and FRM risk other than the adverse effect of rising interest rates on ARM payments and ARM DCR, OFHEO may revisit this issue.

Initial Vacancy Rate. Estimated rent growth for the first month of the stress test is based on the relative change in a rent index from immediately prior to the stress test to month one of the stress test.[17] However, the estimated vacancy rate change in the first month of the stress test does not look back to the value of the vacancy rate immediately prior to the stress test, but rather compares the vacancy rate in month one of the stress test with a long-term national historical average vacancy rate. To be consistent, the change in vacancy rates between the period immediately prior to the stress test and month one of the stress test should be based on the change in the benchmark region vacancy rate from the month prior to the benchmark period to the first month of the benchmark period. OFHEO views this change as a technical correction.

Specifically, the vacancy rate change in the Rule in the initial month of the stress test is from the Census Bureau's long-term national historical average of 6.23 percent to the West South Central (WSC) Census division's estimated January, 1984, rate of 13.6 percent, with changes thereafter based upon changes in rates through 1993 in that region.[18] This specification has the effect of imposing a greater percentage increase in vacancies than appears to have occurred during the benchmark loss experience.

The proposed change is to set the initial vacancy rate at ten percent, which is the estimated WSC Census division vacancy rate in 1983. Thus, the vacancy rate change in the initial month of the stress test would be from ten percent to 13.6 percent.

Loss Severity. Loss severity parameters in the Rule were based upon the experience of 705 Freddie Mac multifamily REO[19] properties from the 1980s. OFHEO has now analyzed data reflecting the costs, timing, and recovery rates associated with additional REO that has been made available from both Enterprises. Based upon that analysis, OFHEO is proposing to modify the multifamily severity parameters to take into consideration the performance of Fannie Mae REO in the 1980s and both Enterprises' more recent multifamily REO. The multifamily loss severity calculations that use the severity parameters in the Rule would not change. Specifically, OFHEO proposes reducing net REO holding costs to seven percent from 13.33 percent and increasing REO sales proceeds from 58.88 percent to 63 percent of the unpaid principal balance as of the default date. Additionally, OFHEO proposes reducing the time from default to foreclosure completion from 18 to 9 months while increasing the time from REO acquisition to REO disposition from 13 to 15 months. Changing these severity parameters yields a 44 percent ''baseline'' severity rate, as compared to the 55 percent ''baseline'' produced by the model in the Rule. ''Baseline'' severity is a simple way to compare one set of severity parameters with another.[20]

Prepayment Penalties. In the Rule, no credit is given for cash flows from prepayment penalties and yield maintenance provisions. Nevertheless, the Rule provides that two percent of loans that are subject to such penalties or provisions prepay each year of the stress test in the down-rate scenario. In the preamble to the Rule, OFHEO explained that the data indicated that a small percentage of loans did prepay while subject to yield maintenance provisions and that OFHEO had no data indicating to what extent prepayment penalties were actually paid by borrowers, as opposed to waived by the Enterprises or added to the balances of refinanced loans. Because it is likely that some prepayment penalties are paid or other compensating consideration is

recalculated by the Enterprises at Enterprise acquisition according to current underwriting standards. New Book loans for which origination and/or acquisition LTV and DCR are unknown cannot be considered to be ratio-updated.

[17] Specifically, the twelfth root of month over same month previous year rent indices minus one.

[18] Reporting of vacancy rate data for Metropolitan Statistical Area located in the WSC Census division began in 1986. As a result, 1984 and 1985 rates were estimated based on national rates using the ratio of WSC Census division rates to U.S. rental vacancy rates in 1986, a factor of 2.3. For 1983, a lower factor of 1.8 is assumed because it predates the WSC Census division's recession.

[19] REO is real estate owned as a result of loan default.

[20] The ''baseline'' consists of a simple adding up of the cost components of the rate, without considering discounting, credit enhancements, or passthrough interest on sold loans.

received by the Enterprises, OFHEO decided to include some prepayments on these loans in the down-rate scenario, but at a lower rate than indicated by the data in order to take prepayment penalties into account.

OFHEO is proposing to modify the Rule to provide for no prepayments in the down-rate scenario inside prepayment penalty or yield maintenance periods. This approach is more consistent with OFHEO's preference to model contractual instruments according to their terms, but recognizes that modeling these penalties according to their terms would be immensely complicated, because those terms vary greatly from loan to loan. The proposed approach is a reasonable simplification because prepayment penalty provisions are actually liquidated damages clauses, which are intended to give the lender the benefit of full performance on the loan.

C. Proposed Changes to Yields on Enterprise Debt

The Rule does not impose a premium upon an Enterprise's cost of funds to reflect the reaction of the debt markets to the financial stress imposed upon the Enterprise. However, the preamble to the Rule suggested that a premium might be appropriate and that this would likely be an area of future change. Upon further study, OFHEO has found that it is appropriate for the stress test to recognize an increased cost of debt of ten basis points for an Enterprise in the stress test vis-a-vis other borrowers in the debt markets.

OFHEO proposed in NPR2 to impose a 50-basis-point premium on new Enterprise debt for the last nine years of the stress period. The analysis that OFHEO performed for NPR2 indicated that debt spreads to Treasury rates have widened in times of financial stress for Government-sponsored enterprises (GSEs). NPR2 did not propose adjustments to reflect unusual stress for any other interest rate series in the stress test.

In the final rule, OFHEO took note of the comments received in response to NPR2, some of which questioned the appropriateness of a premium on new Enterprise debt and the size of that premium. OFHEO conceded that data upon which to base such a premium may be too sparse to determine definitively whether other spreads to Treasuries would widen as much as the Enterprises' spreads or to estimate how much the Enterprises' spreads would widen. The preamble to the final rule also noted that some commenters felt that no premium on new debt should be charged because many of the Enterprises' hedging instruments are based upon rates other than Treasuries (e.g., LIBOR, COFI). The spreads between these rates and Treasuries could be expected to widen during stressful conditions, thus mitigating the Enterprises' risk. In light of these comments, OFHEO postponed imposition of any new debt premium pending later refinements of the Rule. Nevertheless, OFHEO indicated that the implicit assumption in the stress test that the spreads of an Enterprise's debt yields to other interest rates would be unaffected by the deteriorating condition of the Enterprise ignored an area of significant risk.

The risk of wider spreads in a stressful period is important if asset lives, which are unusually long in the up-rate scenario, exceed terms-to-maturity of outstanding debt. In support of this proposal, OFHEO notes that some funding strategies employed by the Enterprises depend significantly on their ability to borrow in the future at relatively favorable interest rates. For example, the Enterprises often fund a portion of their mortgage asset portfolio with short-term debt accompanied by interest rate swaps, in which they pay a fixed rate and receive a floating rate. If the floating rate they pay on their own short-term debt is close to the floating rate they receive on the swap, the net effect is roughly the same as if they had issued long-term fixed-rate debt at the rate they pay on the swap. If, however, their cost of short-term funds rises significantly, relative to the index on which the swap's floating rate is based, their cost will be higher than if they had issued long-term fixed-rate debt. Use of fixed-pay swaptions to hedge against the effect of rising interest rates on expected asset lives creates a similar risk. Although the spreads to Treasury rates of other interests rates may also widen in a stressful economic environment, the stress test is designed to be especially stressful to the Enterprises. The stress test involves factors, such as a decline in housing prices, that might not affect the debt costs in other sectors of the economy as much. OFHEO has chosen to propose a ten-basis-point spread for the final nine years of the stress period, in part to reflect these risks.

A ten-basis-point borrowing premium incorporates these risks in a modest way. Firms in very stressful circumstances frequently face premiums of several hundred basis points, if they are able to borrow at all. GSEs, though, have always been able to borrow, even when they are in very poor financial condition, because of their perceived special status. It is reasonable, therefore, to use a much smaller premium than might be appropriate for a non-GSE in a similar stress test. OFHEO also considers it appropriate to consider that the stresses affecting the Enterprises in the stress test would also be affecting other borrowers in the market place. To assume that they do not, as was the case in NPR2, which proposed a 50-basis-point premium, is inconsistent with the stress implied in the haircuts that the stress test applies to all counterparties of the Enterprises. An ideal stress test might model different spreads for different interest rate series, a complex approach that OFHEO could not implement in the foreseeable future. The ten-basis-point premium, therefore, can be viewed as a simplifying assumption, which gives some effect to the possibility that stress period market conditions could impact an Enterprise more adversely than the rest of the market.

D. Proposed Changes to New Debt Mix

The Rule provides for the funding of all cash deficits by the issuance of new long-or short-term debt, whichever is in shorter supply, until a 50/50 balance of short-to long-term debt is reached in each Enterprise's portfolio. Thereafter, long- and short-term debt are issued in whatever ratio best contributes to maintaining that balance. This approach was chosen because OFHEO did not wish to include an assumption about any particular behavioral preference by the Enterprises during the stress period.

On further consideration, however, OFHEO proposes to change the target balance embodied in this approach. A 50/50 balance is generally unsuitable for funding a portfolio of largely fixed-rate mortgage assets, and it could often result in a substantial change in an Enterprise's funding structure during the stress period. OFHEO proposes to replace the 50/50 target with the actual ratio of Enterprise debt obligations (as adjusted by interest rate swaps) at the start of the stress period. Typically, the Enterprises have a long-term debt to total debt ratio (swap adjusted) of 70 percent to 90 percent. Use of such ratios in the stress test will result in a more realistic debt structure.

E. Miscellaneous Technical Changes

Operating Expenses. In the Rule, one third of an Enterprise's operating expenses at the start of the stress test remain fixed throughout the stress period, while the remainder decline in proportion to the decline in the mortgage portfolio. The total of the fixed and variable components is then reduced by one-third to recognize that a

cessation of new business would have a significant impact upon operating expenses. The variable portion of the operating expenses for a given month is determined by calculating the Enterprise's mortgage portfolio at the end of each month of the stress period as a percentage of the portfolio at the start of the stress test. Starting-position fixed-asset balances are held constant over the ten-year stress period, while related depreciation is included in the base on which operating expenses are calculated for each month of the stress period. The implication of this treatment is that fixed assets are being regularly replaced throughout the period, which appears inconsistent with the decline in financial assets as mortgages amortize and prepay.

To address this inconsistency, OFHEO is proposing to modify the stress test treatment of operating expenses by converting 75 percent of starting-position fixed-asset balances to cash over the ten-year stress period. The proposal would retain 25 percent of the fixed assets on the Enterprise books throughout the stress period to reflect the acquisition of some new fixed assets, such as computer equipment, which is likely even in a ''wind-down'' scenario. The effect of this change is to reduce the Enterprises' need for debt to carry nonearning fixed assets.

Float Income. The Rule provides for the modeling of float income associated with passthrough payments on securities issued by the Enterprises. Float income can be positive or negative depending on whether the Enterprise holds the funds for a period of time before remitting them to security holders or remits funds to security holders before they are actually received. When an Enterprise owns its own passthrough securities, the timing of payment to itself is not relevant. However, the Rule includes these securities in the calculation of float income, resulting in an overstatement of float income. OFHEO proposes to correct this overstatement by reducing the float income on passthrough securities issued by the reporting Enterprise by the percentage of the Enterprise's ownership interest. However, when an Enterprise receives prepayments and holds the funds for a number of days during which investors accrue interest at the coupon rate of the security, the difference between the yield the Enterprise can earn on invested funds at that time of the stress period and the coupon rate will continue to be reflected for the relevant number of days.

Currency Swaps. As a simplifying assumption in the Rule, OFHEO applied no haircut to foreign currency swaps, but stated its intention to continue to explore appropriate methodologies for applying an appropriate haircut. In furtherance of its commitment to continue to refine the stress test, OFHEO now proposes to eliminate the simplifying assumption and apply haircuts to foreign currency swap counterparties. Because the stress test does not project foreign currency values, the haircut is applied by adjusting the pay (dollar-denominated) side of the swap upward by the amount of the haircut percentage rather than haircutting the foreign-currency receive side of the swap.

American Call Option. As a simplifying assumption in the Rule, an American call option, which allows the issuer to exercise the option at any time, is treated as a Bermudan call option, which allows the issuer to exercise the call only on a coupon date. However, in the preamble to the Rule, OFHEO signaled its intention to consider how American call options might be modeled more precisely. OFHEO is now proposing to modify the stress test to evaluate American calls on the first option date in the exercise schedule and subsequent monthly anniversaries of the instrument's first coupon date.

House Price Growth Factor Clarification. The Rule requires the use of OFHEO's most recent House Price Index as of the reporting date to determine the house price growth factor used to calculate current loan-to-value ratios. The proposal expands the instructions in Section 3.6 to clarify, consistent with Section 3.7, that when a loan was originated since the publication of that report, a cumulative house price growth factor of one is used.

Technical Correction. The proposal adds a Prepayment Penalty Flag as an additional classification variable for multifamily loan groups, to distinguish loans with active prepayment penalties or yield maintenance provisions from those without in the calculation of prepayment penalty duration for loan groups.

Regulatory Impact

Executive Order 12866, Regulatory Planning and Review

The proposed amendment would amend a rule designated as a major rule by the Office of Management and Budget (OMB). The proposed amendment is a refinement of that rule that would tie the capital more closely to risk. Although the impact of that refinement is not economically significant, OMB has reviewed the proposed amendment to determine whether the proposed changes may raise novel policy issues. OFHEO is not required to provide the type of regulatory impact analysis that is required for an economically significant rule. Nevertheless, in accordance with OMB's guidance that all regulatory actions should be consistent with the principles of E.O. 12866, OFHEO has determined, after review by agency economists, financial analysts, and attorneys, that the benefits of the proposed changes to the Rule substantially outweigh any economic costs.

It is impossible to estimate precisely the particular benefits and costs associated with the risk-based capital requirement. While OFHEO believes this group of enhancements and refinements to the stress test will not generally increase or decrease the amount of required capital for an Enterprise to any substantial degree, the effect in any particular quarter depends upon how well that Enterprise is hedged against the risks and conditions specified in the stress test. OFHEO cannot know whether or not hedges in place at an Enterprise at the beginning of any quarter would have been in place in the absence of specific provisions of the risk-based capital rule or were put in place because of the test. Speculating as to what the Enterprises would do in the absence of specific provisions in future quarters is even more difficult. Therefore, a detailed economic cost/benefit analysis is not practical.

Rather than trying to assess the costs and benefits of every change to the stress test, OFHEO looks to whether or not the changes it is proposing make the Rule better reflect the risks faced by the Enterprises. Improving the Rule in this manner should reduce the potential for Enterprise insolvency by protecting better against interest rate, credit, and management and operations risk. By helping to ensure the safety and soundness of the Enterprises, the regulation allows them to continue to carry out their public purposes, which include providing stability in the secondary market for residential mortgages and providing access to mortgage credit in central cities, rural areas, and underserved areas.[21] In addition, the regulation helps ensure that the Enterprises will continue to provide benefits to the primary mortgage market, such as standardizing business practices.[22]

[21] 1992 Act, section 1302(2) (12 U.S.C. 4501(2)).

[22] ''Managing Risk in Housing Finance Markets: Perspective from the Experience of the United States of America and Mexico,'' *Mortgage Bankers Association of America* (June 11, 1998).

Adopting the proposed amendment will result in a capital requirement that corresponds more closely to capital levels that the marketplace would demand in the absence of the benefits afforded by the Government sponsorship of the Enterprises, leading to gains in overall economic efficiency. By improving the Rule's ability to reflect actual risks at the Enterprises, the amendment also may enhance investor confidence in the ability of the stress test to forewarn investors and regulators of financial weaknesses. This result would be consistent with a study by Standard & Poor's (S&P) that provided risk-to-the-government credit ratings for the Enterprises.[23] Although S&P had rated Fannie Mae A- and Freddie Mac A+ in 1991, the 1997 report upgraded the ratings of both Enterprises to AA-. S&P cited increased governmental oversight by OFHEO as an important factor in these higher ratings. It further noted that ''OFHEO's regulatory oversight [of Freddie Mac] also gives comfort that appropriate interest rate risk mitigation steps would be taken as needed.''[24]

OFHEO can identify no significant costs associated with implementing the proposed amendments. No new reports are required, and net effects on required capital likely will be very small. In sum, the benefits to the public, including the Enterprises and other private-sector concerns, of the proposed changes far outweigh the already expended costs of implementing those changes.

Paperwork Reduction Act

This proposed regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). OFHEO has considered the impact of the proposed regulation under the Regulatory Flexibility Act. The General Counsel of OFHEO certifies that the proposed regulation, if adopted, is not likely to have a significant economic impact on a substantial number of small business entities because the regulation is applicable only to the Enterprises, which are not small entities for purposes of the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 1750

Capital classification, Mortgages, Risk-based capital.

Accordingly, for the reasons stated in the preamble, OFHEO proposes to amend 12 CFR part 1750 as follows:

PART 1750—RISK-BASED CAPITAL

1. The authority citation for part 1750 continues to read as follows:

Authority: 12 U.S.C. 4513, 4514, 4611, 4612, 4614, 4618.

2. Amend Appendix A to subpart B of part 1750 as follows:

a. Revise Table 3–1 in paragraph 3.1.1;

b. Revise Table 3–4 in paragraph 3.1.2.1;

c. Revise paragraph 3.3.1 [b];

d. Revise paragraph 3.3.3 [a] 3.c.;

e. Add new paragraph 3.5.3 [a] 2.d.;

f. Revise paragraph 3.5.3 [a] 3. and Table 3–31;

g. In sentence six of paragraph 3.6.1 [e], remove the comma after the words ''Credit Losses'', add the word ''and'' in its place, and remove the words ''and the Float Income'' after the words ''Guarantee Fee'';

h. Revise paragraph 3.6.3.4.3.1 [a] 2.a.;

i. Revise paragraph 3.6.3.5.1 [b];

j. In paragraph 3.6.3.5.2, revise Table 3–38;

k. Revise paragraph 3.6.3.5.3.1 [a] 2.;

l. In paragraph 3.6.3.5.3.1 [a] 4, remove the first equation: ''$UWDCRF_m = 1$ if $DCR_m < 1$ in month m'' and add the equation ''$UWDCRF_m = 1$ if $DCR_m < 0.98$ in month m'' in its place;

m. Revise paragraph 3.6.3.5.3.2 [a] 1. and Table 3–39;

n. Revise paragraph 3.6.3.5.3.2 [a] 2.b.;

o. Revise paragraph 3.6.3.5.3.2 [a] 3.;

p. Revise Table 3–44, in paragraph 3.6.3.6.3.2;

q. In section 3.6.3.6.4.3, revise the four paragraphs: [a] 1., [a] 3.b., [a] 4.b. and [a] 5.;

r. Revise paragraph 3.6.3.7.3 [a] 9.b.;

s. Revise paragraph 3.7.3.1 [g] 1.;

t. In paragraphs 3.7.3.2 [a] 5. and 3.7.3.3 [a] 3., add the words '', as appropriate'' at the end of the sentence in each paragraph;

u. In paragraph 3.7.4 [a] remove reference to ''Table 3–55'' and add ''Table 3–61'' in its place;

v. Redesignate Tables 3–65 through 3–70 as Tables 3–66 through 3–71;

w. After paragraph 3.8.1 [e], add new paragraph 3.8.1 [f], new footnote 5, and new Table 3–65;

x. In paragraphs 3.8.2 [a] and [b] remove references to ''Table 3–65'' and add ''Table 3–66'' in their place;

y. Revise paragraph 3.8.3.1 [a] 3.a.;

z. In paragraph 3.8.3.4 remove reference to ''Table 3–66'' and add ''Table 3–67'' in its place;

aa. In paragraphs 3.8.3.6.1 [e] 1. and [e] 2. remove both references to ''Table 3–67'' and add ''Table 3–68'' in their place;

bb. In redesignated Table 3–69 in paragraph 3.8.3.9, remove both references to ''Table 3–65'' and add ''Table 3–66'' in their place;

cc. Revise paragraphs 3.8.3.10 [a], [b] and [c];

dd. In paragraph 3.9.2 remove reference to ''Table 3–69'' and add ''Table 3–70'' in its place;

ee. In paragraph 3.10.2 [a] remove reference to ''Table 3–70'' and add ''Table 3–71'' in its place;

ff. Revise paragraphs 3.10.3.1 [b] 2. and [b] 3.;

gg. Revise paragraph 3.10.3.6.2 [a] 5.; and

hh. Revise the definition of *Enterprise Cost of Funds* in paragraph 4.0 Glossary.

The revisions and additions read as follows:

Appendix A to Subpart B of Part 1750—Risk-Based Capital Text Methodology and Specifications

* * * * *

3.1.2.1 * * *

[23] *Final Report of Standard & Poor's to OFHEO,* Contract No. HE09602C (February 3, 1997).

[24] Contract No. HE09602C, at 10.

TABLE 3–1-SOURCES OF STRESS TEST INPUT DATA

Section of this Appendix	Table	Data Source(s) R = RBC Report P = Public Data F = Fixed Values			
		R	P	F	Intermediate Outputs
3.1.3, Public Data	3–19, Stress Test Single Family Quarterly House Price Growth Rates			F	
	3–20, Multifamily Monthly Rent Growth and Vacancy Rates			F	
3.2.2., Commitments Inputs	Characteristics of securitized single family loans originated and delivered within 6 months prior to the Start of the Stress Test	R			3.3.4, Interest Rates Outputs
3.2.3., Commitments Procedures	3–25, Monthly Deliveries as a Percentage of Commitments Outstanding (MDP)			F	
3.3.2, Interest Rates Inputs	3–18, Interest Rate and Index Inputs		P		
3.3.3, Interest Rates Procedures	3–26, CMT Ratios to the Ten-Year CMT			F	
3.4.2., Property Valuation Inputs	3–28, Property Valuation Inputs				3.1.3, Public Data 3.3.4, Interest Rates Outputs
3.5.3., Counterparty Defaults Procedures	3–30, Rating Agencies Mappings to OFHEO Ratings Categories		P		
	3–31, Stress Test Maximum Haircut by Ratings Classification			F	
3.6.3.3.2, Mortgage Amortization Schedule Inputs	3–32, Loan Group Inputs for Mortgage Amortization Calculation				3.3.4, Interest Rates Outputs
3.6.3.4.2, Single Family Default and Prepayment Inputs	3–34, Single Family Default and Prepayment Inputs	R		F	3.6.3.3.4, Mortgage Amortization Schedule Outputs
3.6.3.4.3.2, Prepayment and Default Rates and Performance Fractions	3–35, Coefficients for Single Family Default and Prepayment Explanatory Variables			F	
3.6.3.5.2, Multifamily Default and Prepayment Inputs	3–38, Loan Group Inputs for Multifamily Default and Prepayment Calculations	R		F	
3.6.3.5.3.2, Default and Prepayment Rates and Performance Fractions	3–39, Explanatory Variable Coefficients for Multifamily Default			F	3.6.3.3.4, Mortgage Amortization Schedule Outputs
3.6.3.6.2.2, Single Family Gross Loss Severity Inputs	3–42, Loan Group Inputs for Gross Loss Severity			F	3.3.4, Interest Rates Outputs 3.6.3.3.4, Mortgage Amortization Schedule Outputs 3.6.3.4.4, Single Family Default and Prepayment Outputs
3.6.3.6.3.2, Multifamily Gross Loss Severity Inputs	3–44, Loan Group Inputs for Multifamily Gross Loss Severity			F	3.3.4, Interest Rates Outputs 3.6.3.3.4, Mortgage Amortization Schedule Outputs
3.6.3.6.4.2, Mortgage Credit Enhancement Inputs	3–46, CE Inputs for each Loan Group	R			3.6.3.3.4, Mortgage Amortization Schedule Outputs 3.6.3.4.4, Single Family Default and Prepayment Outputs 3.6.3.5.4, Multifamily Default and Prepayment Outputs 3.6.3.6.2.4, Single Family Gross Loss Severity Outputs 3.6.3.6.3.4, Multifamily Gross Loss Severity Outputs
	3–47, Inputs for each Distinct CE Combination (DCC)	R			
3.6.3.7.2, Stress Test Whole Loan Cash Flow Inputs	3–51, Inputs for Final Calculation of Stress Test Whole Loan Cash Flows	R			3.3.4, Interest Rates Outputs 3.6.3.3.4, Mortgage Amortization Schedule Outputs 3.6.3.4.4, Single Family Default and Prepayment Outputs 3.6.3.5.4, Multifamily Default and Prepayment Outputs 3.6.3.6.5.2, Single Family and Multifamily Net Loss Severity Outputs
3.6.3.8.2, Whole Loan Accounting Flows Inputs	3–54, Inputs for Whole Loan Accounting Flows	R			3.6.3.7.4, Stress Test Whole Loan Cash Flow Outputs

TABLE 3–1-SOURCES OF STRESS TEST INPUT DATA—Continued

Section of this Appendix	Table	Data Source(s) R = RBC Report P = Public Data F = Fixed Values			
		R	P	F	Intermediate Outputs
3.7.2., Mortgage-Related Securities Inputs	3–56, RBC Report Inputs for Single Class MBS Cash Flows	R			
	3–57, RBC Report Inputs for Multi-Class and Derivative MBS Cash Flows	R			
	3–58, RBC Report Inputs for MRBs and Derivative MBS Cash Flows	R			
3.8.2., Nonmortgage Instrument Inputs	3–66, Input Variables for Nonmortgage Instrument Cash flows	R			
3.9.2., Alternative Modeling Treatments Inputs	3–70, Alternative Modeling Treatment Inputs	R			
3.10.2., Operations, Taxes, and Accounting Inputs	3–71, Operations, Taxes, and Accounting Inputs	R			3.3.4, Interest Rates Outputs 3.6.3.7.4, Stress Test Whole Loan Cash Flow Outputs 3.7.4., Mortgage-Related Securities Outputs 3.8.4., Nonmortgage Instrument Outputs
3.12.2., Risk-Based Capital Requirement Inputs		R			3.3.4, Interest Rates Outputs 3.9.4., Alternative Modeling Treatments Outputs 3.10.4., Operations, Taxes, and Accounting Outputs

* * * * *

3.1.2.1 * * *

TABLE 3–4.—ADDITIONAL MULTIFAMILY LOAN CLASSIFICATION VARIABLES

Variable	Description	Range
Multifamily Product Code	Identifies the mortgage product types for multifamily loans	Fixed Rate Fully Amortizing Adjustable Rate Fully Amortizing 5 Year Fixed Rate Balloon 7 Year Fixed Rate Balloon 10 Year Fixed Rate Balloon 15 Year Fixed Rate Balloon Balloon ARM Other
New Book Flag	''New Book'' is applied to Fannie Mae loans acquired beginning in 1988 and Freddie Mac loans acquired beginning in 1993, except for loans that were refinanced to avoid a default on a loan originated or acquired earlier.	New Book Old Book
Ratio Update Flag	Indicates if the LTV and DCR were updated at origination or at Enterprise acquisition	Yes No
Interest Only Flag	Indicates if the loan is currently paying interest only. Loans that started as I/Os and are currently amortizing should be flagged as 'N'.	Yes No
Current DCR	Assigned classes for the Debt Service Coverage Ratio based on the most recent annual operating statement	DCR < 1.00 1.00 <=DCR<1.10 1.10 <=DCR<1.20 1.20 <=DCR<1.30 1.30 <=DCR<1.40 1.40 <=DCR<1.50 1.50 <=DCR<1.60 1.60 <=DCR<1.70 1.70 <=DCR<1.80 1.80 <=DCR<1.90 1.90 <=DCR<2.00 2.00 <=DCR<2.50 2.50 <=DCR<4.00 DCR >= 4.00
Prepayment Penalty Flag	Indicates if prepayment of the loan is subject to active prepayment penalties or yield maintenance provisions	Yes No

* * * * *

3.3.1 * * *

[b] The process for determining interest rates is as follows: first, identify values for the necessary Interest Rates at time zero; second, project the ten-year CMT for each month of the Stress Period as specified in the 1992 Act; third, project the 1-month Treasury yield, the 3-month, 6-month, 1-, 2-, 3-, 5-, 20-

and 30-year CMTs; fourth, project non-Treasury Interest Rates, including the Federal Agency Cost of Funds Index; and fifth, project the Enterprises Cost of Funds Index, which provides borrowing rates for the Enterprises during the Stress Period, by increasing the Agency Cost of Funds Index by 10 basis points for the last 108 months of the Stress Test.

* * * * *

3.3.3 * * *

[a] * * *

3. * * *

c. *Enterprise Borrowing Rates.* In the Stress Test, the Federal Agency Cost of Funds Index is the same as the Enterprise Cost of Funds Index during the Stress Period, except that the Stress Test adds a 10 basis-point credit spread to the Federal Agency Cost of Funds rates to project Enterprise Cost of Funds rates for the last 108 months of the Stress Period.

* * * * *

3.5.3 * * *

[a] * * *

2. * * *

d. The Stress Test will permit a higher rating to be used for an unrated seller-servicer who participates in a delegated underwriting and servicing program that requires a loss-sharing agreement when: (1) The loss sharing agreement is collateralized by a fully funded reserve account pledged to the Enterprise; and (2) the reserve account is in an amount that is equal to or exceeds the amount that OFHEO has determined to be adequate to support the seller-servicer's loss-sharing obligation under the program. Determinations of the reserve requirement and of the rating that will be permitted will be made on a program-by-program and Enterprise-by-Enterprise basis by the Director.

3. *Determine Maximum Haircuts.* The Stress Test specifies the Maximum Haircut (i.e., the maximum reduction applied to cash flows during the Stress Test to reflect the risk of loss due to counterparty (including security) default) by rating category and counterparty type as shown in Table 3–31.

a. The Maximum Haircut for a rating category is the product of its default rate and its loss severity rate. For all counterparties the default rates are 5 percent for AAA, 12.5 percent for AA, 20 percent for A, 40 percent for BBB and 100 percent for Below BBB and Unrated. For non-derivative counterparties, the loss severity rate is 70 percent; for derivative counterparties, it is 10 percent. For all Below BBB and Unrated counterparties, the loss severity rate is 100 percent.

b. For periods prior to the implementation of netting, a separate set of Maximum Haircuts (set forth in Table 3–31) will be applied to derivative contract cash flows to approximate the impact of the net exposures to derivative contract counterparties (see section 3.8.3, Nonmortgage Instrument Procedures). After the implementation of netting, exposures will be netted as described in section 3.8.3 before the haircut is applied.

c. With the exception of haircuts for the Below BBB and Unrated category, haircuts for all counterparty categories are phased-in linearly over the 120 months of the Stress Period. The Maximum Haircut is applied in month 120 of the Stress Period. Haircuts for the Below BBB and Unrated category are applied fully starting in the first month of the Stress Test.

TABLE 3–31.—STRESS TEST MAXIMUM HAIRCUT BY RATINGS CLASSIFICATION

Ratings Classification	Derivative Contract Counterparties prior to Implementation of Netting	Derivative Contract Counterparties after Implementation of Netting	Non-Derivative Contract Counterparties or Instruments	Number of Phase-in Months
Cash	0%	0%	0%	N/A
AAA	0.3%	0.5%	3.5%	120
AA	0.75%	1.25%	8.75%	120
A	1.2%	2%	14%	120
BBB	2.4%	4%	28%	120
Below BBB and Unrated	100%	100%	100%	1

* * * * *

3.6.3.4.3.1 * * *

[a] * * *

2. * * *

a. LTV_q is evaluated for a quarter q as:

$$LTV_{ORIG} \times \frac{\begin{pmatrix}\text{Ratio of current}\\ \text{Loan Group UPB}\\ \text{to Original UPB}\end{pmatrix}}{\begin{pmatrix}\text{Ratio of current property}\\ \text{value (based on HPI in}\\ \text{quarter q) to original}\\ \text{property value (based on}\\ \text{HPI at Origination)}\end{pmatrix}}$$

The HPI at Origination is updated to the beginning of the Stress Test using actual historical experience as measured by the OFHEO HPI; and then updated within the Stress Test using House Price Growth Factors from the Benchmark region and time period:

$$LTV_q = LTV_{ORIG} \times \frac{\left(\frac{UPB_{m=3q-3}}{UPB_{ORIG}}\right)}{\left[CHPGF_0^{LG} \times exp\left(\sum_{k=1}^{q} HPGR_k\right)\right]}$$

Where:

$UPB_{m=3q-3}$ = UPB for the month at the end of the quarter prior to quarter q

$CHPGF_oLG$= 1.0 if the loan was originated in the same quarter as or after the most recently available HPI as of the reporting date

* * * * *

3.6.3.5.1

[b] *Explanatory Variables for Default Rates.* Eight explanatory variables are used as specified in the equations section 3.6.3.5.3.1, of this Appendix, to determine Default rates for multifamily loans: Mortgage Age, Mortgage Age Squared, New Book indicator, Not Ratio-updated ARM indicator, current Debt-Service Coverage Ratio, Underwater Current Debt-Service Coverage indicator, Loan-To-Value Ratio at origination/acquisition, and a Balloon Maturity indicator. Regression coefficients (weights) are associated with each variable. All of this information is used to compute conditional annual Default rates throughout the Stress Test. The annualized Default rates are converted to monthly conditional Default rates and are used together with monthly conditional Prepayment rates to calculate Stress Test Whole Loan Cash Flows. (*See* section 3.6.3.7, Stress Test Whole Loan Cash Flows, of this appendix).

* * * * *

3.6.3.5.2

TABLE 3-38—LOAN GROUP INPUTS FOR MULTIFAMILY DEFAULT AND PREPAYMENT CALCULATIONS

Variable	Description	Source
	Mortgage Product Type	RBC Report
A_0	Age immediately prior to start of Stress Test, in months (weighted average for Loan Group)	RBC Report
NBF	New Book Flag	RBC Report
RUF	Ratio Update Flag	RBC Report
LTV_{ORIG}	Loan-to-Value ratio at loan Origination	RBC Report
DCR_0	Debt Service Coverage Ratio at the start of the Stress Test	RBC Report
PMT_0	Amount of the mortgage Payment (principal and interest) prior to the start of the Stress Test, or first Payment for new loans (aggregate for Loan Group)	RBC Report
PPEM	Prepayment Penalty End Month number in the Stress Test (weighted average for Loan Group)	RBC Report
RM	Remaining term to Maturity in months (i.e., number of contractual payments due between the start of the Stress Test and the contractual maturity date of the loan) (weighted average for Loan Group)	RBC Report
RGR_m	Benchmark Rent Growth for months m = 1 120 of the Stress Test	section 3.4.4, Property Valuation Outputs
RVR_m	Benchmark Vacancy Rates for months m = 1 120 of the Stress Test	section 3.4.4, Property Valuation Outputs
PMT_m	Scheduled Payment for months m = 1 RM	3.6.3.3.4, Mortgage Amortization Schedule Outputs
OE	Operating expenses as a share of gross potential rents (0.472)	fixed decimal from Benchmark region and time period
RVR_o	Initial rental vacancy rate	0.10

* * * * *

3.6.3.5.3.1 * * *

[a] * * *

2. Assign product and ratio update flags (NBF, NRAF). *Note*: these values do not change over time for a given Loan Group.

a. New Book Flag (NBF):

NBF = 1 for Fannie Mae loans acquired after 1987 and Freddie Mac loans acquired after 1992, *except* for loans that were refinanced to avoid a Default on a loan originated or acquired earlier.

NBF = 0 otherwise.

b. Not Ratio-updated Arm Flag (NRAF):

NRAF = 1 if both ARMF = 1 and RUF = 0,

NRAF = 0 otherwise.

Where:

ARMF = 1 for ARMs (including Balloon ARMs)

ARMF = 0 otherwise, and

RUF = 1 if the LTV and DCR were calculated or delegated to have been calculated at origination or recalculated or delegated to have been recalculated at Enterprise acquisition according to current Enterprise standards.

RUF = 0 otherwise

* * * * *

3.6.3.5.3.2 * * *

[a] * * *

1. Compute the logits for multifamily Default using inputs from Table 3–38 and coefficients from Table 3–39. For indexing purposes, the Default rate for a period m is the likelihood of missing the mth payment; calculate its corresponding logit ($X\delta_m$) based on Loan Group characteristics as of the period *prior* to m, i.e. *prior* to making the mth payment.

$$X\delta_m = \delta_{AY}AY_{m-1} + \delta_{AY^2}AY^2_{m-1} + \delta_{NBF}NBF + \delta_{NRAF}NRAF + \delta_{DCR}ln(DCR_{m-1}) + \delta_{UWDCRF}UWDCRF_{m-1} + \delta_{LTV}ln(LTV_{ORIG}) + \delta_{BMF}BMF_{m-1} + \delta_0$$

TABLE 3–39—EXPLANATORY VARIABLE COEFFICIENTS FOR MULTIFAMILY DEFAULT

Explanatory Variable	Default Weight (δv)
AY	0.5256
AY2	−0.0284
NBF	−1.219
NRAF	0.4193
DCR	−2.368

TABLE 3–39—EXPLANATORY VARIABLE COEFFICIENTS FOR MULTIFAMILY DEFAULT—Continued

Explanatory Variable	Default Weight (δv)
UWDCRF	1.220
LTV	0.8165
BMF	1.518
Intercept (δ0)	−4.553

* * * * *

2. * * *

b. For the down-rate scenario, APR_m = 0 percent during the Prepayment penalty period (i.e., when m ≤ PPEM)

APR_m = 25 percent after the Prepayment penalty period (i.e., when m > PPEM)

* * * * *

3. Convert annual Prepayment and Default rates to monthly rates (MPR and MDR) using the following formulas for simultaneous processes:

$$MPR_m = \frac{APR_m}{ADR_m + APR_m} \times \left[1 - (1 - ADR_m - APR_m)^{\frac{1}{12}}\right]$$

If both ARMF = 0 and RUF = 0, then

$$MDR_m = \frac{ADR_m}{ADR_m + APR_m} \times \left[1 - \left(1 - ADR_m - APR_m\right)^{\frac{1}{12}}\right] \times 1.2$$

otherwise,

$$MDR_m = \frac{ADR_m}{ADR_m + APR_m} \times \left[1 - \left(1 - ADR_m - APR_m\right)^{\frac{1}{12}}\right]$$

* * * * *

3.6.3.6.3.2 * * *

TABLE 3–44—LOAN GROUP INPUTS FOR MULTIFAMILY GROSS LOSS SEVERITY

Variable	Description	Value or Source
	Government Flag	RBC Report
DR_m	Discount Rate in month m (decimal per annum)	6-month Enterprise Cost of Funds from Section 3.3, Interest Rates
MQ	Time during which delinquent loan interest is passed-through to MBS holders	4 for sold loans 0 otherwise
PTR_m	Pass Through Rate applicable to payment due in month m (decimal per annum)	section 3.6.3.3.4, Mortgage Amortization Schedule Outputs
NYR_m	Net Yield Rate applicable to payment due in month m (decimal per annum)	section 3.6.3.3.4, Mortgage Amortization Schedule Outputs
RHC	Net REO holding costs as a decimal fraction of Defaulted UPB	0.07
MF	Time from Default to completion of foreclosure (REO acquisition)	9 months
MR	Months from REO acquisition to REO disposition	15 months
RP	REO proceeds as a decimal fraction of Defaulted UPB	0.63

* * * * *

3.6.3.6.4.3 * * *

[a] * * *

1. Determine Mortgage Insurance Payment (MI_m) for single family loans in the DCC, or Loss Sharing Payment (LSA_m) for multifamily loans in the DCC, as a percentage of Defaulted UPB, applying appropriate counterparty Haircuts from section 3.5, of this Appendix:

$$MI_m^{DCC} = \left(1 - MIExp_m^{LG}\right) \times C^{MI,DCC} \times CLM_m^{MI,LG} \times \left[1 - \frac{m'}{120} \times MaxHct\left(R^{MI,DCC}\right)\right]$$

$$LSA_m^{DCC} = C^{LSA,DCC} \times CLM_m^{LSA,LG} \times \left[1 - \frac{m'}{120} \times MaxHct\left(R^{LSA,DCC}\right)\right]$$

Where:

m′ = m, except for counterparties rated below BBB, where m' = 120

$$MIExp_m^{LG} = 1 \text{ if } \left(LTV_{ORIG} \times \frac{UPB_m^{LG}}{UPB_{ORIG}^{LG}}\right) < 0.78$$

$$MIExp_m^{LG} = 0 \text{ otherwise}$$

0.78 (78%) = the LTV at which MI is cancelled if payments are current

* * * * *

3.* * *

b. Determine CE Payment in Dollars after application of Haircuts:

$$PD_m^{DCC,C1,H} = PD_m^{DCC,C1} \times \left[1 - \frac{m'}{120} \times MaxHct\left(R^{DCC,C1}\right)\right]$$

Where:

m′ = m, except for counterparties rated below BBB, where m′ = 120

* * * * *

4.* * *

b. Determine CE Payment in Dollars after application of Haircuts:

$$PD_m^{DCC,C2,H} = PD_m^{DCC,C2} \times \left[1 - \frac{m'}{120} \times MaxHct\left(R^{DCC,C2}\right)\right]$$

Where:

m′ = m, except for counterparties rated below BBB, where m′ = 120

* * * * *

5. Convert Aggregate Limit First and Second Priority Contract receipts in Dollars for each DCC in month m to a percentage of DCC Defaulted UPB:

$$ALPD_m^{DCC} = \frac{\left(PD_m^{DCC,C1,H} \times ELPI^{DCC,C1}\right) + \left(PD_m^{DCC,C2,H} \times ELPI^{DCC,C2}\right)}{DEF_m \times UPB_{m-1}^{LG} \times P^{DCC}}$$

Where:

$ELPI^{DCC,C} = 0$ if $ELPF^{DCC,C} = Y$ (Yes, indicating that Contract C is an Enterprise Loss Position)

$ELPI^{DCC,C} = 1$ otherwise

* * * * *

3.6.3.7.3. * * *

[a] * * *

9. * * *

b. Float Income (FI) received in month m

$$FI_m = \left[\left(\left[\left(SPR_m + NIR_m - GF_m\right) \times \frac{FDS}{365}\right] + \left[PPR_m \times \frac{FDP}{365}\right]\right) \times FER_m \times (1 - FREP)\right] - PIS_m$$

Where:

Prepayment Interest Shortfall (PIS) in month m is:

$$PIS_m = UPB_{m-1} \times PRE_m \times \frac{PTR_m}{12} - FREP \times PPR_m \times \frac{FER_m}{12} \quad \text{if } FDP \geq 30$$

$$PIS_m = UPB_{m-1} \times PRE_m \times \frac{PTR_m}{24} - FREP \times PPR_m \times \frac{FER_m}{24} \quad \text{if } 15 \leq FDP < 30$$

* * * * *

3.7.3.1 * * *

[g] * * *

1. Compute:

$$HctFac_m = \frac{m'}{120} \times MaxHct(R)$$

Where:

m' = m, except for MBS credit rating below BBB where m'=120

R = MBS credit rating

* * * * *

3.8.1 * * *

[f] In a currency swap, the Enterprise receives payments that are denominated in a foreign currency and it makes payments in U.S. dollars. The main difference between currency swaps and the type of swaps discussed above is that in a currency swap principal amounts are actually exchanged between the two counterparties. Currency swaps are divided into two classes, as shown in Table 3–65 below.[5]

TABLE 3–65—CURRENCY SWAP CONTRACT CLASSIFICATION

Classification	Description of Contract
Fixed-for-Fixed Currency Swap	Enterprise receives fixed interest payments denominated in a foreign currency and makes fixed, US$-denominated payments
Fixed-for Floating Currency Swap	Enterprise receives fixed interest payments denominated in a foreign currency and makes payments in US$ based on a floating interest rate

* * * * *

3.8.3.1 * * *

[a] * * *

3. When applying the option exercise rule:
   a. For zero coupon and discount securities, instruments with European options, and zero coupon swaps, evaluate option exercise only on dates listed in the instrument's option exercise schedule. For Bermudan options, evaluate option exercise on the first option date in the instrument's option exercise schedule and subsequent coupon dates (coupon dates on the fixed-rate leg for swaps). For American options, evaluate option exercise on the first option date in the instrument's option exercise schedule and subsequent monthly anniversaries of the instrument's first coupon date.

* * * * *

3.8.3.10 * * *

[a] Finally, the interest and principal cash flows received by the Enterprises for non-mortgage instruments other than swaps and foreign currency-related instruments are Haircut (i.e., reduced) by a percentage to account for the risk of counterparty insolvency, if a counterparty obligation exists. The amount of the Haircut is calculated based on the public rating of the counterparty and time during the stress period in which the cash flow occurs, as specified in section 3.5, Counterparty Defaults, of this Appendix.

[b] An Enterprise may issue debt denominated in, or indexed to, foreign currencies, and eliminate the resulting foreign currency exposure by entering into currency swap agreements. The combination of the debt and the swap creates synthetic debt with principal and interest payments denominated in U.S. dollars. The Haircuts for currency swaps are applied to the pay (dollar-denominated) side of the currency swaps, or to the cash outflows of the synthetic debt instrument. Therefore, the payments made by the Enterprise on a foreign currency contract are increased by the haircut amount. The Haircuts and the Phase-in periods for currency swaps are detailed in Table 3–31, under Derivative Contracts.

[c] Haircuts for swaps that are not foreign currency related are applied to the Monthly Interest Accruals (as calculated in section 3.8.3.8, of this Appendix) on the receive leg minus the Monthly Interest Accruals on the pay leg when this difference is positive. Use the maximum haircut from Table 3–31 for periods before and after the implementation of netting, as appropriate. After the implementation of netting, net the swap proceeds for each counterparty before applying the haircuts. The following example applies to an Enterprise having two swaps with the same counterparty. On the first swap, the Enterprise pays fixed and receives floating and on the second swap it pays floating and receives fixed. If the counterparty is a net payer to the Enterprise, the haircuts will be applied to the sum of the two receive legs net of the sum of the two pay legs.

* * * * *

3.10.3.1 * * *

[b] * * *

2. In any month in which the cash position is negative at the end of the month, the Stress Test issues a mix of new short-term and long-term debt on the 15th day of that month. New short-term debt issued is six-month discount notes with a discount rate at the six-month Enterprise Cost of Funds as specified in section 3.3, Interest Rates, of this Appendix, with interest accruing on a 30/360 basis. New long-term debt issued is five-year bonds not callable for the first year ("five-year-no call-one") with an American call at par after the end of the first year, semiannual coupons on a 30/360 basis with principal paid at maturity or call, and a coupon rate set at the five year Enterprise Cost of Funds as specified in section 3.3, Interest Rates, of this Appendix, plus a 50 basis point premium for the call option. An issuance cost of 2.5 basis points is assessed on new short-term debt at issue and an issuance cost of 20 basis points is assessed on new long-term debt at issue. New long-term debt is issued to target a total debt mix of short to long term debt that is the same as the short to long term debt mix at the beginning of the Stress Test. Issuance fees for new debt are amortized on a straight line basis to the maturity of the appropriate instrument.
3. Given the Net Cash Deficit (NCD_m) in month m, use the following constants and method to calculate the amount of short-term and long-term debt to issue in month m:
   a. Set the Issuance Cost on new short-term debt at issue (ISCOST):
      ISCOST = 0.00025
   b. Set the Issuance Cost on new long-term debt at issue (ILCOST):
      ILCOST = 0.002
   c. Calculate Net Short-term Debt Outstanding ($NSDO_0$) and Total Debt Outstanding (TDO_0) at the start of the

[5] Ibid.

Stress Test (m = 0) using the following methodology:

(1) For each month m and each debt and swap instrument i (each swap leg is considered a separate instrument), determine the Month of Next Repricing (MNR_m) defined as the first month greater than m in which the instrument matures, an option is exercised, or repricing can occur whether or not the coupon rate actually changes. Set the Principal Balance (PB_m) to be:

(a) the principal (or notional principal) outstanding if the instrument cash flows are paid by the Enterprise,

(b) minus the principal (or notional principal) outstanding if the instrument cash flows are received by the Enterprise.

(2) Calculate $NSDO_m$ by summing $PB_{m,i}$ for all instruments where $MNR_{m,i}$ is less than or equal to m plus 12.

(3) Calculate TDO_m by summing $PB_{m,i}$ for instruments where $MNR_{m,i}$ is greater than m.

d. Set the Maximum Proportion of Total Debt (MPD):

$$MPD = \frac{TDO_0 - NSDO_0}{TDO_0}$$

e. Calculate Discount Rate Factor (DRF_m):

$$DRF_m = \left(1 + \frac{CF_m}{12}\right)^6$$

Where: CF_m = six month Enterprise Cost of Funds for month m

f. Calculate the Adjustment Factor for Short-Term Debt Issuance Fees ($AFSIF_m$):

$$AFSIF_m = \frac{DRF_m}{1 - ISCOST \times DRF_m}$$

g. Calculate the Adjustment Factor for Long-Term Debt Issuance Fees ($AFLIF_m$):

$$AFLIF_m = \frac{1}{1 - ILCOST}$$

h. Calculate the Maximum Long-Term Issuance ($MLTI_m$):

$$MLTI_m = NCD_m \times AFLIF_m$$

i. Calculate Net Short-Term Debt Outstanding ($NSDO_m$) and Total Debt Outstanding (TDO_m) for month m using the methodology described in section 3.c. of this section. *Note:* This calculation must reflect all new issuances, option exercises, and maturities between the beginning of the Stress Test and month m.

j. Calculate Interim Face Amount of Long-Term Debt to be issued this month ($IFALD_m$):

$$IFALD_m = \frac{\left((MPD - 1) \times TDO_m\right) + NSDO_m + \left(MPD \times AFSIF_m \times NCD_m\right)}{1 - MPD + \left(AFSIF_m \times \frac{MPD}{AFLIF_m}\right)}$$

k. Calculate Face Amount of Long-Term Debt to be issued ($FALD_m$):

$$FALD_m = min\left(MLTI_m,\ max\left(0,\ IFALD_m\right)\right)$$

l. Calculate Face Amount of Short-Term Debt to be issued ($FASD_m$):

$$FASD_m = AFSIF_m \times max\left(0,\ NCD_m - \frac{FALD_m}{AFLIF_m}\right)$$

* * * * *

3.10.3.6.2 * * *

[a] * * *

5. *Fixed Assets.* 25 percent of fixed assets (net of accumulated depreciation) as of the beginning of the Stress Test remain constant over the Stress Test. The remaining 75 percent is converted to cash on a straight line basis over the ten-year Stress Period. Depreciation is included in the base on which operating expenses are calculated for each month during the Stress Period.

* * * * *

4.0 * * *

Enterprise Cost of Funds: Cost of funds used in computing the cost of new debt for the Enterprises during the Stress Test, as specified in section 3.3.3[a]3.c., of this Appendix.

* * * * *

Dated: December 11, 2001.

Armando Falcon, Jr.,

Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 01–30898 Filed 12–17–01; 8:45 am]

BILLING CODE 4220–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5 and 202

[Docket No. FR–4681–C–02]

Uniform Financial Reporting StandardsFor HUD Housing Programs, Additional Entity Filing Requirements; Correction

AGENCY: Office of the General Counsel, HUD.

ACTION: Proposed rule; correction.

SUMMARY: On November 30, 2001, HUD published a proposed rule entitled ''Uniform Financial Reporting Standards for HUD Housing Programs, Additional Entity Filing Requirements.'' The preamble to the rule (although not the rule text) misstates the date by which the financial statements of entities covered by the rule must submit their financial statements electronically. This notice corrects the preamble.

FOR FURTHER INFORMATION CONTACT: For further information about the entities covered by the proposed rule and this correction notice, Lynn Herbert, the Office of Housing, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone 202–708–3976 (this is not a toll-free number). For general information about this notice and the proposed rule, Stacey Kniff, Real Estate Assessment Center, U.S. Department of Housing and Urban Development, 1280 Maryland Avenue, SW., Suite 800, Washington, DC 20024, telephone Technical Assistance Center, 1–888–245–4860 (this is a toll-free number). Persons with hearing or speech impairments may access these telephone numbers via TTY by calling the Federal Information Relay Service at (800) 877–8339. Additional information is available from the REAC Web site at http://www.hud.gov/reac/.

SUPPLEMENTARY INFORMATION: On November 30, 2001, HUD published a proposed rule entitled ''Uniform Financial Reporting Standards for HUD Housing Programs, Additional Entity Filing Requirements'' at 66 FR 60132. The preamble to the proposed rule, in the third column of that page, immediately above the ''Findings and Certifications'' section, states:

This rule when issued as a final rule would be effective for the covered Title I and Title II nonsupervised lenders, nonsupervised mortgagees, and loan correspondents after December 31, 2001. Audited financial statements submitted by the covered entities on or after January 1, 2002 must be submitted electronically. Audited financial statements submitted prior to January 1, 2002, may either be submitted in paper or electronically at the lenders' option.

Due to the time frame of this rulemaking, the effective date has been pushed back to June 1, 2002, which is stated correctly in the regulation at § 5.801(d)(3). In the proposed rule published on November 30, 2001, the second paragraph in the third column on page 60132 as FR Doc 01–29680 quoted above should read:

This rule when issued as a final rule would be effective for the covered Title I and Title II nonsupervised lenders, nonsupervised mortgagees, and loan correspondents after May 31, 2001. Audited financial statements submitted by the covered entities on or after June 1, 2002 must be submitted electronically. Audited financial statements submitted prior to June 1, 2002, may either be submitted on paper or electronically at the lenders' option.

Dated: December 12, 2001.

Aaron Santa Anna,

Assistant General Counsel, for Regulations.

[FR Doc. 01–31049 Filed 12–17–01; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Part 470

RIN 1215–AB33

Obligations of Federal Contractors and Subcontractors; Notice of Employee Rights Concerning Payment of Union Dues or Fees

AGENCY: Office of Labor-Management Standards, Employment Standards Administration, Labor.

ACTION: Notice of request for duplicate copies of comments affected by mail delivery problems.

SUMMARY: The Office of Labor-Management Standards (OLMS) is seeking information about, and duplicate copies of, public comments that may have been submitted via U.S. mail, but that have not yet been received by OLMS because of mail delivery problems that the U.S. Department of Labor experienced from October through December of 2001. The subject of such comments would have been a Notice of Proposed Rule-Making (NPRM) that was published in the **Federal Register** on October 1, 2001. The NPRM proposed a regulation to implement Executive Order 13201, which was signed by President George W. Bush on February 17, 2001.

DATES: *Submission Period:* Duplicate copies of comments that were originally submitted by U.S. mail before the November 30, 2001, close of the comment period, and that have not yet been received by OLMS, must be submitted and received by January 2, 2002.

ADDRESSES: Duplicate copies of comments originally submitted via U.S. mail during the comment period should be sent to Don Todd, Deputy Assistant Secretary for Labor-Management Programs, Office of Labor-Management-Standards, Employment Standards Administration, U.S. Department of Labor. Because of the special circumstances, described below, that require the issuance of this notice, OLMS prefers that such duplicate copies and accompanying documentation (see below) be transmitted by facsimile (FAX) machine or e-mail. The e-mail address for transmitting these documents is *OLMS-Mail@fenix2.dol-esa.gov.* The telephone number of the FAX receiver is (202) 693–1340. Please note that the NPRM originally limited comments sent via FAX transmittal to five pages or fewer; however, this limitation will not apply to transmission of duplicate copies. As described in detail in the ''Supplementary Information'' section below, arrangements for hard-copy delivery may also be made by contacting OLMS.

As set forth in the NPRM, comments will be available for public inspection during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Kay Oshel, Chief, Division of Interpretations and Standards, Office of Labor-Management Standards, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N–5605, Washington, DC 20210, (202) 693–1233 (this is not a toll-free number). Individuals with hearing impairments may call 1–800–877–8339 (TTY/TDD).

SUPPLEMENTARY INFORMATION: On October 1, 2001, OLMS published the above-mentioned NPRM. *See* 66 FR 50010. The NPRM proposed a Rule to implement Executive Order 13201 (66 FR 11221, February 22, 2001). As set forth in detail in the preamble to the NPRM, that Order requires non-exempt Government contractors and subcontractors to post notices informing their employees that under Federal law, those employees have certain rights related to union membership and use of union dues and fees. The Order also provides the text of contractual provisions that Federal Government contracting departments and agencies must include in every Government contract, except for collective bargaining agreements (as defined in 5 U.S.C. 7103(a)(8)) and contracts for purchases under the Simplified Acquisition Threshold (as defined in the Office of Federal Procurement Policy Act, 41 U.S.C. 403). The Rule proposed in the NPRM would provide the text of the required contractual provisions, explain exemptions, and set forth procedures for ensuring compliance with the Order; it also would contain other related requirements. See 66 FR 50010 *et seq.* Both the Executive Order and the Proposed Rule were intended to inform employees of their rights under the decisions of the United States Supreme Court in *Communications Workers of America* v. *Beck,* 487 U.S. 735 (1988), and related cases.

The NPRM invited comments on the Proposed Rule. Comments were to be submitted to Deputy Assistant Secretary Don Todd at the Department of Labor's (the Department's) main building, the Frances Perkins Building (FPB), in Washington, DC. The NPRM established the deadline for receipt of such comments as November 30, 2001.

On October 22, 2001, because postal workers at the U.S. Postal Service's Brentwood mail distribution center in Washington, DC, were found to have been exposed to anthrax bacteria, the Department temporarily closed its mailrooms in the Washington metropolitan area that received mail from Brentwood, including the mailroom in the Frances Perkins Building. As a result, all mail that was addressed to the FPB (including all first-class mail postmarked October 12 or later) was redirected to a Lima, Ohio, facility to be irradiated. This situation was not anticipated when OLMS set the deadline for receipt of comments on the NPRM.

The FPB mailroom reopened on Monday, November 26, 2001. However, because of the large amount of mail that was redirected to Ohio for irradiation, delivery of the redirected mail to its intended recipients has not yet been completed, and may not be completed for some time.

As of December 12, 2001, OLMS has received comments about the NPRM from the following six commenters: the National Legal and Policy Center; the Employment Policy Foundation; the

National Right to Work Legal Defense Foundation, Inc.; the Associated General Contractors of America, Inc.; LPA, Inc.; and a group of Members of Congress who serve on the U.S. House of Representatives Committee on Education and the Workforce. OLMS seeks information about, and duplicate copies of comments from, any other individuals or organizations who submitted comments about the NPRM via U.S. mail during the comment period. Such duplicate copies should be accompanied by documentation establishing that the comments were originally mailed on or before the November 30 deadline.

Duplicate copies of comments and accompanying documentation may be delivered via facsimile or e-mail at the phone number and address listed above. Where necessary, hard copies may also be delivered to the address listed above in the ''For Further Information Contact'' section, via hand delivery, courier service, or a package delivery service such as United Parcel Service, FedEx, or Airborne Express. OLMS recommends that, where such hard copy delivery is necessary, the commenter contact OLMS by telephone in advance to make appropriate arrangements for delivery.

Signed at Washington, D.C., this 14th day of December, 2001.

D. Cameron Findlay,

Deputy Secretary.

Don Todd,

Deputy Assistant Secretary for Labor-Management Programs.

[FR Doc. 01–31210 Filed 12–17–01; 10:33 am]

BILLING CODE 4510–CP–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–7119–1]

RIN 2060–AJ79

Regulation of Fuel and Fuel Additives: Reformulated Gasoline Terminal Receipt Date

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; correction.

SUMMARY: This document corrects the preamble to a proposed rule published in the **Federal Register** of December 3, 2001, regarding establishment of a new compliance date for the reformulated gasoline program. This correction clarifies when and where a public hearing would be held if a hearing is requested.

FOR FURTHER INFORMATION CONTACT: For further information about this correction, contact Chris McKenna, Chemical Engineer, Office of Transportation and Air Quality, Transportation and Regional Programs Division, at (202) 564–9037 or mckenna.chris@epa.gov.

Correction

In proposed rule FR Doc. 01–29777, beginning on page 60163 in the issue of December 3, 2001, make the following correction in the **DATES** section. On page 60163 in the 2nd column, replace the text,

''If a hearing is requested within 20 days of the date of publication of this document in the **Federal Register**, a hearing will be held on December 24, 2001 at the location indicated in the **ADDRESSES** section below.''

with the following text:

''If a hearing is requested no later than December 24, 2001, a hearing will be held at a time and place to be published in the **Federal Register**.''

Dated: December 11, 2001.

Robert D. Brenner,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 01–31179 Filed 12–17–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 89, 90, 91, 94, 1048, 1051, 1065, and 1068

[AMS–FRL–7119–2]

RIN 2060–AI11

Control of Emissions from Nonroad Large Spark Ignition Engines and Recreational Engines (Marine and Land-Based); Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Environmental Protection Agency published in the **Federal Register** of October 5, 2001 a notice of proposed rulemaking proposing new emission standards for large spark-ignition engines, recreational vehicles using spark-ignition engines, and recreational marine diesel engines. This document extends the period for written comments on that notice of proposed rulemaking to January 18, 2002.

DATES: Comments: Send written comments on this proposed rule by January 18, 2002.

ADDRESSES: You may send written comments in paper form to Margaret Borushko, U.S. EPA, National Vehicle and Fuels Emission Laboratory, 2000 Traverwood, Ann Arbor, MI 48105. We must receive them by the date indicated under DATES above. You may also submit comments via e-mail to NRANPRM@epa.gov. In your correspondence, refer to Docket A–2000–01.

FOR FURTHER INFORMATION CONTACT: Margaret Borushko, U.S. EPA, National Vehicle and Fuels Emission Laboratory, 2000 Traverwood, Ann Arbor, MI 48105; Telephone (734) 214–4334; FAX: (734) 214–4816; E-mail: borushko.margaret@epa.gov. EPA hearings and comments hotline: 734–214–4370.

SUPPLEMENTARY INFORMATION: EPA published a notice of proposed rulemaking in the **Federal Register** of October 5, 2001 (66 FR 51098). That document included a deadline for written comments of December 19, 2001. Since that time, we have received requests for an extension of that deadline to allow additional time to review and comment on the proposed emission standards. As a result of such requests, EPA is extending the comment period on the proposed rule to January 18, 2002.

The testimony and transcripts from the public hearings and other materials have been placed in the docket since we published the proposal. Additional information will be placed in the docket as it becomes available. We therefore encourage interested parties to stay abreast of docketed materials to the extent possible.

Dated: December 11, 2001.

Robert D, Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 01–31178 Filed 12–17–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–2736; MM Docket No. 01–323; RM–10337]

Television Broadcasting Services; Vernal and Santaquin, UT; and Ely and Caliente, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking jointly filed on behalf of petitioners TV 6, L.L.C., permittee of VHF TV Station KBCJ, NTSC Channel 6, Vernal, Utah (BPCT–960919KG), and by Kaleidoscope Foundation, Inc., permittee of VHF TV Station KBNY, NTSC Channel 6, Ely, Nevada (BPET–970331LN). Petitioners request the reallotment of NTSC Channel 6 from Vernal to Santaquin, Utah and reallotment of NTSC Channel 6 from Ely to Caliente, Nevada as the communities' first local television transmission services and modification of the their authorizations accordingly, pursuant to the provisions of section 1.420(i) of the Commission's rules. Coordinates to be used for NTSC Channel 6 at Santaquin are North Latitude 39–43–58 and West Longitude 111–56–34; and those to be used for NTSC Channel 6 at Caliente are North Latitude 37–47–00 and West Longitude 114–30–00. The DTV Table of Allotments contained in section 73.622(b) of the Commission's rules is not affected by the requested reallotments as there is no paired DTV channel for either Vernal or Ely.

DATES: Comments must be filed on or before January 14, 2002, and reply comments on or before January 29, 2002.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows:

Mark N. Lipp, Esq., Shook, Hardy & Bacon, 600 14th Street, N.W., Suite 800, Washington, DC 20005

FOR FURTHER INFORMATION CONTACT: J. Bertron Withers, Jr., Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, MM Docket No. 01–323, adopted November 14, 2001, and released November 23, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room CY-A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualtex International, Portals II, 425 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 Rulemaking 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 broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend part 73 of Title 47 of the Code of Federal Regulations as follows:

PART 73—TELEVISION BROADCAST SERVICES

1. The authority citation for part 73 reads as follows:

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

§ 73.606 [Amended]

2. Section 73.606(b), the Table of TV Allotments under Utah, is amended by adding Santaquin, NTSC Channel 6 and removing NTSC Channel 6 at Vernal.

3. Section 73.606(b), the Table of TV Allotments under Nevada, is amended by adding Caliente, NTSC Channel 6+ and removing NTSC Channel 6+ at Ely.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–31187 Filed 12–17–01; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 573

[Docket No. NHTSA–2001–10856]

RIN 2127–AI29

Motor Vehicle Safety; Disposition of Recalled Tires

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposes a rule implementing section 7 of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act. Section 7 provides that a manufacturer's remedy program for the replacement of defective or noncompliant tires shall include a plan addressing how to prevent, to the extent reasonably within the manufacturer's control, the replaced tires from being resold for installation on a motor vehicle, and also how to limit, to the extent reasonably within the manufacturer's control, the disposal of replaced tires in landfills. Section 7 also requires the manufacturer to include information about the implementation of the plan in quarterly reports to the Secretary about the progress of any notification and remedy campaigns.

DATES: *Comments:* You should submit your comments early enough to ensure that Docket Management receives them not later than February 19, 2002.

ADDRESSES: You should mention the docket number of this document in your comments, and submit your comments in writing to Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. You may also submit your comments electronically by logging onto the Dockets Management System website at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/info'' to obtain instructions for filing the document electronically.

Regardless of how you submit your comments, you should mention the docket number of this document in your comments.

You may call Docket Management at 202–366–9324. You may visit Docket Management from 10 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, contact Jonathan White, Office of Defects Investigation, tel. (202) 366–5226. For legal issues, contact Enid Rubenstein, Office of Chief Counsel, tel. (202) 366–5263.

SUPPLEMENTARY INFORMATION:

I. Background

On November 1, 2000, the TREAD Act, Pub. L. 106–414, was enacted. The statute was, in part, a response to congressional concerns related to the tire recall being conducted by Bridgestone/Firestone, Inc. (''Firestone'') during the summer and fall of 2000 with respect to safety-related defects in about 6.5 million Firestone ATX and ATX II size P235/75R15 tires (manufactured at all U.S. Firestone plants) and Firestone Wilderness AT tires of that size manufactured at Firestone's Decatur, Illinois plant.

Under 49 U.S.C. 30118(b), NHTSA may make a final decision that a motor vehicle or replacement equipment (including a tire) contains a defect related to motor vehicle safety or does

not comply with an applicable Federal motor vehicle safety standard. In addition, under 49 U.S.C. 30118(c), a manufacturer of a motor vehicle or replacement equipment (including a tire) is required to notify NHTSA if the manufacturer decides that the vehicle or equipment contains a defect that is related to motor vehicle safety or does not comply with an applicable Federal motor vehicle safety standard. In either instance, in the case of tires, the manufacturer of the defective or noncompliant tires (including original equipment tires that are installed on or sold with new motor vehicles, as well as replacement tires) is required under 49 U.S.C. 30119 to notify tire owners of the defect or noncompliance and is required under 49 U.S.C. 30120(b) to repair or replace the defective or noncompliant tires within 60 days of the notification to owners about the recall or about the availability of replacement tires. (This 60-day period may be extended if replacement tires are not available promptly.)

Also, pre-TREAD Act law, 49 U.S.C. 30120(d), required the manufacturer to file with the Secretary a copy of the manufacturer's program for remedying a defect or noncompliance. But section 30120(d) did not require the manufacturer's program to include a plan for the disposition or disposal of recalled tires that were returned by the tire owners or purchasers.

Section 7 of the TREAD Act expanded 49 U.S.C. 30120(d) to require a manufacturer's remedy program for tires to include a plan for preventing, to the extent reasonably within the manufacturer's control, the resale of replaced tires for use on motor vehicles, as well as a plan for the disposition of replaced tires, particularly through methods such as shredding, crumbling, recycling, recovery, or other ''beneficial non-vehicular uses,'' rather than in landfills. Further, section 7 requires the manufacturer to include information about the implementation of its plan in quarterly reports that it is required to make to the Secretary about the progress of its notification and remedy campaigns.

The TREAD Act authorizes the Secretary of Transportation (''the Secretary'') to issue various rules relating to a manufacturer's notification and remedy program, to carry out Chapter 301 of Title 49 of the United States Code, which is commonly referred to as the Safety Act. This rulemaking authority has been delegated to NHTSA's Administrator in 49 CFR 1.50.

In order to implement section 7's new requirements concerning manufacturers' plans to preclude resale and for disposition of replaced tires, we are proposing to amend 49 CFR 573.5 and 573.6. Below are a summary and explanation of the provisions of today's proposed rule.

II. Discussion

A. Introduction and Background

1. Reason for TREAD Requirements

a. Need To Prevent Resale of Recalled Tires

The provision in section 7 of the TREAD Act that requires manufacturers to provide plans to prevent the resale of recalled tires for use on motor vehicles supplements the pre-TREAD Act ban on the sale of new defective or noncompliant motor vehicles or motor vehicle equipment, unless and until (if possible) they have been remedied. 49 U.S.C. 30120(i). It also supplements section 8 of the TREAD Act, which prohibits the sale or lease of any (new or used) defective or noncompliant motor vehicle equipment (including a tire) for installation on a motor vehicle, unless and until (if possible) the defect or noncompliance has been remedied. 49 U.S.C. 30120(j). Finally, it is also related to section 3(c) of the TREAD Act, which requires any person who (1) knowingly and willfully sells or leases for use on a motor vehicle a defective tire or a tire not in compliance with applicable safety standards and (2) has actual knowledge that the manufacturer of such tire has notified its dealers of such defect or noncompliance, to report that sale or lease to NHTSA. 49 U.S.C. 30166(n). NHTSA has already issued regulations implementing section 30166(n); see 49 CFR 573.10.

Most tires that are recalled are unrepairable, and therefore most are replaced rather than repaired. Section 7 of TREAD recognizes the reality that tire recalls may result in the creation of stockpiles of dangerous, unremedied tires and requires manufacturers to develop plans to deal with them.

a. Problems Posed by Scrap Tires

Today's proposed rule would require manufacturers to develop plans addressing how they will prevent, to the extent reasonably within the manufacturers' control, recalled tires from being resold for use on motor vehicles, and that limit the disposal of recalled tires in landfills and provide instead, to the extent reasonably within the manufacturers' control, for disposition by other means, such as shredding, crumbling, recycling, and recovery. The proposed rule also would require manufacturers to include information about implementation of their plans in the quarterly reports that the manufacturers must file with us under our reporting regulations,49 CFR 573.6.

Defective tires pose a substantial risk to motor vehicle safety. The Firestone tires that have been recalled have been associated with numerous deaths. The recall included both new tires in stock and used tires. Many of the remaining tires had considerable remaining tread and could have been reused if they had not been physically altered to preclude their use on a motor vehicle.

The management and disposition of tires is an ongoing environmental concern that can be aggravated by a safety recall. More than 270 million tires are scrapped annually in the United States. Although the 6.5 million tires involved in last year's Firestone recall would in the aggregate amount to a substantial volume of tires, the recall has been characterized as representing ''just a drop in the bucket'' compared to the numbers of tires disposed of annually. *See* ''Recalled Tires Just a Drop in the Industry Bucket,'' *Recycling Today,* News (October 2000), *http://recyclbroker.com/info-tires.htm.* A copy of this article has been placed in the docket for this rulemaking.

In addition to being unsightly and large, stockpiled ''scrap'' tires may present serious health and environmental risks. Tire piles can collect gas, and they provide breeding grounds for rodents and mosquitoes. Whole tires tend to rise in a landfill and come to the surface, which may compromise a landfill cover, and allow water to enter a landfill which would generate leachate. Tire piles also are susceptible to fire from arson, lightning, and even spontaneous combustion. Tire pile fires pollute the air and are difficult to extinguish. Water used to extinguish them becomes polluted with toxic substances and may pollute watercourses.

2. State Regulation of Management and Disposal of Scrap Tires

Because of the environmental risks posed by scrap tires, many states ban the disposal of whole scrap tires in landfills, and 49 of the 50 states have some form of regulations that cover scrap tire management, including in some instances charges for tire disposal and financial incentives for using scrap tires in other products. These state laws and regulations are summarized briefly in a booklet published by the U.S. Environmental Protection Agency (''EPA''), *State Scrap Tire Programs: A Quick Reference Guide: 1999 Update* (EPA–530–99–002) (August 1999). This

booklet presents a matrix that summarizes each state's scrap tire programs and regulations, provides information about how to contact state scrap tire program managers, and describes grants and other programs that are intended to improve scrap tire disposal and recycling and reduction. A copy of this booklet has been placed in the docket for this rulemaking action; it is also available at EPA's website: (*http://www.epa.gov*) . This is included in the docket as illustrative background material and not as an official statement or interpretation of applicable legal requirements.

3. Possible Uses for Scrap Tires

Today's steel-belted radial tires are not biodegradable and are difficult to dispose of or recycle, because they are made of a mixture of fabric, steel, carbon black, and several types of natural and synthetic rubbers. According to the U.S. Department of Energy (''DOE''), estimates of the number of ''scrap'' tires in stockpiles around the United States range from 500 million to three billion. *See* DOE, *Consumer Energy Information: EEC Reference Briefs, http://www.eren.doe.gov/consumerinfo/refbriefs/ee9/html,* which has been placed in the docket for this rulemaking action). Additional environmental information relevant to the subject of this rulemaking is available on the Scrap Tire Management Council Website and on the Website of *Scrap Tire News (http://www.scraptirenews.com/archive.html),* published by the Recycling Research Institute of Suffield. CT.

The need to develop uses for ''scrap'' tires has been recognized for many years, by government agencies and by the tire industry, which has established a Scrap Tire Management Council, a nonprofit organization that is devoted to expanding the market for scrap tires. (The council's Website address is *http://www.rma.org/scraptires/scraptires.html).* Section 7 of the TREAD Act recognizes this same need.

Another EPA booklet, *Summary of Markets for Scrap Tires* (EPA/530–SW–90–0748 (October 1991)) (''EPA Market Summary''), describes potential market uses for scrap tires. These uses include the manufacture of crumb rubber, which may be incorporated into asphalt pavement, into rubber products such as floor mats, vehicle mud guards and carpet padding, and into plastic products such as floor mats and adhesives, or processed further into reclaimed rubber, which is made by mixing crumb rubber with water, oil and chemicals and heating the mixture under pressure. Crumb rubber also can be used in railroad crossings. Shredded tires can be used as bulking agents in the composting of wastewater treatment sludge. Chipped tires can be used for playground gravel substitutes and lightweight road fill material. Whole or partial scrap tires also can be used for artificial reefs, breakwaters, erosion control, playground equipment, commercial fishing equipment, and highway crash barriers. *See* ''EPA Market Summary,'' pp. 8–9. This booklet has been placed in the docket for this rulemaking action. *See also* A. Moorse, ''Recycled rubber goods maker moves into production stage,'' *Capital District Business Review,* Sept. 2, 2000. A hard copy of this article has been placed in the docket for this rulemaking action; it also is available at *http://albany.bcentral.com/albany/stories/20000/09/04/story3.html.*

Scrap tires can also be used as fuel. They represent a potentially significant energy source, because they have a heat value slightly higher than that of coal (EPA Market Summary, p. 5) and they are comparable to or better than coal in terms of emissions of some pollutants. See L.Chubb, ''Firestone recall: Where have all the tires gone?'' Environmental News Network (''ENN'') , 9/20/2000 (citing statement of John Serumgard of the Scrap Tire Management Council). Power plants, tire manufacturing plants, cement kilns, and pulp and paper mills have used tires as fuel. Usually they burn tires that have been shredded into chunks (also known as tire-derived-fuel, or ''tdf''), because they do not have the capability to burn whole tires. Some plants can produce their own tdf in furnaces; others can use tdf prepared by others. According to one source, last year, a total of 110 electricity generating facilities in the U.S. held permits to burn tires. *See* Chubb, ''Firestone recall * * *'', *supra.* A hard copy of this article has been placed in the docket for this rulemaking action; it also is available from ENN's website (*http://www.enn.com/news/enn-stories/2000/09/09202000/tires—31672.asp?P=2).*

B. Who Would be Required to Comply with the Requirements to file Programs and Reports about Disposition and Disposal of Recalled Tires?

We are proposing that the rule's requirements apply to all manufacturers that conduct tire recalls, including vehicle manufacturers that conduct recalls to correct defects in their vehicles in which the remedy is the replacement of tires.

TREAD section 7's amendment to subsection 30120(d) provides that, for a remedy involving the replacement of tires, the manufacturer shall include a plan addressing how to prevent replaced tires from being resold for use on motor vehicles or disposed of in landfills. In this amendment, Congress added these requirements to the pre-existing 30120(d) requirement that a manufacturer file with the Secretary a copy of the manufacturer's program for remedying a defect or noncompliance. In this context, the use of the term ''manufacturer'' in section 7 indicates that the term applies to all manufacturers that conduct recalls of tires under the Safety Act to correct safety-related defects or noncompliances with applicable standards.

Tires are motor vehicle equipment. With respect to the recall provisions of the Safety Act, 49 U.S.C. 30118–30121, by regulation tires are considered as replacement equipment, even if they were installed on a motor vehicle at the time of first sale. 49 CFR 579.4(b)(2). Therefore, tire manufacturers have the duty to conduct notification and remedy campaigns to address defective or noncompliant tires, including tires installed on new vehicles. *See* 49 CFR 579.5(b). Tire brand name owners, such as retail chain stores that sell tires under their own ''private labels'' or ''house labels'' are also considered manufacturers (49 U.S.C. 30102(b)(1)(E)) and have the same defect and noncompliance reporting requirements as manufacturers under 49 CFR 573.3(d). All of these would be required to file reports required under the proposed rule, if their tires were found to be defective or noncompliant.

In rare circumstances, vehicle manufacturers also may conduct recall campaigns regarding tires installed on their new vehicles. For example, Ford Motor Company (Ford) recently announced a recall to replace tires on MY 2002 Ford Explorer vehicles whose sidewalls had been cut during the vehicle assembly process. Because the tire disposition problem also affects tires that are removed during these recalls, the proposed rule also applies to vehicle manufacturers that initiate tire recalls.

C. What Elements Would the Manufacturers' Plans Address?

1. Summary

We are proposing to require manufacturers to include information about their plans for incapacitating and disposing of recalled tires in their remedy programs, and to require that manufacturers implement these plans. We are proposing that manufacturers' plans address, at a minimum, three

major issues: (1) Ways of assuring that the entities replacing the tires are aware of legal prohibitions on the sale of the defective or noncompliant tires under the Safety Act, (2) methods to impair recalled tires so that they cannot be used on a vehicle, and (3) the disposition of recalled tires, consistent with applicable laws and in ways that minimize their deposit in landfills. NHTSA believes that the extent of the manufacturer's control over recalled tires likely would vary, depending on the nature of the manufacturer's relationship with each of the facilities that replace the recalled tires, which may range from wholly-owned and franchised tire dealers to independent tire dealers, motor vehicle dealers, and service stations. We are proposing that where the manufacturer controls the tire outlet, the manufacturer direct proper disposition of the tire. Where the manufacturer does not have control, we are proposing that the manufacturer provide informational materials to the outlets, including information about the legal prohibitions on the resale of the tires.

We are proposing ''exceptions reporting'', by manufacturer-controlled tire outlets to manufacturers monthly and by manufacturers to NHTSA in quarterly reports filed pursuant to 49 CFR 573.6. These reports would identify the aggregate number of recalled tires which the manufacturer becomes aware have not been rendered unsuitable for resale for installation on a motor vehicle in accordance with the manufacturer's plan; the aggregate number of recalled tires which the manufacturer becomes aware have been disposed of in violation of applicable state and local laws and regulations; and a description of any such failures of tire outlets to act in accordance with the manufacturer's plan, including an identification of the outlets in question.

2. Legislative Background

As described above, section 7 of the TREAD Act provides for two independent plans for the disposition of recalled tires: (1) Plans for the restriction of the resale of recalled tires and (2) plans for the limitation of the disposal of recalled tires in landfills. Each may be qualified by the degree of the manufacturer's control over the tire replacement process. The first of these provisions was addressed originally in proposed section 6 of the House Bill underlying the TREAD Act, ''Sales of Replaced Equipment,'' which would have amended 49 U.S.C. 30120 by adding a requirement, at subsection (d), for the manufacturer to have a plan addressing how to prevent replaced tires from being sold for installation on motor vehicles, unless they had been remedied, to the extent that the manufacturer could reasonably control such resales. *See* H.R. Report No. 106–954, 106th Cong., 2d Sess., pp. 4, 15. This provision did not address the issue of how to dispose of the unremedied tires, nor did any other part of the original bill.

The first version of the ''anti-landfill'' portion of section 7 of the TREAD Act, which was intended to preclude disposition of recalled tires in public landfills, was proposed as amendment 1(k) to H.R. 5164, offered by Congressman Pallone on October 5, 2000. This proposed amendment would have provided that ''[n]o person may dispose of any [recalled tire] except in a fashion that protects the public health and safety. Disposal of such tires in a public landfill shall not be considered adequate protection of the public's health and safety.'' Prior to passage of the House bill (H.R. 5164), this amendment was withdrawn. *See* H.R. Rep. No. 106–954, *supra,* at p. 9.

Eventually, section 6 of the H.R. 5164 was expanded to include a restriction on the disposition of recalled tires in landfills. The ''reasonable extent of control'' language from section 6 was applied to the ''anti-landfill'' provision as well as to the ''no resale without repair'' provision; the references to ''protection of the public health and safety'' and the direct prohibition of use of recalled tires in landfills were dropped from the ''anti-landfill'' provision. Both provisions, with identical reporting requirements, appear in section 7 of the TREAD Act. The legislative history does not provide further explanation of Congress' action.

3. The August 2000 Firestone Recall

Firestone prepared a Recall Fact Sheet (''Fact Sheet''), dated August 30, 2000, which was intended to provide Federal, State and local authorities with information about the scrap tires collected during the company's August 2000 recall. The Fact Sheet contained a general description of the procedures in place at the 13,000 authorized service centers that were replacing recalled tires to manage the proper disposition of those tires. It outlined the following four elements: (1) To ensure that recalled tires are not reused on vehicles, the tires are to be rendered useless by drilling a hole in or cutting through the sidewall upon removal from the vehicle; (2) the company arranged with its current scrap tire vendors for additional pickups of scrap tires from company-owned stores and arranged with its ''normal transportation vendors'' to visit Firestone stores and authorized service centers and remove scrap tires; (3) recalled scrap tires are being transported directly to licensed and permitted recycling facilities or to Firestone distribution facilities where they are checked to ensure that they have been rendered useless and then transported to licensed and permitted recycling facilities; and (4) ''[t]he majority of the recalled tires are being shredded or beneficially reused as fuel for power plants or cement kilns, or ground into crumb rubber for recycling into a variety of useful products such as playground mats, asphalt, and soaker irrigation hoses.'' It also stated that ''none of the recalled tires are being redistributed or retreaded.'' This Fact Sheet is available in the docket for this rulemaking.

4. Plan Elements

We are proposing that manufacturers' plans include three elements.

First, the plans would have to address legal requirements established by the Safety Act. In addition to the notifications of the existence of a defect or noncompliance required under 49 U.S.C. 30118–30119, at a minimum manufacturers would be required to notify all entities that are authorized to replace the tires in question, including their owned stores, franchised dealers, and distributors, as well as independent dealers, about the prohibitions and notification requirements in the Safety Act as they apply to recalled tires. This includes the ban on the sale of new defective or noncompliant tires (49 U.S.C. 30120(i), *see generally* 66 FR 38247 *et seq.* (July 23, 2001)); the prohibition on the sale of new and used defective and noncompliant tires (49 U.S.C. 30120(j), *see generally* 66 FR 38247 *et seq.* (July 23, 2001)); and the duty to notify NHTSA of any sale of a new or used recalled tire for use on a motor vehicle (49 U.S.C. 30166(n)), *see generally* 49 CFR 573.10, 66 FR 38159 *et seq.* (July 23, 2001)). The manufacturer would have to provide informational materials on the prohibitions and notification requirements to all authorized replacement outlets. For the tire outlets that are company-owned or otherwise subject to the control of the manufacturer, the manufacturer would also be required to provide written direction to the person in charge of each outlet to comply with the law and to notify all employees involved in replacing, handling, or disposing of recalled tires of the requirements.

Second, manufacturers would be required to set forth their programs to assure, insofar as possible, that the recalled tires are not resold for

installation on a motor vehicle. As above, company-owned and other stores controlled by the company would be directed to permanently alter the tires so that they could not be used on vehicles. This could include, for example, drilling substantial (*e.g.* ½ inch) holes in the sidewalls, cutting the tire beads, or sawing the tires in half. To ensure that this alteration is performed, we are also proposing that stores be directed to do it before the end of the business day on which the recalled tire has been removed from the vehicle. We seek comments on whether this time period is sufficient or whether, and why, a different time period should be specified. The manufacturer would have to provide authorized tire outlets that it does not control with guidance on how to permanently alter the tires so that they could not be used on vehicles and request them to do that promptly.

Third, manufacturers would be required to describe their plans aimed at limiting the disposal of recalled tires in landfills and, instead, channeling them into a category of positive reuse (shredding, crumbling, recycling, and recovery) or another alternative beneficial non-vehicular use. The proposed rule would require that the manufacturers' plans provide that company-controlled outlets dispose of all recalled tires in accordance with applicable state and/or local laws and regulations. We are further proposing that manufacturers provide directions to their stores and guidance to independent dealers about disposition of tires in a manner that, to the extent possible, avoids landfilling.

We seek comments on whether to require manufacturers to provide outlets that are authorized to replace tires with information that summarizes the applicable laws and regulations regarding disposal of tires in their jurisdictions and that identifies reputable tire collection and transportation contractors as well as facilities in their areas that would accept unrepairable recalled tires for a beneficial use. We believe that this information would be useful to outlets that replace recalled tires, but we do not know the extent to which they already have it. We assume that some manufacturers already provide such information, but we do not know how many do so or the types of information that are provided. We are interested in comments on whether providing this information has proved useful to manufacturers and their dealers and on the extent of the burden that such a requirement would create.

It is possible that manufacturers could include conditions governing tire disposition in their contracts for supply of replacement tires to independent outlets. If this were done, it would help to assure appropriate disposition of recalled tires by outlets not controlled by the manufacturer. Because we do not know whether manufacturers' past and/or existing contracts contain restrictions or other provisions with respect to the re-use and disposition of recalled tires, the proposed rule does not address this topic. We seek comments on this issue, as well as on whether conditions could be included in the future and what they would be.

In addition, manufacturers would be required to implement their plans for conducting programs to ensure that recalled tires are rendered unsuitable for installation on a motor vehicle for resale and for limiting the disposal of recalled tires in landfills.

We seek comments on the above proposal for plans and, depending on the comments, may modify the plan requirements. If you suggest additional items, please include in your comments information about the associated costs.

5. Quarterly Reporting

Section 7 provides that we must require manufacturers to ''include information about the implementation of such plan with each quarterly report to the Secretary regarding the progress of any notification [and] remedy campaigns.'' The contents of these quarterly reports are currently described in 49 CFR 573.6.

In order to minimize administrative burdens on manufacturers, we do not plan to require that manufacturers include in their quarterly reports the number of recalled tires that have been rendered unsuitable for resale on motor vehicles or the number of recalled tires that have been disposed of by various means. Instead, we propose to require ''exceptions reporting'' under which manufacturers must advise us of only those instances of which they become aware in which their plans were not followed. The required quarterly reports from manufacturers to us would include the aggregate number of recalled tires which the manufacturer becomes aware have not been rendered unsuitable for resale for installation on a motor vehicle in accordance with the manufacturer's plan and the aggregate number of recalled tires which the manufacturer becomes aware have been disposed of in violation of applicable state and local laws and regulations. The manufacturer would also be required to describe any such failures of tire outlets to act in accordance with the directions in the manufacturer's plan, including an identification of the outlet(s) in question. To permit manufacturers to report this information in a timely fashion, the proposal would require manufacturer-controlled outlets that dispose of tires to report the same categories of information monthly to the manufacturer. We seek comments on effective reporting mechanisms and on the burdens that such reporting would impose on the outlets.

D. What Role Does NHTSA Intend to Play With Respect to the Manufacturers' Plans for the Disposition of Tires?

Under today's proposal, NHTSA's role with respect to reviewing the manufacturers' plans for the disposition of recalled tires would be limited to examining the manufacturers' plans, programs, and reports to see whether they contain the required items of information. We believe that our list of required reporting elements is sufficiently comprehensive and specific to ensure that the plans will effectuate Congressional objectives. Also, the proposed rule would require that the manufacturers' plans demonstrate that they have directed the entities that are replacing recalled tires to dispose of them in accordance with applicable laws. We note that in virtually every state, the disposition of used tires already is subject to regulation under State and/or local statutes and regulations. However, we do not have the resources or the expertise to review the manufacturers' characterizations of applicable requirements under those environmental laws. Of course, the failure of a manufacturer to implement its plan in accordance with its terms would constitute a violation of the Safety Act.

III. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

We have considered the impact of this proposed rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking was not reviewed under E.O. 12866, ''Regulatory Planning and Review.'' This rulemaking is not considered ''significant'' under the Department of Transportation's regulatory policies and procedures. The impacts of this rule are expected to be so minimal as not to warrant preparation of a full regulatory evaluation because this provision essentially would require only the supplementing of reports that manufacturers already must file with limited information about the disposition of recalled tires.

We estimate that the additional economic impact of this rule upon manufacturers would be small. Manufacturers already assume the costs of the tire recalls that they conduct. They already are required by our regulations to notify dealers of recalls and to file plans and quarterly reports about their recalls with our Office of Defects Investigation (ODI). The additional notification and reporting elements that this rule would add would be very limited and wholly descriptive. They would not impose significant costs on manufacturers.

In general, the radial tires that are in widespread use today are far safer than older technology tires and are subject to few significant recalls. Although the two recalls recently conducted by Bridgestone/Firestone, Inc. of Firestone ATX and Wilderness AT tires were very large, this is unusual. In the 1980s and 1990s, there were relatively few recalls of large numbers of tires. In the past five years, the average number of tire recalls per year was five, the average population of recalled tires per year was 28,389, and the average recall involved 5,678 tires, excluding the aforementioned Bridgestone/Firestone recalls and a Cooper Tire recall (No. 99T–005), which covered only two (2) tires. (This excludes recalls to correct labeling errors.) Therefore, we do not anticipate that there will be large numbers of tire recalls for which manufacturers would be required to file programs and plans under our proposed rule.

Finally, this rule essentially would require manufacturers to take steps to facilitate compliance by entities that replace recalled tires with applicable state and local laws regarding tire disposition. Since it is likely that these entities already comply with applicable requirements for disposal of returned tires, this rule would not add any substantive burdens or compliance costs. Even in the unlikely event of complete disregard of applicable disposal requirements (in which case 100% of the cost of compliance might be viewed as a cost of this rule), the additional costs for recycling 100% of the tires recalled annually would be $141,945 for the tire industry as a whole, or $28,390 per average tire recall (assuming 28,389 tires recalled annually, or 5,678 tires recalled per average tire recall, multiplied by $5.00 (including $2.00 to incapacitate each recalled tire, $1.00 to collect each recalled tire, and $2.00 to recycle each recalled tire)). For these reasons, we believe that the additional economic effect of this rule would be minimal.

B. Regulatory Flexibility Act

We have also considered the impacts of this notice under the Regulatory Flexibility Act. For the reasons discussed above under E.O. 12866 and the DOT Policies and Procedures, I certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. The primary impact of this proposed rule would be felt by the major tire manufacturers, which are not small entities. This impact would be minor, since it primarily would involve adding a description of plans for incapacitating and disposing of recalled noncompliant or defective tires to their remedy programs, notifying affected retail outlets of the plans, and providing minimal reporting on the plans in the quarterly reports that manufacturers already must file with NHTSA. We estimate this cost at $1.00 per tire manufacturer per affected retail outlet, but the cost could well be less because manufacturers may already be including such descriptions in their notices to dealers.

Disposal requirements would be governed by applicable State and local laws and regulations. It is likely that manufacturers and entities that replace tires already are complying with applicable requirements for tire disposal. If not, manufacturers, who we understand currently pay for tire recalls, would incur the costs associated with tire disposal, *e.g.* the costs of transporting disabled tires and the costs of recycling the tires. We estimate these costs at approximately $1.00 per tire for transportation and $2.00 per tire for recycling.

This proposed rule could also have an impact on the nation's 3,500 tire dealers, many of which are small entities. If they do not comply with applicable requirements for tire disposal, manufacturer-controlled tire dealers would incur the costs of monthly ''exceptions reporting'' to manufacturers of any instances in which the dealer did not comply with the manufacturer's plan for disposing of recalled tires. We estimate these reporting costs at $1.00 per affected dealer per recall. Each dealer could also incur a one-time cost for obtaining equipment to incapacitate tires so that the tires cannot be resold to the public. The one time-cost would likely range between $70.00 (to purchase a power drill and a drill bit) and $95.00 (to purchase a cutoff saw and blade(s)) per affected dealer, or a maximum of between $245,000 and $332,500, assuming that each of the 3,500 dealers purchases a new drill and bit or cutoff saw and blade. We believe that many dealers already own such equipment and that therefore the maximum aggregate one-time cost would be far lower. Also, we note that, because not every dealer is involved in a tire recall every year, the aggregate one-time cost would be incurred over a multi-year time period.

C. National Environmental Policy Act

We have reviewed this proposal for the purposed of compliance with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and determined that it would not have a significant impact on the quality of the human environment. The proposed rule would not require manufacturers to conduct any recalls beyond those that they already are required to conduct. The sale of recalled tires is prohibited by other provisions in the Safety Act. Disposal requirements are already governed by other State laws and regulations.

D. Paperwork Reduction Act

This proposed rule would impose new collection of information burdens within the meaning of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. chapter 35). However, those burdens should be minimal. Manufacturers already are required by our regulations to file plans and quarterly reports about tire recalls with our ODI. There would be an incremental burden of adding to their descriptions of their programs. Even this impact would be minor, since it only would involve adding a description of plans for incapacitating and disposing of recalled noncomplying or defective tires to their remedy programs and providing minimal reporting on the plans in the quarterly reports that manufacturers already must file with NHTSA. The additional reporting elements that this proposed rule would require of manufacturers and of manufacturer-controlled outlets that implement recalls, *i.e.* periodic ''exceptions reporting'' of aggregate numbers of recalled tires that have not been incapacitated for use or that have been disposed of unlawfully, describing any failure to comply with the manufacturer's plan to render tires unsuitable for installation on a motor vehicle for resale and any failure to comply with the disposal requirements of applicable state and local laws and regulations of which the manufacturer becomes aware, would be very limited and primarily descriptive. We believe that compliance with the proposed rule would not impose significant additional costs or burdens either on the manufacturers that conduct the tire

recalls or on the manufacturer-controlled outlets that implement them. In furtherance of the recognition in section 7 that the manufacturer's ability to influence the recalls will vary according to the degree to which it controls the outlets that carry out the recalls, we do not propose to require even this limited ''exceptions reporting'' by manufacturers with respect to outlets that the manufacturer does not control.

Because this proposed rule would impose information collection requirements, albeit minimal, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1329, we plan to submit the proposed requirements to OMB for its approval, as required by the PRA. We seek comments on the information collection burdens associated with this proposed rule.

E. Executive Order 13132 (Federalism)

Executive Order 13132 on ''Federalism'' requires us to develop an accountable process to ensure ''meaningful and timely input'' by State and local officials in the development of ''regulatory policies that have federalism implications.'' The E.O. defines this phrase to include regulations ''that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This proposed rule, which would require that manufacturers include a plan for disposal of recalled tires in their remedy programs under either section 30118(b) or 30118(c) of the Safety Act, will not have substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in E.O. 13132. This rulemaking does not have those implications because it applies directly only to manufacturers who are required to file a remedy plan under sections 30118(b) or 30118(c), rather than to the States or local governments, and because it directs manufacturers to file plans that conform with applicable state and/or local requirements.

F. Civil Justice Reform

This proposed rule would not have a retroactive or preemptive effect. Judicial review of the rule may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

G. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the cost, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribunal governments, in the aggregate, or by the private sector, of more than $100 million annually. Because this rule would not have a $100 million annual effect, no Unfunded Mandates assessment is necessary and one will not be prepared.

H. Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?
—Are the requirements in the rule clearly stated?
—Does the rule contain technical language or jargon that is not clear?
—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could we improve clarity by adding tables, lists, or diagrams?
—What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this rule.

IV. Submission of Comments.

A. How Can I Influence NHTSA's Thinking on This Rule?

In developing this notice of proposed rulemaking, we tried to address the anticipated concerns of all our stakeholders. Your comments will help us decide what to include in the rule and to improve the proposed rule. We invite you to provide different views on it, new approaches we have not considered, new data, how this rule may affect you, or other relevant information. Your comments will be most effective if you follow the suggestions below:

Explain your views and reasoning as clearly as possible.

- Provide solid information to support your views.
- If you estimate potential numbers or reports or costs, explain how you arrived at the estimate.
- Tell us which parts of the rule you support, as well as those with which you disagree.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Refer your comments to specific sections of the rule, such as the units or page numbers of the preamble, or the regulatory sections.
- Be sure to include the name, date, and docket number with your comments.

B. How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21.) We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.**

Comments may also be submitted to the docket electronically by logging onto the Docket Management System website at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/Info'' to obtain instructions for filing the document electronically.

C. How can I be Sure That my Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

D. How do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel (NCC–30), NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT.** In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When

you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

E. Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES.** To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

F. How can I Read the Comments Submitted by Other People and Other Materials Relevant to this Rulemaking?

You may view the materials in the docket for this rulemaking on the Internet. These materials include background information on the use of tires in landfills and written comments submitted by other interested persons. You may read them at the address given above under **ADDRESSES.** The hours of the Docket are indicated above in the same location.

You may also see the comments and materials on the Internet. To read them on the Internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/).*

(2) On that page, click on ''search.''

(3) On the next page (*http://dms.dot.gov/search/),* type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were ''NHTSA–2000–1234,'' you would type ''1234.'' After typing the docket number, click on ''search.''

(4) On the next page, which contains docket summary information for the materials in the docket you selected, click on the desired comments. You may download the comments.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

List of Subjects in 49 CFR Part 573:

Defects, Motor vehicle safety, Noncompliance, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 573 as set forth below.

1. The authority citation for part 573 continues to read as follows:

Authority: 49 U.S.C. 30102–103, 30112, 30117–121, 30166–167; delegation of authority at 49 CFR 1.50.

2. In § 573.5, redesignate paragraphs (c)(9) through (c)(11) as paragraphs (c)(10) through (c)(12) and by add a new paragraph (c)(9) to read as follows:

§ 573.5 Defect and noncompliance information report.

* * * * *

(c) * * *

(9) In the case of a remedy program involving the replacement of tires, the manufacturer's program for remedying the defect or noncompliance shall:

(i) Include a plan for assuring that the entities replacing the tires are aware of the legal requirements related to recalls of tires established by 49 U.S.C. Chapter 301, including regulations thereunder;

(ii) Address how the manufacturer will prevent, to the extent reasonably within its control, the recalled tires from being resold for installation on a motor vehicle; and

(iii) Address how the manufacturer will limit, to the extent reasonably within its control, the disposal of the recalled tires in landfills and, instead, channel them into a category of positive reuse (shredding, crumbling, recycling, and recovery) or another alternative beneficial non-vehicular use.

(A) With respect to the requirement in paragraph (c)(9)(i) of this section, at a minimum, the manufacturer shall notify its owned stores, franchised dealers, and/or distributors, as well as all independent outlets that are authorized to replace the tires that are the subject of the recall, about the prohibitions and notification requirements in Chapter 301. This includes notification of the ban on the sale of new defective or noncompliant tires (49 U.S.C. 30120(i)); the prohibition on the sale of new and used defective and noncompliant tires (49 U.S.C. 30120(j)); and the duty to notify NHTSA of any sale of a new or used recalled tire for use on a motor vehicle (49 U.S.C. 30166(n)). For tire outlets that are manufacturer-owned or otherwise subject to the control of the manufacturer, the manufacturer shall also provide directions to comply with these statutory provisions and the regulations thereunder.

(B) With respect to the requirement in paragraph (c)(9)(ii) of this section, the manufacturer's program must, at a minimum, include the following:

(1) Written directions to manufacturer-owned and other manufacturer-controlled outlets to alter the recalled tires permanently so that they cannot be used on vehicles, and instructions on how and when to perform such alterations. These shall include instructions on the means to render recalled tires unsuitable for resale for installation on motor vehicles and instructions to perform the incapacitation of each recalled tire by the close of business on the day on which recalled tire has been removed from the vehicle;

(2) Written guidance to all other outlets that are authorized to replace the recalled tires on how to alter the recalled tires promptly and permanently so that they cannot be used on vehicles; and

(3) A requirement that manufacturer-owned and other manufacturer-controlled outlets report to the manufacturer on a monthly basis the number of recalled tires removed from vehicles by the outlet that have not been rendered unsuitable for resale for installation on a motor vehicle within the specified time frame and describe any such failure to comply with the manufacturer=s plan;

(C) With respect to the requirement in paragraph (c)(9)(iii) of this section, the manufacturer's program must, at a minimum, include the following:

(1) Written directions that require manufacturer-owned and other manufacturer-controlled outlets to comply with applicable state and local laws and regulations regarding disposal of tires, and that provide further direction and guidance to manufacturer-owned and other manufacturer-controlled outlets on how to limit the disposal of recalled tires in landfills and, instead, channel them into a category of positive reuse (shredding, crumbling, recycling, and recovery) or another alternative beneficial non-vehicular use;

(2) Written guidance to all other outlets that are authorized to replace the recalled tires regarding the duty to comply with applicable state and local laws and regulations regarding disposal of tires; and

(3) A requirement that manufacturer-owned and other manufacturer-controlled outlets report to the manufacturer on a monthly basis the number of recalled tires disposed of in violation of applicable laws and regulations. Each such report shall include a description of any such failure of the tire outlet to act in accordance

with the directions in the manufacturer's plan.

(D) As used in this paragraph, written directions to a manufacturer-owned or controlled outlet shall be sent to the person in charge of each outlet with further instructions to notify all employees of the outlet who are involved with removal, rendering unsuitable for use, or disposition of recalled tires of the above requirements.

(E) Manufacturers must implement the plans for disposition of recalled tires that they file with NHTSA pursuant to this paragraph. The failure of a manufacturer to implement its plan in accordance with its terms constitutes a violation of the Safety Act.

* * * * *

3. In § 573.6, add paragraph (b)(7) to read as follows:

§ 573.6 Quarterly reports.

* * * * *

(b) * * *

(7) For all recalls that involve the replacement of tires, the manufacturer shall provide

(i) The aggregate number of recalled tires which the manufacturer becomes aware have not been rendered unsuitable for resale for installation on a motor vehicle in accordance with the manufacturer's plan provided to NHTSA pursuant to § 573.5(c)(9) of this part;

(ii) The aggregate number of recalled tires which the manufacturer becomes aware have been disposed of in violation of applicable state and local laws and regulations; and

(iii) A description of any failure of a tire outlet to act in accordance with the directions in the manufacturer's plan, including an identification of the outlets in question.

Issued on: December 11, 2001.

Kenneth N. Weinstein,

Associate Administrator for Safety Assurance.

[FR Doc. 01–30998 Filed 12–17–01; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register

Vol. 66, No. 243

Tuesday, December 18, 2001

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

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: Modoc Resource Advisory Committee, Alturas, California, USDA Forest Service.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Modoc National Forest's Modoc Resource Advisory Committee will meet Saturday, January 12, 2002 and Saturday, February 9, 2002 in Alturas, California for business meetings. The meetings are open to the public.

SUPPLEMENTARY INFORMATION: The business meeting January 12 begins at 9:30 am, at the Modoc National Forest Office, Conference Room, 800 West 12th St., Alturas. Agenda topics will include approval of 11/17/01 minutes, reports from subcommittees are review and selection of projects that will improve the maintenance of existing infrastructure, implement stewardship objectives that enhance forest ecosystems, and restore and improve health and water quality. Opportunity for public discussion will be accepted following each proposal but limited to a set time. Time will also be set aside for public comments at the close of the meeting. The business meeting February 9, begins at 9:30 a.m, at the Modoc National Forest Office, Conference Room, 800 West 12th Street, Alturas. Agenda topics will include approval of the 12/1/01 minutes, reports from subcommittees and selection of projects on the Modoc National Forest that meet the intent of Pub. L. 106–393. Time will be set aside for public comments at the close of the meeting.

FOR FURTHER INFORMATION CONTACT: Dan Chisholm, Forest Supervisor and Designated Federal Officer, at (530) 233–8700; or Public Affairs Officer Nancy Gardner at (530) 233–8713.

Dan Chisholm,

Forest Supervisor.

[FR Doc. 01–31108 Filed 12–17–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Agricultural Library

Notice of Intent To Seek Approval To Collect Information

AGENCY: National Agricultural Library, Agricultural Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Library's intent to request approval for new information collection from personnel at schools receiving USDA funds for Child Nutrition Programs.

DATES: Comments on this notice must be received by February 21, 2002, to be assured of consideration.

ADDRESSES: Address all comments concerning this notice to Elizabeth Hill, Nutrition Information Specialist Food and Nutrition Information Center /NAL/ARS/USDA 10301 Baltimore Ave. Rm 105, Beltsville, MD 20705–2351. Submit electronic comments to *lhill@nal.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Elizabeth Hill, 301–504–6415.

SUPPLEMENTARY INFORMATION:

Title: Utilization of Food and Nutrition Information Center (FNIC) Resources by Personnel at Schools Receiving USDA Funds for Child Nutrition Programs.

OMB Number: Not yet assigned.

Expiration Date: N/A.

Type of Request: Approval for new data collection.

Abstract: The collection of information using a one-time, voluntary customer survey regarding utilization of FNIC resources will provide personnel in schools receiving USDA funds for Child Nutrition Programs an opportunity to comment on their current usage of FNIC resources and the types of resources that are of greatest value to them. This information will assist FNIC staff in continually improving its resources to meet the usage patterns and needs of this target audience.

FNIC does not have a formal means of determining the use of FNIC resources (including the website) by personnel at schools receiving USDA funds for Child Nutrition Programs. To collect this information, FNIC proposes to provide attendees of selected education related conferences with a password to access a one-time, voluntary, electronic FNIC Resources usage survey. The information collected from this survey will be used to evaluate current FNIC resources and assist in planning and managing future projects. The Utilization of FNIC Resources Survey is comprised of seven questions where customers report on their use of FNIC resources. Some examples of survey components include: ''Please rate the usefulness of the following FNIC resources'' and ''How often do you think you will use FNIC resources in the next 12 months?'' The survey also asks for customers to report which websites they are currently accessing for nutrition information as well as to provide any additional comments they deem appropriate.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 15 minutes per response.

Respondents: Educators and related personnel involved in child nutrition and child nutrition education. Respondents will be recruited at education related conferences.

Estimated Number of Respondents: 250 per year.

Estimated Total Annual Burden on Respondents: 63 hours total. Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and the assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be

collected; and (d) ways to minimize the burden of the collection of information on those who respond, including the use of appropriate automated, electronic, mechanical, or other technology. Comments should be sent to the address in the preamble. All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

Dated: November 14, 2001.

Maria Pisa,

Acting Director, National Agricultural Library.

[FR Doc. 01–31128 Filed 12–17–01; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Rural Housing Service

Rural Utilities Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCIES: Rural Business-Cooperative Service, Rural Housing Service, and Rural Utilities Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agencies' intention to request an extension for a currently approved information collection in support of Form RD 1910–11, ''Application Certification, Federal Collection Policies for Consumer or Commercial Debts.''

DATES: Comments on this notice must be received by February 19, 2002, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: H. Richard Kelly, Chief, Program Operations Branch, Water Programs Division, Rural Utilities Service, USDA, STOP 1570, 1400 Independence Avenue, SW., Washington, DC 20250–1570, telephone (202) 720–9589.

SUPPLEMENTARY INFORMATION:

Title: Form RD 1910–11, ''Application Certification, Federal Collection Policies for Consumer or Commercial Debts.''

OMB Number: 0575–0127.

Expiration Date of Approval: March 31, 2002.

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

Abstract: The water and waste loans, community facilities loans, intermediary relending program loans, rural housing site loans, and business and industry direct loans are authorized by various sections of the Consolidated Farm and Rural Development Act, (7 U.S.C. 1921 *et seq.*), as amended. The water and waste program provides loan funds for water and waste projects serving rural communities. Community facilities loans assist rural communities to develop facilities that are essential for their communities. The rural housing site loans provide financing for the purchase and development of housing sites for low- and moderate-income families. The intermediary relending program provides loans to intermediary organizations to establish revolving loan funds that assist with rural economic and community development. The direct business and industry direct loan program provides funds to rural businesses that cannot get adequate financing from other sources.

OMB Circular A–129, ''Policies for Federal Credit Programs and Non-Tax Receivables'' requires that an agency will inform its loan applicants of the Federal government's debt collection policies and procedures prior to extending credit. The Circular states that further information on the implementation of credit management and debt collection can be found in the Treasury Financial Manual. A supplement to the Treasury Financial Manual requires that the Agency will ask the applicant to sign a debt collection certification statement to certify knowledge of the Government's policies. This certification statement details the consequences of delinquency on Federal loans.

The Agencies will use Form RD 1910–11 to meet the requirements of OMB Circular A–129 and the supplement to the Treasury Financial Manual for the identified programs. This form will uniformly advise applicants of the debt collection methods that will be used in recovering delinquent or defaulted loans.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .25 hours per response.

Respondents: Business or other for profit organizations, not-for-profit institutions, public organizations and local or tribal governments.

Estimated Number of Respondents: 1,625.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Responses: 1,625.

Estimated Total Annual Burden on Respondents: 406 hours.

Copies of this information collection can be obtained from Tracy Gillin, Regulations and Paperwork Management Branch, at (202) 692–0039.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Tracy Gillin, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250–0742.

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

Dated: December 5, 2001.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

Dated: December 7, 2001.

John Rosso,

Acting Administrator, Rural Business-Cooperative Service.

Dated: December 7, 2001.

James. C. Alsop,

Acting Administrator, Rural Housing Service.

[FR Doc. 01–31054 Filed 12–17–01; 8:45 am]

BILLING CODE 3410–XY–U

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Competitive Enhancement Needs Assessment Survey Program

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information

collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 19, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, DOC Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dawnielle Battle, BXA ICB Liaison, (202) 482–0637, Department of Commerce, Room 6881, 14th & Constitution Avenue, NW., Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Defense Production Act of 1950, as amended, and Executive Order 12919, authorizes the Secretary of Commerce to assess the capabilities of the defense industrial base to support the national defense and to develop policy alternatives to improve the international competitiveness of specific domestic industries and their abilities to meet defense program needs. The information collected from voluntary surveys will be used to assist small and medium-sized firms in defense transition and in gaining access to advanced technologies and manufacturing processes available from Federal Laboratories. The goal is to improve regions of the country adversely affected by cutbacks in defense spending and military base closures.

II. Method of Collection

Survey.

III. Data

OMB Number: 0694–0083.

Form Number: None.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 5,000.

Estimated Time Per Response: 30 minutes per response.

Estimated Total Annual Burden Hours: 2,500.

Estimated Total Annual Cost: No start-up capital expenditures.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: December 13, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–31129 Filed 12–17–01; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

India and Pakistan Sanctions

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 19, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, DOC Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Dawnielle Battle, BXA ICB Liaison, (202) 482–0637, Department of Commerce, Room 6881, 14th & Constitution Avenue, NW., Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

BXA is revising the EAR to implement sanctions against India and Pakistan by setting forth a licensing policy of denial for exports and reexports of items controlled for nuclear nonproliferation and missile technology reasons to India and Pakistan, with limited exceptions.

II. Method of Collection

Submitted, as required, on form BXA–748P.

III. Data

OMB Number: 0694–0111.

Form Number: BXA748–P.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 57.

Estimated Time Per Response: 40 to 45 minutes per response.

Estimated Total Annual Burden Hours: 52 hours.

Estimated Total Annual Cost: No start-up capital expenditures.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: December 13, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–31130 Filed 12–17–01; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–337–806]

Notice of Postponement of Preliminary Antidumping Duty Determination: IQF Red Raspberries From Chile

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

SUMMARY: The Department of Commerce is extending the time limit for the preliminary determination in the antidumping duty investigation on individually quick frozen red raspberries from Chile.

EFFECTIVE DATE: December 18, 2001.

FOR FURTHER INFORMATION CONTACT: Cole Kyle (202) 482–1503 or Annika O'Hara (202) 482–3798; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

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. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (April 2001).

Postponement of Preliminary Determinations

On June 6, 2001, the Department published the initiation of the antidumping duty investigation of imports of individually quick frozen (IQF) red raspberries from Chile. The notice of initiation stated that we would make our preliminary determination for this antidumping duty investigation no later than 140 days after the date of issuance of the initiation (*i.e.*, November 7, 2001). *See Notice of Initiation of Antidumping Duty Investigations: IQF Red Raspberries from Chile,* 66 FR 34407 (June 28, 2001). At the petitioners' [1] request, the Department postponed the preliminary determination to December 12, 2001. *See Notice of Postponement of Preliminary Antidumping Duty Determination: IQF Red Raspberries from Chile,* 66 FR 53775 (October 24, 2001).

The Department is further postponing the preliminary determination in this investigation pursuant to section 351.205(b)(2) of the regulations and section 733 (c)(1)(B)(i)(II) of the Act. This further postponement is necessary to provide additional time for the Department to consider novel cost issues involved in this case. Because of this extraordinary complication, we are postponing the preliminary determination until no later than December 20, 2001.

This notice is published pursuant to sections 733(c) and 777(i) of the Act.

Dated: December 12, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–31163 Filed 12–17–01; 8:45 am]

BILLING CODE 3510–DS–P

[1] The petitioners are the IQF Red Raspberries Fair Trade Committee and its members.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Bangladesh

December 12, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 19, 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 and 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 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

December 12, 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 December 19, 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]
237	469,994 dozen.
335	157,989 dozen.
341	3,285,686 dozen
635	513,819 dozen.
847	426,670 dozen.

[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 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. 01–31093 Filed 12–17–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Man-Made Fiber Textiles Produced or Manufactured in Romania

December 12, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting a limit.

EFFECTIVE DATE: December 19, 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 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.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 limit for Category 604 is being increased for 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 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

December 12, 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 December 19, 2001, you are directed to increase the current limit for Category 604 to 1,945,157 kilograms [1], as provided for under the Uruguay Round Agreement on Textiles and Clothing.

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. 01–31095 Filed 12–17–01; 8:45 am]

BILLING CODE 3510–DR–S

[1] The limit has not been adjusted to account for any imports exported after December 31, 2000.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

December 12, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 18, 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 limit for Categories 647/648 is being increased for the undoing of special shift, reducing the limit for Categories 347/348 to account for the amount being returned to Categories 647/648.

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 69911, published on November 21, 2000.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 12, 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, wool, man–made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on January 1, 2001 and extends through December 31, 2001.

Effective on December 18, 2001, you are directed to adjust the limits for the categories listed below, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Twelve-month restraint limit [1]
Levels in Group I	
347/348	2,412,951 dozen.
647/648	4,468,985 dozen.

[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. 01–31094 Filed 12–17–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Availability of the Correlation: Textile and Apparel Categories With the Harmonized Tariff Schedule of the United States for 2002

December 12, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Keith Daly, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION: The Committee for the Implementation of Textile Agreements (CITA) announces that the 2002 Correlation, based on the Harmonized Tariff Schedule of the United States, will be available in January 2002 as part of the Office of Textiles and Apparel (OTEXA) CD-Rom publications.

The CD-Rom may be purchased from the U.S. Department of Commerce,

Office of Textiles and Apparel, 14th and Constitution Avenue, NW., room H3100, Washington, DC 20230, ATTN: Barbara Anderson, at a cost of $25. Checks or money orders should be made payable to the U.S. Department of Commerce. The 2002 Correlation will also be available on the OTEXA website at http://otexa.ita.doc.gov.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–31096 Filed 12–17–01; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Office of the Secretary

TRICARE Management Activity; Fiscal Year 2002 Diagnosis Related Group (DRG) Updates

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of DRG revised rates.

SUMMARY: This notice describes the changes made to the TRICARE DRG-based payment system in order to conform to changes made to the Medicare Prospective Payment System (PPS).

It also provides the updated fixed loss cost outlier threshold, cost-to-charge ratios and the Internet address for accessing the updated standardized amounts and DRG relative weights to be used for FY 2002 under the TRICARE DRG-based payment system.

EFFECTIVE DATES: The rates, weights and Medicare PPS changes which affect the TRICARE DRG-based payment system contained in this notice are effective for admissions occurring on or after October 1, 2001.

ADDRESSES: TRICARE Management Activity (TMA), Medical Benefits and Reimbursement Systems, 16401 East Centretech Parkway, Aurora, CO 80011–9066. For copies of the **Federal Register** containing this notice, contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238. The charge for the **Federal Register** is $10.00 for each issue payable by check or money order to the Superintendent of Documents.

FOR FURTHER INFORMATION CONTACT: Marty Maxey, Medical Benefits and Reimbursement Systems, TMA, telephone (303) 676–3627. To obtain copies of this document, see **ADDRESSES** section above. Questions regarding payment of specific claims under the TRICARE DRG-based payment system should be addressed to the appropriate contractor.

SUPPLEMENTARY INFORMATION: The final rule published on September 1, 1987 (52 FR 32992) set forth the basic procedures used under the CHAMPUS DRG-based payment system. This was subsequently amended by final rules published August 31, 1988 (53 FR 33461), October 21, 1988 (53 FR 41331), December 16, 1988 (53 FR 50515), May 30, 1990 (55 FR 21863), October 22, 1990 (55 FR 42560), and September 10, 1998 (63 FR 48439).

An explicit tenet of these final rules, and one based on the statute authorizing the use of DRGs by TRICARE, is that the TRICARE DRG-based payment system is modeled on the Medicare PPS, and that, whenever practicable, the TRICARE system will follow the same rules that apply to the Medicare PPS. The Centers for Medicare and Medicaid Services (CMS) publishes these changes annually in the **Federal Register** and discusses in detail the impact of the changes.

In addition, this notice updates the rates and weights in accordance with our previous final rules. The actual changes we are making, along with a description of their relationship to the Medicare PPS, are detailed below.

I. Medicare PPS Changes Which Affect the TRICARE DRG-Based Payment System

Following is a discussion of the changes CMS has made to the Medicare PPS that affect the CHAMPUS DRG-based payment system.

A. DRG Classifications

Under both the Medicare PPS and the TRICARE DRG-based payment system, cases are classified into the appropriate DRG by a Grouper program. The Grouper classifies each case into a DRG on the basis of the diagnosis and procedure codes and demographic information (that is, sex, age, and discharge status). The Grouper used the TRICARE DRG-based payment system is the same as the current Medicare Grouper with two modifications. The TRICARE system has replaced Medicare DRG 435 with two age-based DRGs (900 and 901), and has implemented thirty-four (34) neonatal DRGs in place of Medicare DRGs 385 through 390. For admissions occurring on or after October 1, 2001, DRG 435 has been replaced by DRG 523. The TRICARE system has replaced DRG 523 with the two aged-based DRGs (900 and 901). For admissions occurring on or after October 1, 1995, the CHAMPUS grouper hierarchy logic was changed so the age split (age <29 days) and assignments to MDC 15 occur before assignment of the PreMDC DRGs. This resulted in all neonate tracheostomies and organ transplants to be grouped to MDC 15 and not to DRGs 480–483 or 495. For admissions occurring on or after October 1, 1998, the CHAMPUS grouper hierarchy logic was changed to move DRG 103 to the PreMDC DRGs and to assign patients to PreMDC DRGs 480, 103 and 495 before assignment to MDC 15 DRGs and the neonatal DRGs. For admissions occurring on or after October 1, 2001, DRGs 512 and 513 were added to the PreMDC DRGs, between DRGs 480 and 103 in the TRICARE grouper hierarchy logic.

For FY 2002, CMS will implement classification changes, including surgical hierarchy changes. The TRICARE Grouper will incorporate all changes made to the Medicare Grouper.

B. Wage Index and Medicare Geographic Classification Review Board Guidelines

TRICARE will continue to use the same wage index amounts used for the Medicare PPS. In addition, TRICARE will duplicate all changes with regard to the wage index for specific hospitals that are redesignated by the Medicare Geographic Classification Review Board.

C. Hospital Market Basket

TRICARE will update the adjusted standardized amounts according to the final updated hospital market basket used for the Medicare PPS according to CMS's August 1, 2001, final rule.

D. Outlier Payments

Since TRICARE does not include capital payments in our DRG-based payments, we will use the fixed loss cost outlier threshold calculated by CMS for paying cost outliers in the absence of capital prospective payments. For FY 2002, the fixed loss cost outlier threshold is based on the sum of the applicable DRG-based payment rate plus any amounts payable for IDME plus a fixed dollar amount. Thus, for FY 2002, in order for a case to qualify for cost outlier payments, the costs must exceed the TRICARE DRG base payment rate (wage adjusted) for the DRG plus the IDME payment plus $19,226 (wage adjusted). The marginal cost factor for cost outliers continues to be 80 percent.

E. Blood Clotting Factor

For FY 2002, TRICARE will use the same HCPCS codes and payment rates for blood clotting factors used in FY 2001, except for HCPCS code J7190 Factor VIII (antihemophilic factor—human) which has changed from $0.85 per unit to $0.86 per unit. TRICARE

uses the same ICD–9–CM diagnosis codes as CMS for add-on payment for blood clotting factors.

F. Indirect Medical Education (IDME) Adjustment

Passage of The Benefits Improvement and Protection Act of 2000, modified the transition for the IDME adjustment that was first established by the Balanced Budget Act of 1997 and revised by the Balanced Budget Refinement Act of 1999. The formula multiplier for the TRICARE IDME adjustment has been revised to 1.21 for FY 2002 and 1.02 for FY 2003 and thereafter.

G. National Operating Standard Cost as a Share of Total Costs

The FY 2002 TRICARE National Operating Standard Cost as a Share of Total Costs used in calculating the cost outlier threshold is 0.918.

II. Cost to Charge Ratio.

For FY 2002, the cost-to-charge ratio used for the TRICARE DRG-based payment system will be 0.5003, which is increased to 0.5073 to account for bad debts. This shall be used to calculate the adjusted standardized amounts and to calculate cost outlier payments, except for children's hospitals. For children's hospital cost outliers the cost-to-charge ratio used is 0.5520.

III. Updated Rates and Weights

The updated rates and weights are accessible through the Internet at *www.tricare.osd.mil* under the sequential headings TRICARE Provider Information, Reimbursement Systems, and DRG Information. Table 1 provides the ASA rates and Table 2 provides the DRG weights to be used under the TRICARE DRG-based payment system during FY 2002 and which is a result of the changes described above. The implementing regulations for the TRICARE/CHAMPUS DRG-based payment system are in 32 CFR part 199.

Dated: December 12, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–31091 Filed 12–17–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to Amend Systems of Records.

SUMMARY: The Department of the Army is amending three systems of records notices in its existing inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

Throughout the three notices, 'Department of Defense Computer Institute' and 'DODCI'' are being changed to 'Information Resources Management College' and 'IRMC'.

DATES: This proposed action would be effective without further notice on January 17, 2002 unless comments are received which result in a contrary determination.

ADDRESSES: Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–RP, Stop 5603, 6000 6th Street, Ft. Belvoir, VA 22060–5603.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390 or Ms. Christie King at (703) 806–3711 or DSN 656–3711.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: December 12, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0351a NDU–CI

SYSTEM NAME:

DODCI Student Record System (February 22, 1993, 58 FR 10002).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with A0351a IRMC.

SYSTEM NAME:

Delete entry and replace with 'Information Resources Management College Record System'.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete from entry 'as regular students' and 'other'.

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Individual's name, Social Security Number, home address, home telephone number, military rank, civilian grade, branch of service, course ID, activity and consolidated list of students, names, courses and their activities.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 3013, Secretary of the Army; Army Regulation 351–1, Individual Military Education and Training; Army Regulation 351–9, Inter-service Education and Training; and E.O. 9397 (SSN).'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Records are maintained for a total of 40 years. Current file is maintained until no longer needed, then retired to a records holding area. The records holding area will retire the military records to National Personnel Records Center, 9700 Page Avenue, St. Louis, MO 63132–5100 when records are ten years old.'

* * * * *

RECORD SOURCE CATEGORIES:

Delete parenthetical phrase.

* * * * *

A0351a IRMC

SYSTEM NAME:

Information Resources Management College Record System.

SYSTEM LOCATION:

Information Resources Management College, Washington Navy Yard, Washington, DC 20374–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All students who have completed a course of instruction presented by the Information Resources Management College (IRMC). These are primarily DoD military and civilian personnel; personnel from federal, state and local government agencies who have attended courses on a space available basis; military and civilian personnel from foreign governments who requested and were granted authority to attend courses; and personnel from private industry who are under direct contract to a DoD activity who sponsor their attendance.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number, home address, home telephone number, military rank, civilian grade, branch of service, course ID, activity and consolidated list of students, names, courses and their activities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; Army Regulation 351–1, Individual Military Education and Training; Army Regulation 351–9, Inter-service Education and Training; and E.O. 9397 (SSN).

PURPOSE(S):

Maintained by IRMC Student Operations Section to respond to individuals requesting official verification of attendance to a specific course; to respond to students, agency or activity requesting official record of training completed. Used to compile statistical data of student output, e.g., attendance by course, attendance by branch of service, agency or activity. Statistical data is not compiled by name.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Card file, paper copies forms, and hard disk/magnetic tape.

RETRIEVABILITY:

Name and course ID.

SAFEGUARDS:

Maintained in an administrative office, which is locked after normal working hours, accessible only to authorized office staff and director or delegate on demand.

RETENTION AND DISPOSAL:

Records are maintained for a total of 40 years. Current file is maintained until no longer needed, then retired to a records holding area. The records holding area will retire the military records to National Personnel Records Center, 9700 Page Avenue, St. Louis, MO 63132–5100 when records are ten years old.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Student Operations Section, Information Resources Management College, Building 175, Washington Navy Yard, Washington, DC 20374–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Chief, Student Operations Section Information Resources Management College, Building 175, Washington Navy Yard, Washington, DC 20374–5000.

Individual should provide full name and course attended.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system of records should address written inquiries to the Chief, Student Operations Section, Information Resources Management College, Building 175, Washington Navy Yard, Washington, DC 20374–5000.

Individual should provide full name and course attended.

CONTESTING RECORD PROCEDURES:

The Army rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Enrollment and registration request for DoD management education and training program courses, and course listing of students reviewed by course manager and individual students.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0351b NDU–CI

SYSTEM NAME:

DODCI Student/Faculty/Senior Staff Biography System (February 22, 1993, 58 FR 10002).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'A0351b IRMC'.

* * * * *

A0351b IRMC

SYSTEM NAME:

IRMC Student/Faculty/Senior Staff Biography System.

SYSTEM LOCATION:

Information Resources Management College, Washington Navy Yard, Washington, DC 20374–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All faculty members, senior staff members, and guest lecturers currently instructing or managing at the Information Resources Management College (IRMC). All students who are attending or who have completed a course of instruction presented by the Information Resources Management College. These are primarily DoD military and civilian personnel as regular students; personnel from other federal, state and local government agencies who have attended courses on a space available basis; military and civilian personnel from foreign governments who requested and were granted authority to attend courses; and personnel from private industry who are under direct contract to a DoD activity who sponsor their attendance.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographic summary forms individually submitted upon request by each IRMC faculty member, senior staff member, guest lecturer, or student. Students record consists of name, rank or rate, civilian grade, organization and division, office phone number, current and previous job titles and positions, number of months with present job title, major duties of present job, formal education completed, course ID, objectives for attending IRMC course, computer-related and other technical training and experience, information on usage of computers in present position, influence and authority student has over design of computer-based systems including security and privacy aspects, extent involved in planning and design of teleprocessing systems.

Faculty/senior staff record consists of name, rank or rate, current and previous job titles and positions, former major duties, formal education completed, computer-related and other technical training experience.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations.

PURPOSE(S):

The student biographical summaries are used by course managers and functional department heads to evaluate education level, computer related work experience, and general computer background of IRMC students. Establishes student qualifications to attend a requested course and if course objectives have satisfied personal objectives of students attending course. Statistical summarization of information contained in the system provides basis for modification and revision to course

content. Serves as vehicle to place student into appropriate laboratory and seminar group in courses requiring such a breakout.

Information on faculty/senior staff members contained in the biographical summaries is provided to students as an attachment to their student notebooks. Records are used to identify faculty and senior staff members, areas of data processing and information management expertise for consultation purposes and as an expertise preamble to the next scheduled lecturer.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD ''Blanket Routine Uses'' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and computer hard disk/magnetic tape.

RETRIEVABILITY:

By name for faculty/senior staff members. Course ID and name for students.

SAFEGUARDS:

Maintained in Student Operations Section which is locked after normal working hours, access controlled by system manager and accessible only to authorized faculty members, director or administration, and director or delegate on demand.

RETENTION AND DISPOSAL:

All completed individual student biographical summaries are retained in a file folder marked by course ID and course date. Individual student biographical summaries are retained by course for two fiscal years preceding the fiscal year in progress. All individual faculty and senior staff biographical summaries are retained in a master file folder until no longer providing services to IRMC. Master file is reviewed periodically to maintain currency.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Student Operations Section, Information Resources Management College, Building 175, Washington Navy Yard, Washington, DC 20374–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Chief, Student Operations Section, Information Resources Management College, Building 175, Washington Navy Yard, Washington, DC 20374–5000.

Individual should provide course title and year of attendance.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Chief, Student Operations Section, Information Resources Management College, Building 175, Washington Navy Yard, Washington, DC 20374–5000.

Individual should provide course title and year of attendance.

CONTESTING RECORD PROCEDURES:

The Army rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Student biography forms are of IRMC origin and completed by each individual student. Forms are completed either the first day of the course or, in the case of certain specific courses, are mailed to the prospective student requesting return prior to commencement of the course.

Biographies are authorized by each faculty and senior staff member soon after arrival at IRMC. Guest lecturers are requested to voluntarily submit biographies for use in course notebooks. Content is never changed, but in some cases selectively reduced in length so as not to exceed one page. Format and content are generated solely by IRMC member and are subjected only to editorial review.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0351c NDU–CI

SYSTEM NAME:

DODCI Course Evaluation System (February 22, 1993, 58 FR 10002).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with ''A0351c IRMC''.

* * * * *

A0351c IRMC

SYSTEM NAME:

IRMC Course Evaluation System.

SYSTEM LOCATION:

Information Resources Management College, Washington Navy Yard, Washington, DC 20374–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All students who have completed a course of instruction presented by the Information Resources Management College (IRMC). These are primarily DoD military and civilian personnel as regular students; personnel from other federal, state and local government agencies who have attended courses on a space available basis; military and civilian personnel from foreign governments who requested and were granted authority to attend courses; and personnel from private industry who are under direct contract to a DoD activity who sponsor their attendance.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual student evaluation of entire course and random sampling of specific lecture presentations. Includes course ID; objectives for attending course; statement concerning realization of personal objectives, numerical or qualitative rating of overall course, lab sessions and/or specific lectures; list of strengths and weaknesses of course; list of lecture subjects of particular benefit or of little use to student; list of lecture subjects which should be expanded or reduced in coverage; and list of topics not covered in course but should be included. Comments concerning course content, sequence, lecture presentation, teaching techniques, audio visual aids, physical facilities and administrative support are solicited and recorded. Categories are posed as questions with ample space to encourage written response to student opinion in a structured but non-restrictive format. These Course Evaluation Forms also contain hard core factual information, *i.e.,* course ID, course dates, student name, rank/rate/grade, branch of service, duty station or agency, and present job title.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations.

PURPOSE(S):

The system is used to evaluate course, lecture, teaching techniques and individual instructor effectiveness. It provides basis for modification and revision to course content and sequence and lecture content. It provides input to

long-range plan for course update, additions and revisions. The evaluation of all attendees to a particular course are reviewed as a composite group by IRMC faculty members to determine problem areas, trends, and provides a continuous evaluation of course effectiveness.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and computer hard disk/magnetic tape.

RETRIEVABILITY:

Course ID and student name.

SAFEGUARDS:

Maintained in Student Operations Section Office, which is locked after normal working hours, access controlled by system manager and accessible only to authorized faculty members. Director of Administration and Director delegate on demand.

RETENTION AND DISPOSAL:

All completed individual evaluations of students attending a specific course are retained by course ID and course date. Individual student evaluation forms are retained by course for two fiscal years preceding the fiscal year in progress.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Student Operations Section, Information Resources Management College, Building 175, Washington Navy Yard, Washington, DC 20374–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Chief, Student Operations Section, Information Resources Management College, Building 175, Washington Navy Yard, Washington, DC 20374–5000.

Individual should provide course title and year of attendance.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Chief, Student Operations Section, Information Resources Management College, Building 175, Washington Navy Yard, Washington, DC 20374–5000.

Individual should provide course title and year of attendance.

CONTESTING RECORD PROCEDURES:

The Army rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Student course evaluation forms are of IRMC origin and distributed in class and completed by each individual student.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 01–31092 Filed 12–17–01; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 17, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10202, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren.Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 13, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Student Financial Assistance

Type of Review: Revision.

Title: William D. Ford Federal Direct Loan (Direct Loan) Program Electronic Debit Account Application and Brochure.

Frequency: One time.

Affected Public: Individuals or household; Federal Government.

Reporting and Recordkeeping Hour Burden:

Responses: 210,000.

Burden Hours: 6,993.

Abstract: A Direct Loan borrower uses this application to request and authorize the automatic deduction of monthly student loan payments from his or her checking or savings account.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address *OCIO.RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–31118 Filed 12–17–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

DATES: Thursday, January 10, 2002, 6 p.m. to 9:30 p.m.

ADDRESSES: Jefferson County Airport Terminal Building, Mount Evans Room, 11755 Airport Way, Broomfield, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO, 80021; telephone (303) 420–7855; fax (303) 420–7579.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Quarterly update by representative from the Colorado Department of Public Health and Environment
2. Update on safety issues and recent safety incidents at the Rocky Flats site
3. Presentation on review of risk calculations for Radionuclide Soil Action Levels (RSALs)
4. Discussion regarding the Board's RSAL Recommendation (No. 2001–4) and DOE's response to the recommendation
5. Agree on path forward for this year's end-state discussions
6. Other Board business may be conducted as necessary

Public Participation

The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation in the agenda. The Deputy DesignatedFederal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes

The minutes of this meeting will be available for public review and copying at the Public Reading Room located at the Office of the Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminister, CO 80021; telephone (303)420–7855. Hours of operations for the Public Reading Room are 9 a.m. to 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be made available by writing or calling Deb Thompson at the address or telephone number listed above.

Issued at Washington, DC on December 12, 2001.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 01–31111 Filed 12–17–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the**Federal Register**.

DATES: Monday, January 14, 2002, 3 p.m.–9:00 p.m. Tuesday, January 15, 2002, 8:30 a.m.–4 p.m.

ADDRESSES: Hilton Oceanfront Hotel-Palmetto Dunes, 23 Ocean Lane,Hilton Head Island, SC 29928.

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Science Technology & Management Division, Department of Energy Savannah River Operations Office, PO Box A, Aiken, SC 29802; Phone: (803) 725–5374.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Monday, January 14, 2002

3 p.m. Executive Committee Meeting
4 p.m.–6:30 p.m. Special Work Plan Session
6:30 p.m. Public Comment Session
7 p.m. Committee meetings
9 p.m Adjourn

Tuesday, January 15, 2002

8:30–9:30 a.m. Approval of Minutes; Agency Updates; Recognition for Outgoing Board Members; Public Comment Session: Facilitator Update
9:30–11 a.m. Waste Management Committee Report
11–12 a.m. Nuclear Materials Committee Report; Public Comments
12 noon Lunch Break
1–2:30 p.m. Strategic & Long-Term Issues Committee
2:30–3 p.m. Environmental Remediation Committee
3–4 p.m. Administrative Committee Report; 2002 Officer, committee Chair and Membership Elections; Chairs Farewell; Public Comments
4 p.m. Adjourn

If needed, time will be allotted after public comments for items added to the agenda, and administrative details. A final agenda will be available at the meeting January 14, 2002.

Public Participation

The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make the oral statements pertaining to agenda items should contact Gerri Flemming's office at the address or telephone listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy DesignatedFederal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided equal time to present their comments.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Minutes will also be available by writing to Gerri Fleming, Department of Energy Savannah River Operations Office, PO Box A, Aiken, SC 29802, or by calling her at (803) 725–5374.

Issued at Washington, DC on December 11, 2001.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 01–31112 Filed 12–17–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board Chairs Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB) Chairs Meeting. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

DATES: February 1–2, 2002.

ADDRESSES: Sheraton Augusta Hotel, 2651 Perimeter Parkway, Augusta, GA 30909.

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Science Technology & Management Division, Department of Energy Savannah River Operations Office, PO Box A, Aiken, SC 29802, (803) 725–5374.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Friday, February 1

8–8:30 a.m. Opening remarks
8:30–10 a.m. Presentation by DOE HQ Representative
10–10:15 a.m. Morning break
10:15–11:30 a.m. Panel Discussion—Participants will make a brief presentation and address specific issues on ground water across the DOE complex.
11:30–12 a.m. Site-Specific Information—Participants will view displays, obtain information and discuss site-specific issues.
12–1 p.m. Lunch
1–1:30 p.m. Site-Specific Information
1:30–1:45 p.m. Plenary Session—Participants will meet to finalize core topic areas and receive assignments for breakout sessions.
1:45–3:45 p.m. Core Topic Breakout Discussions—Groups will discuss information from DOE and site-specific presentations and develop statements for consideration from the group.
3:45–4 p.m. Break
4–5 p.m. Plenary Session—Reports from Core Topic Breakout Groups
5 p.m Adjourn

Saturday, February 2

8–8:15 a.m. Plenary Session
8:15–9:15 a.m. Site-Specific Breakout Session—Delegations will discuss statements developed by the core topic breakout groups.
9:15–10:30 a.m. Core Topic Breakout Sessions—Groups will refine their statements.
10:30–10:45 a.m. Break
10:45–11:45 a.m. Final Plenary Discussion of Core Topic Statements—Each group will present its final statements for consideration by the entire group.
11:45–12 a.m. Workshop wrap-up and evaluation
12 noon Adjourn

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gerri Fleming at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The DeputyDesignated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments at the end of the meeting.

Minutes

Minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday except Federal holidays. Minutes will also be available by writing or calling Gerri Flemming at the address or telephone number listed above.

Issued at Washington, DC on December 11, 2001.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 01–31113 Filed 12–17–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency information collection activities: Submission for emergency OMB review; comment request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency Information Collection Activities: Submission for Emergency OMB Review; Comment Request.

SUMMARY: The EIA has submitted the energy information collection listed at the end of this notice to the Office of Management and Budget (OMB) for emergency processing under section 3507(j)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 *et seq.*) by January 14, 2002. The reason for this emergency clearance request is that the American Gas Association (AGA) plans to discontinue collecting and releasing weekly underground natural gas storage statistics at the end of April 2002. The Secretary of Energy announced on October 30, 2001, that EIA would begin to survey weekly storage activities when AGA discontinues its data collection. Storage estimates will be provided for three multi-state regions comprising the lower 48 States. These regions were chosen because they are familiar to both respondents and data users. Normal clearance procedures would prevent the timely collection of this storage information by EIA when AGA discontinues its survey.

DATES: Comments must be filed by January 4, 2002.

ADDRESSES: Send comments to Bryon Allen, OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure receipt of the comments by the due date, submission by FAX at 202–395–7285 or e-mail to *BAllen@omb.eop.gov* is recommended. The mailing address is 726 Jackson Place NW., Washington, DC 20503. The OMB DOE Desk Officer may be telephoned at (202) 395–7318. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Herbert Miller. Copies of the materials submitted to OMB may be obtained at *http://www.eia.doe.gov/pub/oil_gas/natural_gas/survey_forms/eia912package.pdf* or by contacting Herbert Miller at (202) 287–1711. To ensure receipt of the comments by the

due date, submission by FAX at 202–287–1705 or e-mail to *herbert.miller@eia.doe.gov* is recommended. The mailing address is Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection number and title; (2) the sponsor (i.e., the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (i.e, new, revision, extension, or reinstatement); (5) response obligation (i.e., mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (i.e., the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. Forms EIA–912, ''Weekly Underground Natural Gas Storage Report''

2. Energy Information Administration

3. OMB Number 1905–NEW

4. New (emergency clearance request)

5. Mandatory

6. The EIA–912 will collect data on natural gas inventories held in underground storage facilities in the United States. EIA will release weekly summary information on the EIA web site along with analyses of the data. Respondents will be a sample of 50 natural gas underground storage operators.

7. Businesses or other for-profit

8. 2,600 hours (50 respondents x 52 reports x 1 hour per response)

Statutory Authority: Section 3507(j)(1) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, DC, December 13, 2001.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 01–31117 Filed 12–17–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[IC01–566–001 FERC Form 566]

Information Collection Submitted for Review and Request for Comments

December 11, 2001.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has submitted the energy information collection listed in this notice to the Office of Management and Budget (OMB) for review under provisions of section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received comments in response to an earlier **Federal Register** notice of May 8, 2001 (66 FR. 23240). The Commission has responded to these comments in its submission to OMB.

DATES: Comments regarding this collection of information are best assured of having their full effect if received within 30 days of this notification.

ADDRESSES: Address comments to Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission, Desk Officer, 725 17th Street, NW., Washington, DC 20503. A copy of the comments should also be sent to Federal Energy Regulatory Commission, Office of the Chief Information Officer, Attention: Mr. Michael Miller, 888 First Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202)208–1415, by fax at (202) 273–0873, and by E-mail: *mike.miller@fer.fed.us.*

SUPPLEMENTARY INFORMATION:

Description

The energy information collection submitted to OMB for review contains:

1. *Collection of Information:* FERC Form 566 ''Annual Report of a Utility's Twenty Largest Purchasers''

2. *Sponsor:* Federal Energy Regulatory Commission.

3. *Control No.:* OMB No. 1902–0114. The Commission is now requesting that OMB approve a three-year extension of the current expiration date, with no changes to the existing collection. This is a mandatory information collection requirement.

4. *Necessity of Collection of Information:* Submission of the information is necessary to fulfill the requirements of Section 305 of the Federal Power Act (FPA), as amended by Title II, section 211 of the Public Utility Regulatory Policies Act of 1978 (PURPA). FPA section 305—Officials Dealing in Securities-Interlocking Directorates defines the annual reporting requirements for public utility officers and directors to report office and director positions they hold with, among other entities, a public utility's top twenty customers of electric energy. FPA section 305(c)(2) states ''each public utility shall publish a list, pursuant to rules prescribed by the Commission * * * This statutory requirement to publish the customers'' list allows the public the opportunity to compare the customers listed with the interlocking directorate information filed in FERC Form 561 (1902–0099), by public utility officers and directors, for identification of positions where the relationship may be employed, for example to the detriment of the utility, or the public interest. The required public utility filers, the necessary filing information, the requirement to publish the information and the filing deadline are all specifically mandated by the FPA. The Commission is not empowered to amend or waive these statutory requirements. Requirements the Commission has the authority to amend, such as the filing format and the number of required copies are found at 18 CFR 46.3.

5. *Respondent Description:* The respondent universe currently comprises on average approximately 175 public utilities.

6. *Estimated Burden:* 1,050 total burden hours, 175 respondents, 1 response annually, 6 hours per response (average).

7. *Estimated Cost Burden to Respondents:* 1,050 hours ÷ 2,080 hours per year × $117,041 per year = $ 59,083, average cost per respondent = $338.

Statutory Authority: Sections 211 of the Public Utility Regulatory Policies Act of 1978 (PURPA) (16 U.S.C. 825d as amended and 16 U.S.C. 2601) and

section 305 of the Federal Power Act (16 U.S.C. 825d).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31064 Filed 12–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–347–002]

Canyon Creek Compression Co.; Notice of Compliance Filing

December 11, 2001.

Take notice that on December 5, 2001, Canyon Creek Compression Company (Canyon) tendered for filing to be part of its FERC Gas Tariff, Third Revised Volume No. 1, certain tariff sheets, to be effective November 1, 2001.

Canyon states that the purpose of this filing is to comply with the Commission's ''Second Order on Compliance with Order No. 637,'' issued in the captioned docket on November 23, 2001.

Canyon states that copies of the filing are being mailed to each person designated on the official service list.

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 § 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with § 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31077 Filed 12–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–40–000]

Cargill-Alliant, LLC Complainant, v. Midwest Independent TransmissionSystem Operator, Inc. Respondent; Notice of Complaint

December 11, 2001.

Take notice that on December 10, 2001, Cargill-Alliant, LLC (Cargill-Alliant), filed a complaint requesting fast track processing against Midwest Independent Transmission System Operator, Inc. (MISO). Cargill-Alliant requests the Commission to order MISO to implement its open access transmission tariff, and develop and implement its related business practices, in a fair, consistent, and non-discriminatory manner.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before December 31, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before December 31, 2001. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31063 Filed 12–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–32–001]

Columbia Gas Transmission Corp.; Notice of Compliance Filing

December 11, 2001.

Take notice that on December 5, 2001, Columbia Gas Transmission Corporation(Columbia) tendered its filing in compliance with the November 30, 2001 order issued in this proceeding accepting Columbia's Eleventh Revised Sheet No. 44 to be effective December 1, 2001, subject to refund and action in Columbia's Docket No. RP01–262.

Columbia states that copies of its filing has been sent by first-class mail, postage prepaid, by Columbia to each of the parties on the official service list in Docket No. RP01–262.

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 § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31069 Filed 12–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–037]

Columbia Gulf Transmission Co.; Notice of Negotiated Rate Filing

December 11, 2001.

Take notice that on December 5, 2001, Columbia Gulf Transmission

Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of December 1, 2001:

Second Revised Sheet No. 20
First Revised Sheet No. 20A
First Revised Sheet No. 20B

Columbia Gulf states that it is filing the tariff sheets to comply with the Commission's October 24, 2001 orders approving negotiated rate agreements in Docket Nos. RP96–389–031, and –032.

Columbia Gulf states further that it has served copies of the filing on all parties identified on the official service list in Docket No. RP96–389.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31075 Filed 12–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES02–13–000]

Consolidated Edison Company of New York, Inc.; Notice of Filing

December 11, 2001.

Take notice that on November 30, 2001, Consolidated Edison Company of New York, Inc. filed an application for an order, pursuant to Section 203 of the Federal Power Act for authorization to purchase, acquire or take unsecured evidences of indebtedness of its affiliate Orange and Rockland Utilities, Inc. maturing not more than twelve months after their date of issue up to an amount not in excess of $150 million at any one time outstanding.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before December 21, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31065 Filed 12–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES02–15–000]

Consolidated Edison Company of New York, Inc.; Notice of Filing

December 11, 2001.

Take notice that on November 30, 2001, Consolidated Edison Company of New York, Inc. (Con Edison of New York) filed an application for an order, pursuant to Section 204 of the Federal Power Act, authorizing Con Edison of New York during the period from the date of the order through December 31, 2003 to issue and sell unsecured evidences of indebtedness maturing not more than twelve months after their date of issue up to an amount not in excess of $1 billion at any one time outstanding.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before December 21, 2001 . Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31067 Filed 12–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–119–000]

Dominion Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

December 11, 2001.

Take notice that on December 4, 2001, Dominion Transmission Inc. (DTI), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets, with an effective date of December 5, 2001:

Second Revised Sheet No. 1076
First Revised Sheet No. 1077

DTI states that the purpose of this filing is to eliminate the North of Valley Operational Flow Order. DTI requests a waiver of the 30-day notice requirement and an effective date of December 5, 2001.

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 § 385.214 or § 385.211 of the Commission's Rules

and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31082 Filed 12–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–383–036]

Dominion Transmission, Inc.; Notice of Tariff Filing

December 11, 2001.

Take notice that on December 4, 2001, Dominion Transmission, Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute Second Revised Sheet No. 1406, with an effective date of December 15, 2001.

DTI states that the filing is being made to correct its November 27, 2001, filing in Docket No. RP96–383–035.

In addition, DTI withdrew Sixth Revised Sheet No. 1300, another tariff sheet submitted on November 27, 2001.

The November 27, 2001, filing disclosed a negotiated rate agreement between DTI and Central Hudson Enterprises Corporation (Central Hudson). DTI states that the purpose of the December 4, 2001, filing is to fix a description in one of November 27 tariff sheets that incorrectly suggested that the negotiated rate agreement with Central Hudson constituted a material deviation from the form of service agreement that DTI has on file with the Commission.

DTI states that copies of its letter of transmittal and enclosures have been served upon DTI's customers, interested state commissions and on all persons on the official service list compiled by the Secretary of the Commission for this proceeding.

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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31074 Filed 12–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–35–001]

Dominion Transmission, Inc.; Notice of Compliance Filing

December 11, 2001.

Take notice that on December 4, 2001, Dominion Transmission, Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet to comply with the Commission's Letter Order issued on November 28, 2001, in Docket Nos. RP02–35–000 and RP00–15–004:

Substitute First Revised Sheet No. 1070

DTI states that the purpose of this filing is to comply with the condition imposed by the Letter Order. DTI requests an effective date of November 1, 2001, for its proposed tariff sheet.

DTI states that copies of its letter of transmittal and enclosures have been served upon DTI's customers, interested state commissions and on all persons on the official service list compiled by the Secretary of the Commission for this proceeding.

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 § 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with § 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31070 Filed 12–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2064]

Flambeau Hydro, LLC; Notice of Authorization for Continued Project Operation

December 12, 2001.

On November 26, 1999, Flambeau Hydro, LLC (on January 23, 2001, the Commission approved the transfer of the license from North Central Power Co., Inc. to Flambeau Hydro, LLC and substituted Flambeau Hydro, LLC for North Central Power Co., Inc. as the relicense applicant), licensee for the Winter Project No. 2064, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2064 is located on the East Fork of the Chippewa River in Sawyer County, Wisconsin.

The license for Project No. 2064 was issued for a period ending November 30, 2001. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or

any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to Section 15 of the FPA, notice is hereby given that an annual license for Project No. 2064 is issued to Flambeau Hydro, LLC for a period effective December 1, 2001, through November 30, 2002, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before December 1, 2002, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under Section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to Section 15 of the FPA, notice is hereby given that Flambeau Hydro, LLC is authorized to continue operation of the Winter Project No. 2064 until such time as the Commission acts on its application for subsequent license.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 01–31122 Filed 12–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–320–047]

Gulf South Pipeline Company, LP; Notice of Negotiated Rate Filing

December 11, 2001.

Take notice that on November 28, 2001, Gulf South Pipeline Company, LP (Gulf South) filed with the Commission a contract between Gulf South and the following company for disclosure of a recently negotiated rate transaction. As shown on the contract, Gulf South requests an effective date of November 1, 2001.

Special Negotiated Rate Between Gulf South Pipeline Company, LP and Willmut Gas Company

Gulf South states that it has served copies of this filing upon all parties on the official service list created by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31073 Filed 12–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–118–000]

High Island Offshore System, L.L.C.; Notice of Tariff Filing

December 11, 2001.

Take notice that on December 4, 2001, High Island Offshore System, L.L.C. (HIOS) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of January 4, 2002:

Fourth Revised Sheet No. 2
Fifth Revised Sheet No. 171
Third Revised Sheet No. 172

HIOS states that the tariff sheets are being filed to implement the ability for HIOS to enter into negotiated rate agreements.

HIIOS states that copies of its filing has been mailed to each of HIOS' customers and the 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 § 385.214 or § 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31081 Filed 12–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commision

[Docket No. ES02–16–000]

Inland Power and Light Company; Notice of Filing

December 11, 2001.

Take notice that on November 28, 2001, Inland Power and Light Company (Inland) filed an application for authorization to issue securities pursuant to Section 204 of the Federal Power Act (FPA), 16 U.S.C. 824c, and part 34 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR part 34. Inlands' filing is available for public inspection at its offices in Spokane, Washington.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice

and procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before December 21, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31068 Filed 12–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12020–000 Illinois]

Marseilles Hydro Power LLC; Notice of Rejection of Notices of Intent To File Competing Applications and Waiver of Section 4.36

December 11, 2001.

Pursuant to the notice of acceptance of application for the Marseilles Hydroelectric Project, issued August 16, 2001 by the Federal Energy Regulatory Commission (Commission), the following filings have been received: (1) Marseilles Land and Water Company (MLWC) September 18, 2001 filing for waiver of the requirements of § 4.36 of the Commission's regulations establishing deadlines for the filing of applications with an initial preliminary permit application; and (2) the three October 15, 2001 notices of intent to file competing development applications filed by MLWC, Fountainhead Properties LLC, and City of Oglesby, Illinois, respectively.

Background

On May 14, 2001, Marseilles Hydro Power LLC (MHP) filed its application for license for the Marseilles Hydroelectric Project, FERC No. 12020, pursuant to the notice of intent it had filed in response to the Commission's notice of filing of an application for preliminary permit, FERC Project No. 11863, by MLWC. The Commission issued a public notice that MHP's application for license for Project No. 12020 had been accepted for filing on August 16, 2001. The above mentioned subsequent filings were filed with the Commission.

Commission Conclusions

The Commission has previously addressed the situation of when an application for license may be filed in competition with an initial permit application.[1] The Commission has clearly specified that license applications filed in competition with an initial permit application are to be filed in response to the notice of the initial preliminary permit application, not subsequent notices of a competing license application as claimed by MLWC.

Therefore, the Commission rejects the pleadings of (1) MLWC's filing for waiver of the requirements of § 4.36; and (2) the three October 15, 2001 notices of intent to file competing development applications filed by MLWC, Fountainhead Properties LLC, and City of Oglesby, Illinois, respectively.

This notice constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of this issuance of this notice, pursuant to 18 CFR 385.713.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31089 Filed 12–17–01; 8:45 am]

BILLING CODE 6717–01–P

[1] Order No. 413, FERC Stats. & Regs. Preambles 1982–1985, section 30,632 (March 20, 1985); and *Tropicana,* 65 FERC section 61,904 (1993).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–117–000]

Nautilus Pipeline Company, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

December 11, 2001.

Take notice that on December 3, 2001, Nautilus Pipeline Company, L.L.C. (Nautilus) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets to become effective on January 1, 2002:

First Revised Sheet No. 24
First Revised Sheet No. 257

Nautilus states that the purpose of this filing is to provide existing and new shippers an opportunity, under certain specified circumstances, to release all or a part of production from a lease that was previously dedicated to Nautilus.

Nautilus states that a copy of this filing has been served upon its customers.

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 § 385.214 or § 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31080 Filed 12–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–267–002]

Northern Border Pipeline Co.; Notice of Compliance Filing

December 11, 2001.

Take notice that on November 28, 2001, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets effective April 1, 2001:

Second Revised Sheet No. 177
Fourth Revised Sheet No. 250A
Fifth Revised Sheet No. 251
Fifth Revised Sheet No. 253
Fourth Revised Sheet No. 266

Northern Border states that the purpose of this filing is to comply with the Commission's order dated November 8, 2001 in Docket No. RP01–267–001 (97 FERC ¶ 61,162).

Northern Border states that copies of this filing have been served on all parties on the Commission's service list for this proceeding.

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 § 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with § 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31078 Filed 12–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–116–000]

Northwest Pipeline Corp.; Notice of Proposed Changes in FERC Gas Tariff

December 11, 2001.

Take notice that on December 3, 2001, Northwest Pipeline Corporation(Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of January 1, 2002:

Eighth Revised Sheet No. 6
Fifteenth Revised Sheet No. 14
Fifth Revised Sheet No. 15
Second Revised Sheet No. 115
Second Revised Sheet No. 116
Third Revised Sheet No. 117
Second Revised Sheet No. 118
First Revised Sheet No. 119
Eighth Revised Sheet No. 200
Third Revised Sheet No. 215
Eighth Revised Sheet No. 231
Fifth Revised Sheet No. 245
Fourth Revised Sheet No. 303–A
Original Sheet No. 359
Third Revised Sheet No. 360
Second Revised Sheet No. 361
First Revised Sheet No. 362

Northwest states that the purpose of this filing is to add a new rate schedule, Rate Schedule DEX–1, to Northwest's tariff for the deferred exchange of storage gas. This proposed rate schedule provides a mechanism for Northwest to increase the level of its system balancing gas in a particular gas storage facility without using mainline capacity to transport the gas from a storage facility on another part of its 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 § 385.214 or § 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31079 Filed 12–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG01–44–000]

Oildale Energy LLC; Notice of Application for Commission Determination of Exempt Wholesale Generator Status

December 12, 2001.

Take notice that on December 6, 2001, Oildale Energy LLC (Applicant) filed with the Federal Energy Regulatory Commission (Commission) an Application for Determination of Exempt Wholesale Generator Status pursuant to part 365 of the Commission's regulations and section 32 of the Public Utility Holding Company Act of 1935, as amended.

Applicant is a California limited liability company that owns and operates a gas-fired topping-cycle cogeneration facility located in Oildale, Kern County, California (Facility) that operates in simple-cycle mode. The Facility produces steam and utilizes a high temperature fluid that is also supplied to the steam host as a heat transfer medium. The Facility generally produces about 40.6MW (gross) and 40.0 MW (net) of electricity and approximately 70,000 lbs/hr of high pressure steam while producing 30,000 lbs/hr of low pressure steam, and approximately 75 MMBtu/hr of thermal energy. The principal components of the Facility are a steam injected GE LM6000 gas turbine and a waste heat recovery steam generator capable of producing high and low pressure steam as well as heating a high temperature fluid. The Facility as currently configured includes certain transmission interconnection facilities necessary to effect the sale of electric energy at wholesale and interconnect the Facility to the transmission grid. All of the electricity generated by the Facility is sold exclusively at wholesale.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before January 2, 2002. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31120 Filed 12–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES02–14–000]

Orange and Rockland Utilities, Inc. Notice of Filing

December 11, 2001.

Take notice that on November 30, 2001, Orange and Rockland Utilities, Inc. (O&R) filed an application for an order, pursuant to section 204 of the Federal Power Act, authorizing O&R during the period from the date of the order through December 31, 2003 to issue and sell unsecured evidences of indebtedness maturing not more than twelve months after their date of issue up to an amount not in excess of $150 million at any one time outstanding.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before December 21, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31066 Filed 12–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP02–39–000, CP02–40–000, CP02–41–000, and CP02–42–000]

Pacific Gas and Electric Company; Standard Pacific Gas Line Incorporated; GTrans LLC; PG&E Gas Transmission, Northwest Corporation; Notice of Applications

December 11, 2001.

Take notice that on November 30, 2001, Pacific Gas and Electric Company (PG&E), Standard Pacific Gas Line Incorporated (Stanpac), GTrans LLC (GTrans), and PG&E Gas Transmission, Northwest Corporation (GTN), (collectively referred to as Applicants), filed in Docket Nos. CP02–39–000, CP02–40–000, CP02–41–000, and CP02–42–000, pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA) and parts 157 and 284 of the Federal Energy Regulatory Commission's (Commission) regulations, for a series of authorizations that, taken together, will permit them to extend PG&E's existing intrastate natural gas transmission system to a new market center located in the State of Oregon, near Malin, Oregon, thereby integrating PG&E's transmission and storage systems into the interstate pipeline grid and bringing them under FERC regulation, all as more fully set forth in the application, which is on file with the Commission and open to 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).

Applicants state that currently:

- PG&E is an integrated utility providing retail electric and natural gas service to millions of customers in California. As part of its utility operations, PG&E owns and operates an extensive intrastate natural gas transmission system in northern California which is regulated by the Public Utilities Commission of the State of California (CPUC) pursuant to the Hinshaw exemption to the Natural Gas Act. PG&E recently filed a voluntary petition for bankruptcy on April 6.
- Stanpac owns a Hinshaw pipeline (the Stanpac Assets) in California which is operated by PG&E pursuant to a March 28, 1996 Stanpac System Management and Operating Agreement (Stanpac System Agreement).
- GTN is an interstate pipeline extending from the U.S.-Canada border, through the states of Idaho, Washington and Oregon, to the California-Oregon border where it currently interconnects with PG&E's natural gas transmission system.
- GTrans is a newly created entity formed for the purpose of owning and operating an interstate natural gas pipeline system that will result from the integration of PG&E's gas transmission system with an interstate pipeline segment to be acquired from GTN.

The Applicants seek approval for PG&E's reorganization into an interstate pipeline as part of its plan to emerge from bankruptcy. As such, the Applicants indicate that their requests for Commission action and their acceptance of the requested authorizations are conditioned upon bankruptcy court approval. They further submit that formation of the new interstate pipeline system will, among other things: (i) create a new market center at Malin, Oregon, where GTN, Tuscarora Gas Transmission Company (Tuscarora) and GTrans will interconnect at a single point, (ii) standardize the terms and conditions for transportation of natural gas in northern California with the interstate pipeline grid, and (iii) facilitate future pipeline expansions within and outside the State of California.

Applicants propose a limited transition period during which GTrans will offer service under rates, terms and conditions that are virtually identical to PG&E's existing CPUC-approved rates, terms and conditions, including the rates, terms and conditions for open-access transportation and storage approved by the CPUC in the Gas Accord settlement. Applicants propose that the transition period end on the date that FERC accepts a section 4 filing to be made by GTrans no later than 14 months after GTrans accepts its requested certificate. In that section 4 filing, GTrans will propose to amend its open-access tariff to comply with all Commission regulations and policies applicable to open-access pipelines. Subject to certain priority rights for service to the reorganized PG&E and certain existing customers of PG&E under pre-existing, CPUC-authorized long-term contracts, GTrans proposes to hold an open season to award capacity to be taken under the rates, terms and conditions in the section 4 filing.

Specifically, the Applicants request that the Commission take the following actions:

- Issue a certificate of public convenience and necessity authorizing PG&E to acquire from GTN a segment of existing pipeline approximately three miles in length beginning at the existing interconnection between GTN and PG&E's transmission system, extending

north across the California-Oregon border and ending at the interconnection between GTN and Tuscarora near Malin, Oregon (the Oregon Segment) and to integrate it with PG&E's existing gas transmission system (the result of this combination being the GTrans Assets);

• Issue a certificate of public convenience and necessity authorizing GTrans to acquire the GTrans Assets from PG&E;

• Issue a blanket certificate under part 284, subpart G of the Commission's regulations authorizing GTrans to operate the GTrans Assets and the Stanpac Assets as an integrated interstate pipeline system and to provide open-access interstate transportation and storage services to customers within and outside California, including service to the reorganized PG&E;

• Issue a certificate of public convenience and necessity under Part 157 of the Commission's regulations authorizing GTrans to assume and provide service under pre-existing, CPUC-authorized long-term PG&E transportation contracts with (i) Line 401 expansion shippers, (ii) expedited application docket (EAD) customers, (iii) enhanced oil recovery (EOR) customers; (iv) Crockett Cogeneration; and (v) the Sacramento Municipal Utility District (SMUD);

• Issue a blanket construction certificate to GTrans under 18 CFR part 157, subpart F;

• Issue a certificate of public convenience and necessity under part 157 of the Commission's regulations authorizing Stanpac to provide transportation service to Chevron and GTrans pursuant to the Stanpac System Agreement;

• Adopt and approve the rates, terms and conditions set forth in GTrans' proposed FERC Gas Tariff and the individual rate schedules attached in Exhibit P to the Application as initial rates, terms and conditions for GTrans service under section 7 of the NGA and grant such waivers as are necessary to permit GTrans to offer service under such rates, terms and conditions;

• Authorize GTN to abandon the Oregon Segment by sale to PG&E;

• Authorize PG&E to abandon the GTrans Assets by transfer to GTrans;

• Grant Stanpac a waiver of the filing and reporting obligations and the open-access requirements ordinarily imposed on natural gas companies;

• Grant Stanpac a waiver of the ''shipper-must-have-title'' rule to permit GTrans to use Stanpac capacity to transport gas owned by GTrans shippers on the Stanpac system under GTrans contracts and tariffs;

• Grant GTrans a limited waiver of the ''shipper-must-have-title'' rule to permit the reorganized PG&E, during the transition period, to use GTrans transportation capacity to transport customer-owned gas for the reorganized PG&E's noncore transportation customers;

• Rescind PG&E's existing limited-jurisdiction certificate under § 284.224 of the Commission's regulations;

• Rescind the declarations of exemption under the Hinshaw Amendment granted to Stanpac in Docket No. CP86–666–000 and to PG&E in Docket No. G–2489;

• Pregrant the abandonment of services under PG&E's existing Gas Accord transportation and storage contracts at the end of their contract terms and authorize GTrans to provide service under interim contracts for the remainder of the transition period, while reserving the capacity underlying such interim contracts for award in the open season; and

• Waive the requirement that Applicants accept their certificates within thirty days and grant such other waivers and other and further relief as may be proper and appropriate.

Any questions regarding this application may be directed to Donald K. Dankner, attorney for the Applicants, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005, at (202) 371–5700, fax (202) 371–5950, or E-mail: *ddankner@winston.com.*

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 January 29, 2002 file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

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.

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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31062 Filed 12–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1962–038]

Pacific Gas & Electric Company; Notice Rejecting Request for Rehearing

December 12, 2001.

By order issued October 24, 2001, the Commission issued an order approving the settlement agreement and the issuing a new license for Rock Creek-Cresta Hydroelectric Project 1962, located on the North Fork Feather River Watershed in Plumas and Butte Counties, California. 97 FERC ¶ 61,084. On November 27, 2001, the Baiocchi Family filed a request for rehearing of that order.

Under section 313(a) of the Federal Power Act, 16 USC 825l(a), an aggrieved party must file a request for rehearing within thirty days after the issuance of the Commission's order, in this case no later than November 23, 2001. Because the 30-day rehearing deadline is statutorily based, it cannot be extended, and the Baiocchi family's request for rehearing must be rejected as untimely.

This notice constitutes final agency action. Requests for rehearing by the Commission of this rejection notice must be filed within 30 days of the date of issuance of this notice, pursuant to 18 CFR 385.713.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31121 Filed 12–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–513–010]

Questar Pipeline Co.; Notice of Negotiated Rate

December 11, 2001.

Take notice that on December 3, 2001, Questar Pipeline Company's (Questar) filed a tariff filing to implement a negotiated-rate contract as authorized by Commission orders issued October 27, 1999, and December 14, 1999, in Docket Nos. RP99–513, *et al.* The Commission approved Questar's request to implement a negotiated-rate option for Rate Schedules T–1, NNT, T–2, PKS, FSS and ISS shippers. Questar submitted its negotiated-rate filing in accordance with the Commission's Policy Statement in Docket Nos. RM95–6–000 and RM96–7–000 (Policy Statement) issued January 31, 1996.

Questar requested waiver of 18 CFR 154.207 so that Eleventh Revised Sheet No. 7 to First Revised Volume No. 1 of its FERC Gas Tariff may become effective December 1, 2001.

Questar states that a copy of this filing has been served upon Questar's customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or § 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31076 Filed 12–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–065]

Tennessee Gas Pipeline Co.; Notice of Negotiated Rate

December 11, 2001.

Take notice that on December 4, 2001, Tennessee Gas Pipeline Company (Tennessee) tendered for filing a notice of change in the rates for the October 18, 2001 Negotiated Rate Agreement between Tennessee and NJR Energy Services which was accepted by the Commission in *Tennessee Gas Pipeline Company,* 97 FERC ¶ 61,248 (2001). As agreed to in the November 30 Order, Tennessee states that it is providing notice of substitution of a fixed price effective December 1, 2001.

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 § 385.214 or § 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31072 Filed 12–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–136–017]

Williams Gas Pipelines Central, Inc.; Notice of Refund Report

December 11, 2001.

Take notice that on December 5, 2001, Williams Gas Pipelines Central, Inc. (Williams) tendered for filing its interruptible excess refund report for the twelve-month period ended September 2001.

Williams states that it will mail refunds inclusive of interest pursuant to Section 154.501 of the Commission's regulations, within 10 days following a final Commission order accepting the refund report.

Williams states that a copy of its filing was served on all participants listed on the service list maintained by the Commission in the docket referenced above and on all of Williams' jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's rules and regulations. All such protests must be filed on or before December 18, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31071 Filed 12–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–43–000, et al.]

UAE Mecklenburg Cogeneration LP, et al.; Electric Rate and Corporate Regulation Filings

December 11, 2001.

Take notice that the following filings have been made with the Commission:

1. UAE Mecklenburg Cogeneration LP

[Docket No. EG02–43–000]

Take notice that on December 4, 2001, UAE Mecklenburg Cogeneration LP (Mecklenburg) 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.

Mecklenburg is a Delaware limited partnership and a wholly-owned subsidiary of United American Energy Corp. Mecklenburg's facility, currently a Qualifying Facility under PURPA, is a 132 MW topping-cycle cogeneration plant consisting of two coal-fired power generation units.

Mecklenburg states that copies of the application were served upon the Securities and Exchange Commission and the Virginia State Corporation Commission.

Comment date: January 2, 2002, 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. Midwest Independent Transmission System Operator, Inc.

[Docket Nos. ER01–123–005, ER01–786–001, ER01–966–003, ER99–3144–016 and EC99–80–016]

Take notice that on December 4, 2001, the Midwest Independent Transmission System Operator, Inc. (the Midwest ISO) tendered for filing revised pages to its Open Access Transmission Tariff (OATT), FERC Electric Tariff, Original Volume No. 1, which reflect that Schedule 13 (Super-Regional Rate Adjustment Charge) has been suspended, effective December 5, 2001, until such time as the Alliance RTO implements its OATT and the benefits of the non-pancaked Super Regional Rate methodology are available to Transmission Customers. The Midwest ISO submits that the suspension of its Schedule 13 effective date will result in the Midwest ISO charging customers for zonal rates that will only include the rates from Schedules 7, 8, and 9.

The Midwest ISO also seeks waiver of the Commission's regulations, 18 CFR 385.2010 (2000) with respect to service on all parties on the official service list in this proceeding. The Midwest ISO has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's website at *www.midwestiso.org* under the heading ''FERC Filings'' for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment date: December 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Pacific Gas and Electric Company and ETrans LLC

[Docket No. ER02–455–000]

Take notice that on November 30, 2001, ETrans LLC (ETrans) and Pacific Gas and Electric Company as the reorganized debtor (Reorganized PG&E) (together Applicants) submitted for filing the following unexecuted agreements: (i) A Back-to-back Agreement between ETrans and Reorganized PG&E, (ii) a Transmission Availability Agreement for Offsite Power Supply between ETrans and Electric Generation, LLC (Gen.), (iii) an Interconnection Agreement between ETrans Reorganized PG&E load serving facilities, (iv) an Interconnection Agreement between ETrans and Gen providing for the interconnection between ETrans and Gen's generation facilities, (v) an Interconnection Agreement between ETrans and Reorganized PG&E retained generation facilities, and (vi) an Interconnection Agreement between Reorganized PG&E and Gen providing for the interconnection between Reorganized PG&E distribution facilities and Gen's generation facilities (collectively, the Agreements). Applicants state that the Agreements have been established as part of the plan of reorganization filed by Pacific Gas and Electric Company under Chapter 11 of the United States bankruptcy Code.

ETrans and Reorganized PG&E state that they are serving a copy of their filing on each of the wholesale customers that are currently a party of an existing contract with PG&E, as well as on the California Public Utilities Commission.

Comment date: January 29, 2002, in accordance with Standard Paragraph E at the end of this notice.

4. Entergy Louisiana, Inc., Entergy Gulf States, Inc., Entergy Mississippi, Inc.

[Docket No. ER02–457–000]

Take notice that on November 29, 2001, Entergy Services, Inc., on behalf of Entergy Louisiana, Inc., Entergy Gulf States, Inc., and Entergy Mississippi, Inc., tendered revised agreements in compliance with the requirements of Order No. 614.

Comment date: December 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. PacifiCorp

[Docket No. ER02–458–000]

Take notice that PacifiCorp on November 30, 2001, tendered for filing in accordance with 18 CFR part 35 of the Commission's rules and regulations, Replacement Service Agreements for Long-term Firm Transmission Service with IDACORP Energy LP (IDACORP) under PacifiCorp's FERC Electric Tariff, Third Revised Volume No. 11 (Tariff).

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: December 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Duke Energy Corporation

[Docket No.ER02–459–000]

Take notice that on December 3, 2001, Duke Energy Corporation (Duke) tendered for filing a Service Agreement with Exelon Power Team for Firm Transmission Service under Duke's Open Access Transmission Tariff. Duke requests that the proposed Service Agreement be permitted to become effective on January 1, 2002. Duke states that this filing is in accordance with part 35 of the Commission's regulations, 18 CFR part 35, and that a copy has been served on the North Carolina Utilities Commission.

Comment date: December 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Southern Company Services, Inc.

[Docket No. ER02–460–000]

Take notice that on December 3, 2001, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively Southern Companies), filed Revision No. 3 to the Agreement for Network

Integration Transmission Service for Alabama Electric Cooperative, Inc. under Southern Companies Open Access Transmission Tariff to Add Delivery Points. Revision No. 3 provides that transmission service under the referenced service agreement (Service Agreement No. 225 under Southern Companies' Open Access Transmission Tariff (FERC Electric Tariff Original Volume No. 5)) is to be provided at two (2) new delivery points. Additionally, Revision No. 3 specifies the Direct Assignment Facility Charges for these additional delivery points.

Comment date: December 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Duke Energy Corporation

[Docket No.ER02–461–000]

Take notice that on December 3, 2001, Duke Energy Corporation (Duke) tendered for filing a Service Agreement with Duke Power for Firm Transmission Service under Duke's Open Access Transmission Tariff. Duke requests that the proposed Service Agreement be permitted to become effective on January 1, 2002. Duke states that this filing is in accordance with part 35 of the Commission's Regulations, 18 CFR part 35, and that a copy has been served on the North Carolina Utilities Commission.

Comment date: December 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. American Electric Power Service Corporation

[Docket No. ER02–462–000]

Take notice that on December 3, 2001, American Electric Power Service (AEPSC) tendered for filing pursuant to § 35.15 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.15 (2000), a Notice of Cancellation of Service Agreement No. 302 between AEPSC as agent for Indiana Michigan Power Company and Duke Energy DeSoto, LLC under American Electric Power Operating Companies' Open Access Transmission Tariff (OATT).

AEPSC requests an effective date of February 2, 2002 for the cancellation. AEPSC serviced copies of the filing upon Duke Energy DeSoto, LLC c/o Duke Energy North America, LLC.

Comment date: December 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. Commonwealth Edison Company

[Docket No. ER02–463–000]

Take notice that on December 3, 2001 Commonwealth Edison Company (ComEd) submitted for filing an unexecuted Service Agreement for Network Integration Transmission Service (NSA) and a Network Operating Agreement (NOA) between ComEd and Central Illinois Light Company (CILCO). These agreements govern ComEd's provision of network service to serve retail load under the terms of ComEd's Open Access Transmission Tariff (OATT). Copies of this filing were served on CILCO.

ComEd requests an effective date of November 4, 2001, and accordingly seeks waiver of the Commission's notice requirements.

Comment date: December 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. Duke Energy Corporation

[Docket No.ER02–464–000]

Take notice that on December 3, 2001, Duke Energy Corporation (Duke) tendered for filing a Service Agreement with Duke Power for Firm Transmission Service under Duke's Open Access Transmission Tariff. Duke requests that the proposed Service Agreement be permitted to become effective on January 1, 2002. Duke states that this filing is in accordance with part 35 of the Commission's regulations, 18 CFR part 35, and that a copy has been served on the North Carolina Utilities Commission.

Comment date: December 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Elwood Marketing, LLC

[Docket No. ER02–465–000]

Take notice that on December 3, 2001, Elwood Marketing, LLC (Elwood) tendered for filing with the Federal Energy Regulatory Commission (Commission), a Notice of Cancellation of its Market-Based Rate Schedule, Rate Schedule FERC No. 1. Elwood requests an effective date of December 4, 2001.

Comment date: December 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. New England Power Company

[Docket No. ER02–466–000]

Take notice that on December 3, 2001, New England Power Company (NEP) tendered for filing a Third Revised Service Agreement No. 23 between NEP and The Narragansett Electric Company (Narragansett) under NEP's FERC Electric Tariff, Original Volume No. 1. Service Agreement No. 23 has been revised to reflect the fact that, commencing on December 1, 2001, Narragansett will procure all of its requirements for wholesale standard offer service from other suppliers, and NEP will cease its supply of this service under Service Agreement No. 23. Narragansett will continue to take service under Service Agreement No. 23 for other purposes.

Comment date: December 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. American Transmission Company LLC

[Docket No. ER02–467–000]

Take notice that on December 3, 2001, American Transmission Company (ATCLLC) tendered for filing with the Federal Energy Regulatory Commission (Commission) an executed Interconnection Agreement between itself and Commonwealth Edison Company. The Interconnection Agreement describes the general terms and conditions of interconnected operation between the parties.

ATCLLC requests an effective date coincident with its filing and waiver of the Commission's notice requirements in order to allow for economic transactions as they appear. Copies of the filing have been served on Commonwealth Edison Company, the Illinois Commerce Commission, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: December 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER02–468–000]

Take notice that on December 3, 2001, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an unexecuted unilateral Service Sales Agreement between Companies and EnergyUSA–TPC Corp. under the Companies' Rate Schedule MBSS.

Comment date: December 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. Wisconsin Power & Light Company

[Docket No. ER02–469–000]

Take notice that on December 4, 2001, Wisconsin Power & Light Company (WPL) tendered for filing with the Federal Energy Regulatory Commission (Commission) new rates to be charged under its wholesale electric tariffs W–3A, PR–1, W–4A and DLM–1 to reflect the current cost of service incurred by WPL and its subsidiary South Beloit Water, Gas and Electric Company.

WPL has asked that the new rates become effective on April 22, 2002. In addition WPL requests cancellation of

its bundled wholesale electric tariffs W–1, W–3 and W–4.

A copy of the filing has been served upon the Illinois Commerce Commission, the Public Service Commission of Wisconsin and the WPL wholesale electric customers affected by this filing.

Comment date: December 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

17. Entergy Services, Inc.

[Docket No. ER02–470–000]

Take notice that on December 4, 2001, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement and a Short-Term Firm Point-To-Point Transmission Service Agreement both between Entergy Services, Inc., as agent for the Entergy Operating Companies, and Shortleaf Energy Associates, LLC.

Comment date: December 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

18. PJM Interconnection, L.L.C. and Rockland Electric Company

[Docket No. ER02–471–000]

Take notice that on November 30, 2001, PJM Interconnection, L.L.C. (PJM), and Rockland Electric Company (Rockland) submitted for filing a proposed change to the PJM Open Access Transmission Tariff for the purpose of stating a charge by Rockland for Scheduling, System Control and Dispatch Service under Schedule 1A of the PJM Tariff.

Copies of this filing were served upon all PJM members and each state electric utility regulatory commission in the PJM control area.

Comment date: December 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31058 Filed 12–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2103–002 Washington]

Cominco American Inc.; Notice of Availability of Environmental Assessment

December 11, 2001.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for subsequent license for the Cedar Creek Project, located on Cedar Creek in Stevens County, Washington, and has prepared an Environmental Assessment (EA) for the project. 2.058 acres of federal lands, managed by the Department of the Interior's Bureau of Land Management, are affected by this project.

The EA contains the staff's analysis of the potential environmental impacts of issuing a subsequent license for the project and concludes that the issuance of a subsequent license as proposed by Cominco American Inc. would not constitute a major federal action that would significantly affect the quality of the human environment.

The EA is attached to a Commission order issued on December 7, 2001, for the above application. Copies of the EA can be obtained by calling the Commission's Public Reference Room at (202) 208–1371. Copies of the EA can also be obtained through the Commission's homepage at *http://www.ferc.gov.*

For further information, contact Kenneth Hogan at (202) 208–0434.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31083 Filed 12–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No.1864–005]

Upper Peninsula Power Company; Notice of Availability of Draft Environmental Impact Statement

December 11, 2001.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (FERC or Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects staff has reviewed the applications for new license for the Bond Falls Project, and has prepared a draft Environmental Impact Statement (EIS) for the project. In the draft EIS, the Commission's staff has analyzed the potential environmental impacts of the existing projects and has recommended that approval of the projects, with appropriate environmental protection measures, would be in the public interest.

Copies of the draft EIS are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, NE, Washington, DC 20426.

Any comments should be filed within 60 days from the date of this notice and should be addressed to Linwood A. Watson, Jr., Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20246. Please affix ''Bond Falls Project No. 1864–005,'' as appropriate, to all comments. For further information, please contact Patrick Murphy at (202) 219–2659.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31086 Filed 12–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–24–000]

PG&E Gas Transmission, Northwest Corp.; Notice of Intent to Prepare an Environmental Assessment for the Proposed 2003 Expansion Pipeline Project and Request for Comments on Environmental Issues

December 11, 2001.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the PG&E Gas Transmission, Northwest Corporation's (PG&E Transmission) 2003 Expansion Project in Oregon, Washington, and Idaho.[1] These facilities would consist of about 54 miles of pipeline and 19,500 horsepower (hp) of compression. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner on PG&E Transmission's proposed route and receive this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice Western Frontier provided to landowners along and adjacent to the proposed route. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet web site (*www.ferc.gov*).

This notice is being sent to landowners of property crossed by and adjacent to PG&E Transmission's proposed route; Federal, state, and local agencies; elected officials; environmental and public interest groups; and local libraries and newspapers. Additionally, with this notice we are asking those Federal, state, local and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated the proposal relative to their agencies' responsibilities. Agencies who would like to request cooperating agency status should follow the instructions for filing comments described below.

Summary of the Proposed Project

PG&E Transmission proposes to expand the capacity of its existing mainline system by constructing a total of 53.6 miles of new natural gas pipeline loop[2] (42-inch-diameter) and to upgrade compression at its existing Compressor Station 14. PG&E Transmission requests Commission authorization, to construct, install, own, operate, and maintain the following facilities:

- About 18.4 miles of 42-inch-diameter loop in Boundary County, Idaho, including modifications to Compressor Station 3 and Mainline Valve (MLV) 3–1 (Segment 3);
- About 16.7 miles of 42-inch-diameter loop in Spokane and Whitman Counties, Washington, including modifications to Compressor Station 6 and MLV 6–1 (Segment 6);
- About 12.7 miles of 42-inch-diameter loop in Walla Walla County, Washington, including modifications to Compressor Station 7 and MLV 7–1 (Segment 7);
- About 5.8 miles of 42-inch-diameter loop in Umatilla County, Oregon, include modifications to MLV 8–1 and MLV 8–2;
- One new 19,500 horsepower (hp) gas turbine-driven compressor to be installed at PG&E Transmission's existing Compressor Station 14 in Klamath County, Oregon; and
- Associated pipeline facilities, including four pig launchers, four pig receivers, and 5 mainline block valves.

The general location of PG&E Transmission's proposed project facilities is shown on the map attached as appendix 1.[3]

Land Requirements for Construction

PG&E Transmission would construct a total of about 54 miles of new pipeline loop, of which about 18 miles would be in Idaho, 30 miles would be in Washington, and 6 miles would be in Oregon. Construction of the loop would require about 860 acres of land. Of this total, about 849.4 acres would be temporary right-of-way and about 10.5 acres would be maintained as new permanent right-of-way. PG&E Transmission would also require the use of about 157.9 acres of extra workspace for its ancillary areas, aboveground facility expansions, and access roads.

PG&E Transmission's existing permanent right-of-way for its mainline system on private lands is 100 feet wide, containing the two parallel existing pipelines, Pipelines A and B. The proposed loop (Pipeline C) would generally be constructed 30 feet east of Pipeline B, using the existing 100-foot-wide permanent right-of-way as the construction right-of-way. PG&E Transmission states that no new permanent right-of-way would be acquired for construction of the proposed Pipeline C, except for some properties. After construction, the existing 100-foot-wide permanent right-of-way would be retained, and would typically result in a permanent right-of-way 90 feet west and 10 feet east of the Proposed Pipeline C.

In some site-specific locations, PG&E Transmission would install the new loop 20 feet east of Pipeline B, instead of 30 feet. This decrease in separation between Pipeline C and B would occur in areas with residences or other structures in close proximity to the eastern permanent right-of-way boundary. By moving the proposed pipeline closer to Pipeline B, PG&E Transmission would increase the distance between Pipeline C and the edge of the right-of-way. This alignment would also be installed entirely within PG&E Transmission's 100-foot-wide permanent right-of-way.

On federal lands, PG&E Transmission would obtain another Right-of-way Grant from the U.S. Forest Service (USFS) for an additional overlapping 53.5 -foot easement and would install the new Pipeline C with a nominal 30-foot separation from Pipeline B. For this project, the total width of permanent right-of-way, including the existing and new easements, would be a maximum of 110 feet in width. On federal lands, except for extra workspace for slopes and at road, railroad, stream, and

[1] PG&E Gas Transmission, Northwest Corporation's application in Docket No. CP02–24–000 was filed with the Commission under Section 7(c) of the Natural Gas Act.

[2] A loop is a segment of pipeline installed adjacent to an existing pipeline and connected to it at both ends. The loop allows more gas to be moved through the system.

[3] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the ''RIMS'' link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE, Room 2A, Washington DC 20426, or call (202) 208–1371. For instructions on connecting to RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

wetland crossings, no temporary right-of-way would be used as part of the construction right-of-way.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [4] to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

Our independent analysis of the issues will be published in the EA which will be mailed to Federal, state, and local agencies, public interest groups, affected landowners and other interested individuals, newspapers, libraries, and the Commission's official service list for this proceeding. A 30-day comment period will be allotted for review of and comment on the EA. We will consider all comments on the EA and it will be used by the Commission in its decision-making process to determine whether to approve the project.

Currently Identified Environmental Issues

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project. We have already identified a number of issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by PG&E Transmission. These issues are listed below. This is a preliminary list of issues and may be changed based on your comments and our analysis.

- Geology and Soils

—Mixing of topsoil and subsoil during construction.
—Compaction of soil by heavy equipment.
—Erosion control and right-of-way restoration.
—Potential geologic hazards, including seismic activity.

- Water Resources and Wetlands

—Potential effects on groundwater resources.
—Effects on private water supply wells.
—Effects on 20 perennial waterbodies, including six crossings of the Moyie River.
—Effects on about 2.6 acres of wetlands.

- Biological Resources

—Short- and long-term effects of right-of-way clearing and maintenance on grasslands, wetlands, riparian areas, and vegetation communities of special concern.
—Effects on wildlife and species of concern, including raptors;
—Effects on fishery habitats, including four federally listed fish species;
—Potential effects on federally listed species, such as the gray wolf, grizzly bear, Sellkirk Mountains Woodland Caribou, Ute ladies' tresses and habitats for the bald eagle, gray wolf and lynx in Idaho; and water howellia and Ute ladie' tresses in Washington.
—Potential impact on USFS sensitive species.
—Potential impact on state-listed sensitive species.

- Cultural Resources

—Effects on historic and prehistoric sites.
—Native American concerns.

- Land Use

—Effects on agricultural lands.
—Potential impacts on residential areas.
—Effects on recreation areas.
—Effects of about 3.9 miles of crossing USFS, Panhandle National Forest lands (Segment 3).
—Potential impacts on future land uses and consistency with local land use plans and zoning.
—Visual/aesthetic effects of constructing the project.

- Air Quality and Noise

—Construction impacts on local air quality and noise environment.
—Impact on local air quality and noise environment as a result of operation of the upgraded compressor stations.

- Pipeline Reliability and Safety

—Assessment of public safety factors associated with natural gas pipelines.

- Alternatives

—Assessment of alternative routes, systems or energy sources to lessen or avoid impacts on the various resource areas.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Linwood A. Watson, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of the Environmental Gas Branch I, PJ–11.1;
- Reference Docket Nos. CP02–24–000;
- Mail your comments so that they will be received in Washington, DC on or before January 11, 2002.

Federal and state agencies, such as the U.S. Forest Service and the U.S. Army Corps of Engineers, are invited to participate as cooperating agencies in the preparation of the EA. If any agency is interested in participating with the Commission on this basis, please write to the Secretary with this request at the address listed above.

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 at *http://www.ferc.gov* under the ''e-Filing'' link and link to the User's Guide. Before you can file comments you will need to create an account which can be created by clicking on ''Login to File'' and then ''New User Account.''

Everyone who responds to this notice or comments throughout the EA process will be retained on our mailing list. If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (appendix 3). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an ''intervenor.'' Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to

[4] ''We'', ''us'', ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to rule 214 of the Commission's rules of practice and procedure (18 CFR 385.214) (see appendix 2).[5] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding that would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Availability of Additional Information

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).

Similarly, the ''CIPS'' link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the ''CIPS'' link, select ''Docket ι'' from the CIPS Menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31061 Filed 12–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission Soliciting Additional Study Requests and Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

December 11, 2001.

a. *Type of Application:* New Major License.

b. *Project No.:* P–401–027.

c. *Date Filed:* September 14, 2001.

d. *Applicant:* Indiana Michigan Power Company.

e. *Name of Project:* Mottville Hydroelectric Project.

f. *Location:* On the St. Joseph River, in Mottville Township, St. Joseph County, Michigan. The project does not affect Federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* J.F. Norris, Jr., American Electric Power Service Corporation, 1 Riverside Plaza, Columbus, OH 43215, (614) 223–1700, or *jfnorris@aep.com.*

i. *FERC Contact:* Lee Emery (202) 219–2778 or *lee.emery@FERC.fed.us.*

j. *Deadline for filing additional study requests:* January 31, 2002.

All documents (original and eight copies) should be filed with: Linwood A. Watson, Jr., Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Additional study requests may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-filing'' link.

The Commission's Rules of Practice require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. Description of Project: The existing Mottville Project consists of: (1) Two 17-foot high earth-filled embankments extending towards the center of the river from both riverbanks, (i) a west embankment that is 140 feet long and has a crest width of 15 feet and extends to the powerhouse, (ii) an east embankment that is 365 feet long and has a crest width of 8 feet and extends from the east riverbank to the spillway; (2) a 237-foot long, reinforced concrete spillway with 10 steel Taintor gates along the crest of the spillway, which are separated by 2.5-foot wide piers between Bays 1 and 2 and 3 and 4 and 1.5-foot-wide piers between the remaining Bays, (i) Taintor gates are 22 feet wide and 13 feet high in Bays 1 and 2 and 22 feet wide and 7.5 feet high in Bays 3 through 10; (3) a combined powerhouse-intake structure, made of brick and concrete, that is 118 feet long, 28 feet wide, and 25 feet long; (4) 4 vertical shaft, single runner, propeller type generating units with an installed generating capacity of 420 kW each; (5) a 14.5-foot-long, 28-foot-wide, and 25-foot-long switchboard bay attached to the west end of the powerhouse; (6) a 50 horsepower, 460-volt, 3-phase air bubbler system; (7) a 15-ton overhead traveling crane; (8) a 20-foot-wide stilling basin extending across the length of the spillway; (9) a 12-inch thick, reinforced concrete spillway apron; (10) an inoperable 4-foot-wide by 150-foot-long concrete fishway with a slope of about 25 percent; (11) sets of angled steel intake trashracks that are 3-feet 2-inches wide by 14-feet-high with 3/8-inch steel bars with 4-inch spacing between the bars; (12) a five-mile-long, 378-acre reservoir with a gross storage capacity of 2,900-acre-feet at the normal operating pool surface elevation of 770.4 NGVD; (13) a three phase, 2.4/34.5 kV transformer; and (14) other appurtenant facilities. The applicant estimates that the total average annual generation would be 7,800 MWh. All generated power is sold to Indiana Michigan Power Company's customers.

m. With this notice, we are initiating consultation with the *MICHIGAN STATE HISTORIC PRESERVATION OFFICER (SHPO)*, as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36, C.F.R., at 800.4.

n. A copy of the application is on file with the Commission and is 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). A copy is also available for inspection and reproduction at the address in item h above.

o. Pursuant to § 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than the date set in paragraph j of this notice and serve a copy of the request on the applicant.

p. Procedural schedule and final amendments: The application will be processed according to the following milestones, some of which may be combined to expedite processing:

Notice of application has been accepted for filing

Notice of NEPA Scoping

Notice of application is ready for environmental analysis

Final amendments to the application must be filed with the Commission*

[5] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

Notice of the availability of the draft NEPA document
Notice of the availability of the final NEPA document
Order issuing the Commission's decision on the application

* Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 01–31085 Filed 12–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

December 11, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12123–000 .

c. *Date filed:* September 17, 2001.

d. *Applicant:* Quantum Energy Solutions.

e. *Name and Location of Project:* The Columbia River Jetty Project would be located on the Columbia River in Clatsop County, Oregon, near the towns of Astoria, Oregon and Ilwaco, Washington. The proposed project would be located on the Columbia River Jetty which is federally-owned and maintained by the U.S. Army Corps of Engineers.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant contact:* Mr. Tibor Hegedus, 11917 37th Drive SE, Everett, WA 98028, (425) 337–3823, Fax (425) 357–9943.

h. *FERC Contact:* Tom Papsidero, (202) 219–2715.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Linwood A. Watson Jr., Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. 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.

Please include the project number (P–12123–000) on any comments or motions filed. The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project would use the existing Columbia River Jetty and include: (1) Two proposed concrete modules, each containing a wave energy capture chamber and a 0.5 MW turbine-generator, with a total installed capacity of 1.0 MW, (2) a proposed 2.0-mile-long, 75 kv transmission line, and (3) appurtenant facilities. The project would have an average annual generation of 4 GWh.

k. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (202–208–222 for assistance). A copy is also available for inspection and reproduction at the address in item g above.

l. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned

address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31087 Filed 12–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application and Applicant-Prepared EA Accepted for Filing, Soliciting Motions To Intervene and Protests, and Soliciting Comments, and Final Terms and Conditions, Recommendations, and Prescriptions

December 11, 2001.

Take notice that the following hydroelectric application and applicant-prepared environmental assessment has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Minor License.

b. *Project No.:* 11659–002.

c. *Date filed:* October 23, 2001.

d. *Applicant:* Gustavus Electric Company (GEC).

e. *Name of Project:* Falls Creek Hydroelectic Project .

f. *Location:* On Falls Creek (also known as the Kahtaheena River), in southeastern Alaska near the town of Gustavus. The project would be located on lands currently located within the boundary of Glacier Bay National Park and administered by the National Park Service. The Glacier Bay National Park Boundary Adjustment Act of 1998 (Act) provides that if a license is issued to Gustavus Electric Company for the project, the minimum amount of Glacier Bay National Park land necessary to construct and operate the hydroelectric project would be transferred, as part of a land exchange, to the State of Alaska. The Act also authorizes the submittal of a license application for this project to the Federal Energy Regulatory Commission.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r) and Glacier Bay National Park Boundary Adjustment Act of 1998 (Pub. L. 105–317, 112 Stat. 3002).

h. *Applicant Contact:* Richard Levitt, Gustavus Electric Company, PO Box 102, Gustavus, Alaska 99826; (907) 697–2299.

i. *FERC Contact:* Bob Easton, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426; (202) 219–2782, e-mail: *robert.easton@ferc.fed.us.*

j. *Deadline for filing motions to intervene and protests, comments, and final terms and conditions, recommendations, and prescriptions:* 60 days from the issuance of this notice.

All documents (original and eight copies) should be filed with: Linwood A. Watson, Jr., Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's rules of practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene, protests, comments, terms and conditions, recommendations, and prescriptions 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 (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted for filing.

l. The Falls Creek Hydroelectric Project would consist of: (1) An approximately 70-foot-long and 10-foot-high dam; (2) a 0.5-acre reservoir having no storage capacity at elevation 665 feet mean sea level; (3) a powerhouse containing one generating unit for a total installed capacity of 800 kilowatts; (4) 5 miles of buried transmission line; and (5) appurtenant facilities. The project is estimated to generate an average of 4.8 million kilowatthours annually. The dam and project facilities would be owned by the applicant.

m. A copy of the application is on file with the Commission and is 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). A copy is also available for inspection and reproduction at the address in item h above.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application and APEA be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this

proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31088 Filed 12–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File an Application for a New License

December 12, 2001.

a. *Type of Filing:* Notice of Intent to File An Application for a New License.

b. *Project No.:* 7321.

c. *Date Filed:* November 20, 2001.

d. *Submitted By:* Erie Boulevard Hydro, L.P.—current licensee.

e. *Name of Project:* Macomb Hydroelectric Project

f. *Location:* On the Salmon River near the town of Malone, in Franklin County, New York. The project does not occupy federal lands.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act.

h. *Licensee Contact:* Jerry L. Sabattis, Erie Boulevard Hydropower, L.P., 225 Greenfield Parkway, Suite 201, Liverpool, NY 13088 (315) 413–2787.

i. *FERC Contact:* Jarry Kosa, jarrad.kosa@ferc.fed.us, (202) 219–2831.

j. *Effective date of current license:* December 1, 1956.

k. *Expiration date of current license:* November 30, 2006.

l. *Description of the Project:* The project consists of the following existing facilities: (1) A 77-foot-long, 32-foot-high concrete dam; (2) two 38-foot-long, 25-foot-high intake structures; (3) two 6-foot-diameter, 60-foot-long steel gated waste tubes; (4) a reservoir (Lamica Lake) having a surface area of 14 acres at a spillway crest elevation of 570.7 feet msl; (5) a 6.5-foot-diameter, 60-foot-long pipeline; (6) a powerhouse containing a generating unit having an installed capacity of 1,000 kW; (7) a tailrace; (8) a 370-foot-long, 34.5-kV transmission line; and (9) other appurtenances.

m. Each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by November 30, 2004.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31123 Filed 12–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

December 12, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12124–000.

c. *Date filed:* September 17, 2001.

d. *Applicant:* Quantum Energy Solutions.

e. *Name of Project:* Tillamook River Jetty Project.

f. *Location:* On the Pacific Ocean and Tillamook River, in Tillamook County, Orgeon. The project would utilize the existing Tillamook River Jetty administered by U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Tibor Hegedus, Quantum Energy Solutions, 11917 37th Drive SE, Everett, WA 98208, (425) 337–3823.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Linwood A. Watson, Jr., Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC. 20426. Comments, motions to intervene, and protests may be electronically filed via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov/efi/doorbell.htm.* Please include the project number (P–12124–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project utilizing the existing U.S Army Corps of Engineer's Tillamook River Jetty and would consist of: (1) A proposed powerhouse containing two wave generating units having a total installed capacity of 1 MW, (2) a proposed 2-mile-long, 75 kV Transmission line, and (3) appurtenant facilities.

The project would have an annual generation of 4 GWh that would be sold to a local utility.

l. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions ((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.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 01–31124 Filed 12–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

December 12, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12125–000.

c. *Date filed:* September 18, 2001.

d. *Applicant:* Quantum Energy Solutions.

e. *Name of Project:* Grays Harbor Project.

f. *Location:* On the Pacific Ocean and Grays Harbor, in Grays County, Washington. The project would utilize the existing Gray Harbor, Washington Jetty administered by U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Mr. Tibor Hegedus, Quantum Energy Solutions, 11917 37th Drive SE, Everett, WA 98208, (425) 337–3823.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Linwood A. Watson, Jr., Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, motions to intervene, and protests may be electronically filed via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov/efi/doorbell.htm.* Please include the project number (P–12125–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project utilizing the existing U.S. Army Corps of Engineer's Gray Harbor, Washington Jetty and would consist of: (1) a proposed powerhouse containing two wave generating units having a total installed capacity of 1 MW, (2) a proposed 2-mile-long, 75 kV Transmission line, and (3) appurtenant facilities.

The project would have an annual generation of 4 GWh that would be sold to a local utility.

l. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions ((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.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to

submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 01–31125 Filed 12–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

December 12, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12126–000.

c. *Date filed:* September 18, 2001.

d. *Applicant:* Quantum Energy Solutions.

e. *Name of Project:* Newport, Oregon Jetty Project

f. *Location:* On the Pacific Ocean and Yaquina River, in Lincoln County, Oregon. The project would utilize the existing Newport, Oregon Jetty administered by U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Mr. Tibor Hegedus, Quantum Energy Solutions, 11917 37th Drive SE., Everett, WA 98208, (425) 337–3823.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Linwood A. Watson, Jr., Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, motions to intervene, and protests may be electronically filed via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov/efi/doorbell.htm.* Please include the project number (P–12126–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project utilizing the existing U.S. Army Corps of Engineer's Newport, Oregon Jetty and would consist of: (1) A proposed powerhouse containing two wave generating units having a total installed capacity of 1 MW, (2) a proposed 2-mile-long, 75 kV Transmission line, and (3) appurtenant facilities.

The project would have an annual generation of 4 GWh that would be sold to a local utility.

l. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions ((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.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 01–31126 Filed 12–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD02–6–000]

Conference on Energy Infrastructure; Notice of Conference

December 11, 2001.

The Federal Energy Regulatory Commission (FERC) will hold a conference on energy infrastructure issues in the northeastern states on Thursday, January 31, 2002 at the Helmsley Park Lane Hotel, 36 Central Park South, New York City, New York.

The conference will discuss the adequacy of the electric, gas and hydropower infrastructure in the Northeast, and related matters. The Governors of the northeastern states have been invited to participate. The goal is to identify present infrastructure needs, investment and other barriers to expansion, and environmental and landowner concerns. We look forward to an informative discussion of the issues to clarify how we can facilitate and enhance a comprehensive collaborative approach to energy infrastructure development and reliability for the northeastern states. It is our firm belief that an adequate, well-functioning energy infrastructure is a keystone of workable, competitive energy markets.

The one-day meeting will begin at 9 a.m. and conclude at 4 p.m. All interested parties are invited to attend. Hotel rooms have been blocked at the Helmsley Park Lane under the name of the Federal Energy Regulatory Commission for any attending guests to reserve a one- or two-night stay but will be released by January 9, 2002 (212–371–4000).

We will issue further details on the conference, including the agenda and a list of participants, as plans evolve. For additional information, please contact Carol Connors at 202–208–0870 or *carol.connors@ferc.fed.us.*

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31060 Filed 12–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2634]

Great Northern Paper, Inc.; Notice of Final Restricted Service List for Comments on a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

December 11, 2001.

On September 24, 2001, the Federal Energy Regulatory Commission (Commission) issued a notice for the Storage Project (FERC No. 2634–007) proposing to establish a restricted service list for the purpose of developing and executing a Programmatic Agreement (PA) for managing properties included in or eligible for inclusion in the National Register of Historic Places. On November 21, 2001, the Commission issued a notice modifying the restricted service list for the purpose of revising the participates. The Storage project is located in Piscataquis and Somerset Counties in Maine. Great Northern Paper, Inc. is the licensee.

Rule 2010 of the Commission's Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.[1] The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established. The following change to the existing restricted service list is noted.

Add ''Donald Soctomah, Passamaquoddy Tribe, PO Box 301, Princeton, Maine 04668''.

As a result of these changes, the final restricted service list for purposes of commenting on the PA, for Project No. P–2634 is as follows:

Dr. Laura Henley Dean,Advisory Council on Historic Preservation,The Old Post Office

[1] 18 CFR 385.2010.

Building, Suite 803,1100 Pennsylvania Avenue, NW.,Washington, DC 20004.

Earle G. Shettleworth, Jr.,State Historic Preservation Officer,Maine Historic Preservation Commission, 55 Capitol Street, 65 State House Station, Augusta, Maine 04333.

Brian R. Stetson, Manager of Environmental Affairs, Great Northern Paper, Inc., Engineering and Research Building, 1 Katahdin Ave.,Millinocket, Maine 04462–1373.

Gregory W. Sample, Drummond Woodsum & MacMahon, 245 Commercial Street, PO Box 9781, Portland, Maine 04104–5081.

Land and Water Associates, 9 Union Street,Hallowell, Maine 04347.

M. Kirstin Rohrer, Office of the Solicitor, MS–6456, 1849 C St., NW., Washington, DC 20240.

Judith M. Stolfo, Office of the Regional Solicitor, One Gateway Center, Suite 612, Newton, Massachusetts 02458–02802.

Barry Dana, Chief, Penobscot Indian Nation, River Road; Indian Island, Old Town, Maine 04468.

Franklin Keel, Bureau of Indian Affairs, Eastern Regional Office, 711 Stewarts Ferry Pike, Nashville, Tennessee 37214.

Donald Soctomah, Passamaquoddy Tribe, PO Box 301, Princeton, Maine 04668.

Kevin R. Mendik, National Park Service, Northeast Field Area, 15 State Street, Boston, Massachusetts 02109.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31084 Filed 12–17–01; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7119–3]

Office of Environmental Justice Small Grants Program—Application Guidance FY 2002

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: The Environmental Protection Agency published a document in the **Federal Register** of November 5, 2001, concerning application guidance for environmental justice small grants. The document contained incorrect dates.

FOR FURTHER INFORMATION CONTACT: Sheila Lewis, Senior Program Analyst, EPA Office of Environmental Justice, (202) 564–0152.

Correction

In the **Federal Register** of November 5, 2001, in FR Doc. 01–27591, beginning on page 55986, make the following corrections:

The date ''February 21, 2002'' is corrected to read ''February 22, 2002 in the following places: page 55986, in the first column, in the second paragraph identified as **DATES**; page 55988, second column, in the last paragraph, in the second sentence and third column, in the first line; and page 55989, second column, third paragraph.

Dated: December 12, 2001.

Sheila Lewis,

Small Grants Program Manager.

[FR Doc. 01–31177 Filed 12–17–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7119–4]

Database of Sources of Environmental Releases of Dioxin-Like Compounds in the United States: Reference Years 1987 and 1995

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of a final product.

SUMMARY: The National Center for Environmental Assessment within the Office of Research and Development, U. S. Environmental Protection Agency, announces the availability of the final *Database of Sources of Environmental Releases of Dioxin-Like Compounds in the United States: Reference Years 1987 and 1995* (EPA/600/C–01/012, March 2001) and *Users Manual* (EPA/600/R–01/012, March 2001). The database is an electronic repository of congener-specific chlorinated dibenzo-p-dioxin and chlorinated dibenzofuran (CDD/CDF) emissions and environmental release data from all known sources in the United States. The database contains information that can be analyzed to track emissions and releases of CDD/CDF over time, compare congener-specific profiles between and among source categories, and develop source-specific emission factors that can then be used to estimate emissions. The information contained in the current version of the database is associated with two reference years: 1995 and 1987.

The structure of the database and the flow of information into and out of the database are described in the Users Manual. The database was created using Microsoft'' Excel 97 (hereafter, Excel) in the manner of linked ''workbooks.'' Certain calculations and manipulations of data performed in Excel may be lost if the database is converted to another software; therefore, any recalculations for the data in the database should be performed using Excel. The Excel workbooks should be compatible with the Macintosh'' version of Excel. Because the database and Users Manual are stored on a CD–ROM, a CD player is required for use.

ADDRESSES: The database is available electronically through the National Center for Environmental Assessment website at the following URL: *http://www.epa.gov/ncea.* Copies of the database are also available without cost from EPA's National Service Center for Environmental Publications (NSCEP) in Cincinnati, Ohio (telephone: 1–800–490–9198, or 513–489–8190; facsimile 513–489–8695). When requesting a copy of the CD–ROM, please provide your name, mailing address, and the document number (EPA/600/C–01/012). No paper copies will be made available.

FOR FURTHER INFORMATION CONTACT: David Cleverly, National Center for Environmental Assessment-Washington Office (8623D), U.S. Environmental Protection Agency, Washington DC 20460 by email (*cleverly.david@epa.gov*) or telephone(202–564–3238).

SUPPLEMENTARY INFORMATION: CDD/CDF emissions data were extracted from original engineering test reports of the results of sampling the stacks, wastewater discharges, and other emission streams at specific facilities and sources. The database was designed to accommodate facility-based emissions, mobile source emissions, and area source emissions. Test reports from various state agencies, trade associations, EPA program offices, and EPA regulatory dockets were consolidated and assimilated into the database. Most of the emissions data in Version 3.0 of the database concern releases to the air because few data are currently available on releases to other media.

EPA intends to periodically update the Database of Sources of Environmental Releases of Dioxin-Like Compounds in the United States: Reference Years 1987 and 1995 to reflect changes in emissions of dioxin-like compounds that may be associated with regulatory activity, advances in pollution control, abatement, and source-specific technologies. The next update to the database is scheduled for the fall of 2002, and will represent emissions of dioxin-like compounds in the United States for reference year

2000. Please consult the database website (above) for status and availability of this update.

Dated: December 5, 2001.

George W. Alapas,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 01–31175 Filed 12–17–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7118–9]

Proposed Agreement and Covenant Not To Sue Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act of 1986; In Re: Gardner and Hubbardston Superfund Site, Gardner, Massachusetts

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed agreement; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9601, *et seq.,* notice is hereby given of a proposed Agreement and Covenant Not to Sue between the United States, on behalf of the U.S. Environmental Protection Agency (''EPA'') and The Gardner Little League, Inc. (''Purchaser''). The Purchaser plans to acquire approximately 10 acres of property that is currently owned by Mr. Ronald Kirwood. The Purchaser intends to use the property to construct a youth baseball facility. Under the Proposed Agreement, the United States grants a Covenant Not to Sue to the Purchaser with respect to existing contamination at the Site in exchange for the Purchaser's agreement to pay EPA $12,000. In addition, the Purchaser agrees to provide an irrevocable right of access to representatives of EPA.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at One Congress Street, Boston, MA 02214.

DATES: Comments must be submitted on or before January 17, 2002.

ADDRESSES: Comments should be addressed to Michelle Lauterback, Enforcement Counsel, U.S. Environmental Protection Agency, Regional I, One Congress Street, Suite 1100, Mail code SES, Boston, Massachusetts 02203, and should refer to: In re: Gardner and Hubbardston Superfund Site, U.S. EPA Docket No. CERCLA–01–2001–0076.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed Agreement and Covenant Not to Sue can be obtained from Sharon Fennelly, Enforcement Coordinator, U.S. Environmental Protection Agency, Region I, One Congress Street, Mailcode HBR, Boston, Massachusetts 02214, (617) 918–1263.

Dated: November 7, 2001.

Robert V. Varney,

Regional Administrator, Region I.

[FR Doc. 01–31180 Filed 12–17–01; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7119–5]

Notice of Final NPDES General Permit; Final NPDES General Permit for New and Existing Sources and New Dischargers in the Offshore Subcategory of the Oil and Gas Extraction Category for the Western Portion of the Outer Continental Shelf of the Gulf of Mexico (GMG290000)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA Region 6 today issues a modification of the National Pollutant Discharge Elimination System (NPDES) general permit for the Western Portion of the Outer Continental Shelf of the Gulf of Mexico (No. GMG290000) for discharges from new sources, existing sources, and new dischargers in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (40 CFR part 435, subpart A). The modified permit will become effective February 19, 2002. The existing permit published in the **Federal Register**, at 64 FR 19156 on April 19, 1999, authorizes discharges from exploration, development, and production facilities located in and discharging to Federal waters of the Gulf of Mexico seaward of the outer boundary of the territorial seas offshore of Louisiana and Texas. Today's action adds the authorization to discharge of drill cuttings generated using synthetic and other non-aqueous based drilling fluids and hydrostatic test water form pressure testing of existing pipelines.

A copy of the Region's responses to comments and the final permit may be obtained from the EPA Region 6 internet site: *http://www.epa.gov/earth1r6/6wq/6wq.htm.*

FOR FURTHER INFORMATION CONTACT: Ms. Diane Smith, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone: (214) 665 7191, or via EMAIL to the following address: *smith.diane@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Entities potentially regulated by this action are those which operate offshore oil and gas extraction facilities located in the Outer Continental Shelf Offshore of Louisiana and Texas.

Category	Examples of regulated entities
Industry	Offshore Oil and Gas Extraction Platforms.

This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your (facility, company, business, organization, etc.) is regulated by this action, you should carefully examine the applicability criteria in Part I. Section A.1. of the general permit. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Pursuant to section 402 of the Clean Water Act (CWA), 33 U.S.C. 1342, EPA proposed and solicited comments on NPDES general permit GMG290000 at 63 FR 2238 (January 14, 1998). Notice of this proposed permit modification was also published in the New Orleans Times Picayune and the Lafayette Daily Advisor on June 9, 2001. The comment period closed on August 6, 2001.

Region 6 received comments from the Offshore Operators Committee, M–I LLC, Baroid Drilling Fluids, Petro-Canada, and B.P. Chemicals.

EPA Region 6 has considered all comments received. In response to those comments, protocol were included in the final permit for the new test methods for sediment toxicity and biodegradation. A statistical tool was also included in the final permit to account for variability in those new test methods. Several clarifications were also made in the permit's language.

The permit modification includes limits and monitoring requirements for six new parameters. Monitoring for those parameters and implementation of

the required test methods have not previously been required for offshore oil and gas discharges. Industry is therefore expected to need some time to get the necessary equipment in place and train personnel prior to beginning the monitoring. The effective date of the permit is being delayed by thirty days to accommodate those needs.

EPA also expects that many operators will not be able to comply with several of the permit's new limits on the effective date. Operators may be unable to get new equipment in place to meet the new limits for retention of drilling fluid on drill cuttings. There may be an insufficient stock of synthetic base fluids which comply with the new limits. Also, time will be needed to complete the 275 day biodegradation test and to develop sufficient laboratory capacity and stocks of organisms to conduct the sediment toxicity test. For those reasons administrative compliance orders are being issued requiring those discharges not in compliance with the new limitations to comply within six months.

The industry has requested an additional delay in the compliance requirements for the 4-day sediment toxicity limit until February 1, 2003. There are several complicating factors that will initially make compliance with the limit more difficult than with the stock base fluid sediment toxicity limit. Since the 4-day sediment toxicity test is used to measure toxicity of discharged drilling fluids, not just stock base fluids, components and additives to the drilling fluids will initially make compliance with the limits more difficult. The four day test has been shown to have more inherent variability than the ten day test. Also, demand on laboratories conducting the four day test will be much greater than for the ten day test; thus, there is more of a need to build laboratory capacity and develop an adequate supply of test organisms. The administrative compliance order will therefore require operators to comply with the 4-day sediment toxicity limit by February 1, 2003.

Sam Becker,

Acting Director, Water Quality Protection Division, Region 6.

[FR Doc. 01–31176 Filed 12–17–01; 8:45 am]

BILLING CODE 6560–50–P

OFFICE OF NATIONAL DRUG CONTROL POLICY

Meeting of the Drug Control Research, Data, and Evaluation Committee

AGENCY: Office of National Drug Control Policy.

ACTION: Notice of meeting.

SUMMARY: ONDCP will convene a meeting of the Drug Control Research, Data, and Evaluation Advisory Committee on January 17–18, 2002, at the White House Conference Center located at 726 Jackson Place, NW., Washington, DC. The meeting will begin promptly each day at 9 am and adjourn at 4 pm. The agenda will include general discussion and briefs on national drug use indicators and other federal drug control initiatives including, but not limited to the following: (1) Interagency Oxycontin Work Group Progress Report on an Early Warning System for Pharmaceutical Diversion Abuse; (2) a Redesign Proposal for the Drug Abuse Warning Network (DAWN); (3) ONDCP's Anti-Drug Media Campaign Evaluation; (4) 2001 National Household Survey on Drug Abuse State Estimates of Treatment Need and Drug Use Prevalence; (5) The RAMONA Project (Random Access Monitoring of Narcotics Addicts); (6) HHS's Report on Closing the Drug Abuse Treatment Gap: A Report to the President of the U.S.; (7) Updates on Drug Free Communities Grant Program; and (8) Activities related to: prevention, families, schools, and workplaces. There will be an opportunity for public comment from 11:30 am to 12 Noon on Thursday, January 17, 2002.

DATES: January 17–18, 2002, 9 am to 4:00 pm. Opportunity for public comment from 11:30 am to 12:00 noon on Thursday, January 17, 2002.

ADDRESSES: White House Conference Center, 726 Jackson Place, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Linda V. Priebe, Assistant General Counsel, Office of National Drug Control Policy, Washington, DC (202) 395–6622.

Dated: December 11, 2001.

Linda V. Priebe,

Assistant General Counsel.

[FR Doc. 01–31055 Filed 12–17–01; 8:45 am]

BILLING CODE 3180–02–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45; DA 01–2841]

Common Carrier Bureau Seeks Comment on Pine Belt Cellular and Pine Belt PCS Petition for Designation as an Eligible Telecommunications Carrier in Alabama

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: In a Public Notice in this proceeding released on December 7, 2001, the Common Carrier Bureau sought comment on the Pine Belt Cellular and Pine Belt PCS Petition for Designation as an Eligible Telecommunications Carrier in Alabama, including the requested service area.

DATES: Comments are due on or before January 17, 2002. Reply comments are due on or before February 1, 2002.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for where and how to file comments.

FOR FURTHER INFORMATION CONTACT: Richard D. Smith or Anita Cheng, Attorney, or Sheryl Todd, Management Analyst, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400 TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: On November 26, 2001, Pine Belt Cellular and Pine Belt PCS (Pine Belt) filed with the Commission a petition under section 214(e)(6) seeking designation as an eligible telecommunications carrier (ETC) to receive federal universal service support for service offered in Alabama. Specifically, Pine Belt contends that the Alabama Public Service Commission has provided an affirmative statement that it lacks jurisdiction to consider Pine Belt's petition, Pine Belt meets all the statutory and regulatory prerequisites for ETC designation, and designating Pine Belt as an ETC will serve the public interest. The Common Carrier Bureau seeks comment on the Pine Belt Petition, including the requested service area.

The petitioner must provide copies of its petition to the Alabama Public Service Commission at the time of filing with the Commission. The Commission will also send a copy of this Notice to the Alabama Public Service Commission by overnight express mail to ensure that the Alabama Public Service Commission is notified of the notice and comment period.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments as follows: comments are due January 17, 2002, and reply comments are due February 1, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24,121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to <*http://www.fcc.gov/e-file/ecfs.html*>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit electronic comments by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

Parties also must send three paper copies of their filing to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street SW., Room 5–B540, Washington, DC 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 Twelfth Street SW., Room CY–B402, Washington, DC 20554.

Pursuant to § 1.1206 of the Commission's rules, this proceeding will be conducted as a permit-but-disclose proceeding in which *ex parte* communications are permitted subject to disclosure.

Federal Communications Commission.

Katherine L. Schroder,

Division Chief, Accounting Policy Division.

[FR Doc. 01–31029 Filed 12–17–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 1:00 p.m. on Thursday, December 20, 2001, to consider the following matters:

Discussion Agenda

Memorandum and resolution re: 2002 FDIC Budget.

Memorandum and resolution re: Revised Policy Statement Regarding Minority-Owned Depository Institutions.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 7th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2089 (Voice); (202) 416–2007 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: December 13, 2001.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 01–31197 Filed 12–13–01; 4:35 pm]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1399–DR]

Alabama; 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 Alabama (FEMA–1399–DR), dated December 7, 2001, and related determinations.

EFFECTIVE DATE: December 7, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal EmergencyManagement Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 7, 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 Alabama, resulting from severe storms and tornadoes on November 24–25, 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 Alabama.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance 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 Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Public Assistance is later warranted Federal funds provided would be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Charles M. Butler 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 Alabama to have been affected adversely by this declared major disaster: Autauga, Blount, Butler, Calhoun, Cherokee, Clay, Dale, DeKalb, Etowah, Fayette, Jefferson, Lamar, Lawrence, Madison, Marion, Marshall, St. Clair, Talladega and Winston Counties for Individual Assistance.

All counties within the State of Alabama 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. 01–31037 Filed 12–17–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1397–DR]

Guam; 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 Territory of Guam (FEMA–1397–DR), dated December 5, 2001, and related determinations.

EFFECTIVE DATE: December 5, 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 December 5, 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 Territory of Guam, resulting from an earthquake on October 13, 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 Territory of Guam.

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 and Hazard Mitigation in the Territory of Guam, 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 Louis Botta of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the Territory of Guam to have been affected adversely by this declared major disaster:

The Territory of Guam for Public Assistance.

The Territory of Guam is 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. 01–31035 Filed 12–17–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1398–DR]

Mississippi; 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 Mississippi (FEMA–1398–DR), dated December 7, 2001, and related determinations.

EFFECTIVE DATE: December 7, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal EmergencyManagement Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 7, 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 Mississippi, resulting from severe storms, tornadoes and flooding on November 24, 2001, and continuing, 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 Mississippi.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance 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 Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Public Assistance is later warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Gracia Szczech of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Mississippi to have been affected adversely by this declared major disaster: Bolivar, DeSoto, Hinds, Humphreys, Madison, Panola, Quitman, Sunflower, Tate and Washington Counties for Individual Assistance.

All counties within the State of Mississippi 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. 01–31036 Filed 12–17–01; 8:45 am]

BILLING CODE 6718–02–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.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 11, 2002.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. First Charter Corporation, Charlotte, North Carolina; to acquire 5.32 percent of the voting shares of Catawba Valley Bancshares, Inc., Hickory, North Carolina, and thereby indirectly acquire Catawba Valley Bank, Hickory, North Carolina..

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. TCSB Bancorp, Inc., Traverse City, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Traverse City State Bank, Traverse City, Michigan.

Board of Governors of the Federal Reserve System.

Dated: December 12, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–31056 Filed 12–17–01; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10 a.m., Wednesday, December 19, 2001.

The business of the Board requires that this meeting be held with less than one week's advance notice to the public and no earlier announcement of the meeting was practicable.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda: Because of their routine nature, no discussion of the following items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that the items be moved to the discussion agenda.

1. Proposed 2002 Federal Reserve Bank budgets.
2. Proposed 2002—2003 Federal Reserve Board budget.
3. Proposed 2002—2003 Office of Inspector General's budget.

Note: This meeting will be recorded for the benefit of those unable to attend.

Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $6 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

Contact Person for More Information: Michelle A. Smith, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 for a recorded announcement of this meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: December 14, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–31220 Filed 12–14–01; 11:07 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–07–02]

Agency Forms Undergoing Paperwork Reduction Act Review; Correction

A notice announcing a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The State and Local Area Integrated Telephone Survey (SLAITS) was published in the **Federal Register** on November 27, 2001, (66 FR 59254). This notice is corrected as follows:

On page 59254, in the first column, the last paragraph, the OMB number should be changed from 0920–0416 to 0920–0406.

All other information and requirements of the November 27, 2001, notice remain the same.

Dated: December 11, 2001.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 01–31103 Filed 12–17–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Oncologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Oncologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on January 31, 2002, from 8:30 a.m. to 3:30 p.m.

Location: CDER Advisory Committee conference room 1066, 5630 Fishers Lane, Rockville, MD.

Contact: Karen M. Templeton-Somers, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane,

Rockville, MD 20857, 301–827–7001, e-mail: SomersK@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12542. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss supplemental new drug application (NDA) 21–386, ZOMETA (zoledronic acid for injection), Novartis Pharmaceuticals Corp., indicated for the treatment of bone metastases in patients with multiple myeloma, breast cancer, prostate cancer and other solid tumors.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by January 24, 2002. Oral presentations from the public will be scheduled between approximately 8:45 a.m. and 9:45 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before January 24, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation. After the scientific presentations, a 30-minute open public session may be conducted for interested persons who have submitted their request to speak by January 24, 2002, to address issues specific to the topic before the committee.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 10, 2001.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 01–31025 Filed 12–17–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01D–0503]

Draft Compliance Policy Guide: ''Filth from Insects, Rodents, and Other Pests in Food;'' Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft compliance policy guide (CPG) currently entitled ''Filth from Insects, Rodents, and Other Pests in Food.'' The purpose of this draft CPG is to revise, clarify, and redefine existing guidance on the interpretation of filth in foods within the context of current science. The draft CPG will provide written guidance to FDA components as well as to the industry.

DATES: Submit written or electronic comments on this draft CPG by February 19, 2002.

ADDRESSES: Submit written requests for single copies of the draft CPG ''Filth from Insects, Rodents, and Other Pests in Food'' to the Director, Division of Compliance Policy (HFC–230), Office of Enforcement, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist that office in processing your request, or FAX your request to 301–827–0482. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the document.

Submit written comments on the draft CPG 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:

Technical Questions Concerning Filth in Foods: Alan R. Olsen, Microanalytical Branch (HFS–315), Office of Plant, Dairy Foods, and Beverages, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4438, FAX 202–205–4091.

Questions Concerning Regulatory Actions: MaryLynn Datoc, Division of Compliance Policy (HFC–230), Office of Enforcement, Office of Regulatory Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0413, FAX 301–827–0482.

SUPPLEMENTARY INFORMATION:

I. Background

FDA has developed a draft CPG to revise, clarify, and redefine existing guidance on foods that contain filth from insects, rodents, and other pests to reflect recent advances in science. The purpose of this draft CPG is to provide clear policy to FDA's field and headquarters staff with regard to filth from insects, rodents, and other pests in foods. It also contains information that may be useful to the regulated industry and to the public.

The draft CPG, when finalized, will supersede the current CPG and represents the agency's current thinking on the subject. 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 an approach satisfies the requirements of applicable statutes or regulations.

This level 1 guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115).

II. Comments

Interested persons may submit to the Dockets Management Branch (address above) written or electronic comments on the draft CPG entitled ''Filth from Insects, Rodents, and Other Pests in Food.'' Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. A copy of the draft CPG and received comments may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Copies of the draft CPG may also be downloaded to a personal computer with access to the Internet. The Office of Regulatory Affairs home page includes the draft CPG and may be accessed at http://www.fda.gov/ora under ''Compliance References.''

Dated: December 11, 2001.

Dennis E. Baker,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 01–31024 Filed 12–17–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Neurotrophic Components of the ADNF I Complex

Brenneman et al. (NICHD)
DHHS Reference No. E–209–01/0 filed 12 Sep 2001
Licensing Contact: Jonathan Dixon; 301/496–7056 ext. 270; *dixonj@od.nih.gov*

Neuronal cell death has been associated with a variety of diseases and conditions, including Alzheimer's, AIDS-related dementia, Huntington's disease, and Parkinson's disease to name a few. Neuronal cell death has also been associated with developmental retardation and learning impairments that have lifelong effects on individuals diagnosed with these conditions.

This invention discloses new Activity Dependent Neurotrophic Factor I (ADNF I) complex polypeptides. Previously, Activity Dependent Neurotrophic Factor (ADNF) polypeptides have been shown to prevent neuronal cell death. ADNF polypeptides are secreted by astroglial cells in the presence of vasoactive intestinal peptide (VIP). These new ADNF I complex polypeptides are effective for reducing neuronal cell death, for reducing oxidative stress, for reducing condition(s) associated with fetal alcohol syndrome in a subject, for enhancing learning and memory, both pre- and post-natally, and for other conditions.

With these additional ADNF I complex polypeptides it will be easier to target specific receptors in different cell types and to individually tailor drug treatment regimes to those afflicted with neurodegenerative disorders.

Utilization of FPRL1 as a Functional Receptor by Serum Amyloid A (SAA)

Ji Ming Wang et al. (NCI)
DHHS Reference No. E–167–99/0 filed 22 Sep 1999 (PCT/US99/21770, WO 01/21188)
Licensing Contact: Marlene Shinn; 301/496–7056 ext. 285; *shinnm@od.nih.gov*

This technology identifies a means for modulating the interaction of Serum Amyloid A (SAA) with its functional receptor FPRL1. This modulation may have therapeutic applications in treating diseases such as infections, organ rejection, rheumatoid arthritis, atherosclerosis, neoplasms, and amyloidosis. The SAA, an acute phase protein, is normally present in serum but increases by 1,000 fold in systemic inflammatory conditions and is associated with leukocyte migration in these disease states. This technology identifies various means to modulate the association of SAA and FPRL1 in a SAA–FPRL1 complex or method of identifying agents that associate with the complex. It is available for immediate licensing and research collaborations via a Cooperative Research and Development Agreement (CRADA).

Dated: December 10, 2001.

Jack Spiegel,

Director, Division of Technology, Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 01–31048 Filed 12–17–01; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary and Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel NCCAM SEP ZAT1 K–02.

Date: January 4, 2002.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 2 Democracy Plaza, 6707 Democracy Boulevard, Conference Room 701, Bethesda, MD 20892.

Contact Person: William A. Kachadorian, PhD., Scientific Review Administrator, Office of Scientific Review, National Center for Complementary and Alternative Medicine, 6707 Democracy Blvd, Ste 106, Bethesda, MD 20892–5475, (301) 594–2014, *kachadow@mail.nih.gov.*

Dated: December 10, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–31047 Filed 12–17–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental and Craniofacial Research; 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: NIDCR Special Grants Review Committee, Review of R03, F32, K02, K08, K22, K23, K24 Grants.

Date: February 21–22, 2002.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Marriott Pooks Hill, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Yujing Liu, PHD, MD, Scientific Review Administrator, National Institute of Dental and Craniofacial Res., 45 Center Drive, Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: December 7, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–31043 Filed 12–17–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel.

Date: January 7, 2002.

Time: 3 PM to 4:30 PM.

Agenda: To review and evaluate grant applications.

Place: 2 Democracy Plaza, 6707 Democracy Boulevard, Room 754, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lakshmanan Sankaran, PHD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 754, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7799.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel.

Date: January 8, 2002.

Time: 8 PM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Courtyard By Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22203,

Contact Person: Neal A. Musto, PHD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 750, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7798, *muston@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: December 10, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–31044 Filed 12–17–01; 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 pubic 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 a patentable material, and personal information concerning individuals associated with the grant application, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 12, 2001.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Alexander D. Politis, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, (301) 435–1225, *politisacsr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 17, 2001.

Time: 1 p.m. to 2 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.

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 Specific Emphasis Panel.

Date: December 19, 2001.

Time: 9:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call)

Contact of Person: Angela M. Pattatucci-Aragon, PhD, Scientific Review Administrator, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, (301) 435–1775.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 19, 2001.

Time: 1 p.m. to 2 p.m.

Agenda: To review an evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Angela M. Pattatucci-Aragon, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, (301) 435–1775.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institute of Health, HHS)

Dated: December 10, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–31045 Filed 12–18–01; 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 552(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: January 4, 2002.
Time: 3 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call)
Contact Person: Paul K. Strudler, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4100, MSC 7804, Bethesda, MD 20892, (301) 435–1716.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: January 7, 2002.
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: Robert Weller, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3160, MSC 7770, Bethesda, MD 20892, (301) 435–0694.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: January 9, 2002.
Time: 3 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call)
Contact Person: Paul K. Strudler, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4100, MSC 7804, Bethesda, MD 20892, (301) 435–1716.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: January 10, 2002.
Time: 9 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Sherry L. Dupere, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5136, MSC 7840, Bethesda, MD 20892, (301) 435–1021, *duperes@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: January 14, 2002.
Time: 2:00 PM to 3:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call)
Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: January 17–18, 2002.
Time: 8:00 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.
Contact Person: Daniel McPherson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7854, Bethesda, MD 20892, (301) 435–1175, *mcphersod@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: January 20–22, 2002.
Time: 7:00 PM to 12:00 PM.
Agenda: To review and evaluate grant applications.
Place: W. Los Angeles Westwood, 930 Hilgard Avenue, Los Angeles, CA 90024–3033.
Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 10, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–31046 Filed 12–17–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project

Title: Emergency Response Grants Regulations—42 CFR part 51—(OMB No. 0930–0229, Extension)—This rule implements section 501(m) of the Public Health Service Act (42 U.S.C 290aa), which authorizes the Secretary to make noncompetitive grants, contracts or cooperative agreements to public entities to enable such entities to address emergency substance abuse or mental health needs in local communities. The rule establishes criteria for determining that a substance abuse or mental health emergency exists, the minimum content for an application, and reporting requirements for recipients of such funding.

SAMHSA will use the information in the applications to make a determination that the requisite need exists; that the mental health and/or substance abuse needs are a direct result of the precipitating event; that no other local, State, Tribal or Federal funding sources available to address the need; that there is an adequate plan of services; that the applicant has appropriate organizational capability; and, that the budget provides sufficient justification and is consistent with the documentation of need and the plan of services.

Eligible applicants may apply to the Secretary for either of two types of substance abuse and mental health emergency response grants: Immediate awards and Intermediate awards. The former are designed to be funded up to $50,000, or such greater amount as determined by the Secretary on a case-by-case basis, and are to be used over the initial 90-day period commencing as soon as possible after the precipitating event; the latter awards require more documentation, including a needs assessment, other data and related budgetary detail. The Intermediate awards have no predefined budget limit. Typically, Intermediate awards would be used to meet systemic mental health and/or substance abuse needs during the recovery period following the Immediate award period. Such awards may be used for up to one year, with a possible second year supplement based on submission of additional required information and data.

This program is an approved user of the PHS–5161 application form, approved by OMB under control number 0920–0428. The quarterly

financial status reports in 51d.10(a)(2) and (b)(2) are as permitted by 45 CFR 92.41(b); the final program report, financial status report and final voucher in 51d.10(a)(3) and in 51d.10(b)(3–4) are in accordance with 45 CFR 92.50(b). Information collection requirements of 45 CFR part 92 are approved by OMB under control number 0990–0169. The following table presents annual burden estimates for the information collection requirements of this regulation.

42 CFR citation	Number of respondents	Responses/ respondent	Burden/response (hrs.)	Total burden (hrs.)
Immediate award application:				
51d.4(a) and 51d.6(a)(2)	3	1	3	* (9)
Intermediate award application:				
51d.4(b) and 51d.6(a)(2)—Intermediate Awards	3	1	10	* (30)
51d.10(a)(1)—Immediate awards—mid-program report if applicable	3	1	2	* (6)
Final report content for both types of award:				
51d.10(c)	6	1	3	18
Total	6			18

* This burden is carried under OMB control number 0920–0428.

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: December 11, 2001.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 01–31110 Filed 12–17–01; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Decision and Availability of Decision Documents on the Issuance of Permits for Incidental Take of Threatened and Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of decision.

SUMMARY: Between February 17, 2001, and November 14, 2001, Region 1 of the Fish and Wildlife Service (Service) approved seven Habitat Conservation Plans (Plans) and issued seven associated permits and transferred three permits for the incidental take of threatened and endangered species pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The Service also issued two Safe Harbor Agreement permits pursuant to section 10(a)(1)(A) of the Act. Two applicants also withdrew their permit applications after their Plans had been noticed in the **Federal Register** for public comment. Copies of the permits and associated decision documents are available upon request. Charges for copying (10 cents per page), plus shipping and handling may apply.

ADDRESSES: If you would like copies of any of the above documents, please contact the Fish and Wildlife Reference Service, 5430 Grosvenor Lane, Suite 110, Bethesda, Maryland 20814; telephone (800) 582–3421.

FOR FURTHER INFORMATION CONTACT: Heather Hollis, Fish and Wildlife Biologist, Fish and Wildlife Service, Portland, Oregon; telephone (503) 231–6241.

SUPPLEMENTARY INFORMATION: Section 9 of the Act and Federal regulation prohibit the take of wildlife species listed as endangered or threatened, respectively. Under the Act, the term ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed wildlife, or to attempt to engage in any such conduct. The Service may, under limited circumstances, issue permits to authorize take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing permits for threatened and endangered species are found in 50 CFR 17.32 and 17.22.

Between February 17, 2001, and November 14, 2001, Region 1 of the Service issued the following permits for incidental take of threatened and endangered species, pursuant to section 10(a)(1)(B) and section 10(a)(1)(A) of the Act. We issued each permit after making the following determinations: the application had been submitted in good faith; all permit issuance criteria were met, including the requirement that granting the permit will not jeopardize the continued existence of listed species; and the permit was consistent with the Act and applicable regulations, including a thorough review of the environmental effects of the action and alternatives pursuant to the National Environmental Policy Act of 1969.

Copies of these permits, their accompanying Plans, and associated documents are available upon request. Decision documents for each permit include Findings and Recommendations; a Biological Opinion; and either a Finding of No Significant Impact, a Record of Decision, or an Environmental Action Statement. Associated documents may also include an Implementing Agreement, Assumption Agreement, Environmental Assessment, or Environmental Impact Statement, as applicable.

Approved plan/permit	Permit No.	Issuance date
Habitat Conservation Plans:		
John Lang Homes, Cantata—permit transfer	TE835424–0	03/22/01
San Joaquin Valley Multispecies	TE043280–0	05/31/01
Tacoma Water	TE044757–0	07/06/01
El Sobrante Landfill	TE040421–0	07/24/01
Reichel et al. Permit Transfers	TE046730–0	08/10/01
	TE046731–0	08/10/01
Keig Wildcat Line	TE040317–0	09/12/01
Boise Cascade Low-effect	TE028219–0	09/13/01

Approved plan/permit	Permit No.	Issuance date
Deer Canyon Park	TE035929–0	09/17/01
City of Highland Roadways Project	TE049462–0	10/29/01
Safe Harbor Agreements:		
Nene Reintroduction, Puu O Hoku Ranch	TE028990–0	08/22/01
Russell Pond, Oregon Chub	TE042953–0	09/24/01

In addition to issuing the above permits, the Service ceased processing two permit applications after the applicants withdrew their permit applications. Both International Paper and Crown Pacific withdrew their permit applications after both had developed draft HCPs that had been available for public review.

Dated: November 20, 2001.

Rowan Gould,

Deputy Regional Director, Fish and Wildlife Service, Region 1, Portland, Oregon.

[FR Doc. 01–31104 Filed 12–17–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–060–1990]

Notice of Intent To Prepare a Supplemental Environmental Impact Statement to Analyze the Proposed Modification to the Pipeline Plan of Operations for the Pipeline/South Pipeline Pit Expansion

AGENCY: Bureau of Land Management.

COOPERATING AGENCY: Nevada Division of Wildlife.

ACTION: Notice of intent to prepare a supplemental environmental impact statement to analyze the proposed modification to the Pipeline Plan of Operations for the Pipeline/South Pipeline Pit Expansion, Lander County, Nevada, and notice of scoping period.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA), 40 Code of Federal Regulations 1500–1508 Council on Environmental Quality Regulations, and 43 Code of Federal Regulations 3809, the Bureau of Land Management's Battle Mountain Field Office will be directing the preparation of a Supplemental Environmental Impact Statement (EIS) to analyze a proposed pit expansion. The EIS will be prepared by a third party contractor directed by the BLM. The project will involve public and private lands in Lander County, Nevada.

DATES: Written comments on the scope of the EIS must be post-marked or otherwise delivered by 4:30 p.m. on January 17, 2002.

ADDRESSES: Scoping comments should be sent to the Bureau of Land Management, Battle Mountain Field Office, Attention: Pam Jarnecke, 50 Bastian Road, Battle Mountain, Nevada 89820. Comments, including names and street addresses of respondents, will be available for public review at the Battle Mountain Field Office located in Battle Mountain, Nevada, during regular business hours, and may be published as part of the EIS. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Pam Jarnecke, Battle Mountain BLM, at (775) 635–4144.

SUPPLEMENTARY INFORMATION: The actions associated with the project would consist of the following:

- Expansion of the South Pipeline pit southwest into the Gap mineralized area.
- Expansion of the South Pipeline ore deposit southeast into the Crossroads mineralized area.
- Deepening of the Pipeline/South Pipeline open pit from the currently approved 4120-foot elevation (above mean sea level—amsl) to at least 3600-foot elevation amsl.
- Increasing the approved height of 250 feet for the Pipeline/South Pipeline waste rock dump to 400 feet.
- Increasing the mining rate from an average 150,000 tons per day (tpd) to an average 250,000 tpd, with a maximum of 400,000 tpd.
- Translocate waste rock as partial fill in the Pipeline/South Pipeline open pit, including portions of the expanded pit.

The life of the project under this modification would increase seven years over the time line outlined in the South Pipeline Final EIS (BLM 2000). No additional surface disturbance is proposed under this modification, and the expansion of the Pipeline/South Pipeline open pit was defined in this EIS as a Reasonably Foreseeable Action.

Gerald M. Smith,

Field Manager, Battle Mountain Field Office.

[FR Doc. 01–31185 Filed 12–17–01; 8:45 am]

BILLING CODE 4310–HC–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–288]

Ethyl Alcohol for Fuel Use: Determination of the Base Quantity of Imports

AGENCY: United States International Trade Commission.

ACTION: Notice of Determination.

SUMMARY: Section 7 of the Steel Trade Liberalization Program Implementation Act, as amended (19 U.S.C. 2703 note), which concerns local feedstock requirements for fuel ethyl alcohol imported by the United States from CBI-beneficiary countries, requires the Commission to determine annually the U.S. domestic market for fuel ethyl alcohol during the 12-month period ending on the preceding September 30. The domestic market determination made by the Commission is to be used to establish the ''base quantity'' of imports that can be imported with a zero percent local feedstock requirement. The base quantity to be used by the U.S. Customs Service in the administration of the law is the greater of 60 million gallons or 7 percent of U.S. consumption as determined by the Commission. Beyond the base quantity of imports, progressively higher local feedstock requirements are placed on imports of fuel ethyl alcohol and mixtures from the CBI-beneficiary countries.

For the 12-month period ending September 30, 2001, the Commission has determined the level of U.S. consumption of fuel ethyl alcohol to be 1.72 billion gallons. Seven percent of this amount is 120.3 million gallons (these figures have been rounded). Therefore, the base quantity for 2002 should be 120.3 million gallons.

FOR FURTHER INFORMATION CONTACT: Devry Boughner (202) 205–3313, *dboughner@usitc.gov,* in the Commission's Office of Industries. For information on legal aspects of the investigation contact Mr. William Gearhart, *wgearhart@usitc.gov,* of the Commission's Office of the General Counsel at (202) 205–3091.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810.

Background

For purposes of making determinations of the U.S. market for fuel ethyl alcohol as required by section 7 of the Act, the Commission instituted Investigation No. 332–288, Ethyl Alcohol for Fuel Use: Determination of the Base Quantity of Imports, in March 1990. The Commission uses official statistics of the U.S. Department of Energy to make these determinations as well as the PIERS database of the Journal of Commerce, which is based on U.S. export declarations.

Section 225 of the Customs and Trade Act of 1990 (Pub. L. 101–382, August 20, 1990) amended the original language set forth in the Steel Trade Liberalization Program Implementation Act of 1989. The amendment requires the Commission to make a determination of the U.S. domestic market for fuel ethyl alcohol for each year after 1989.

By order of the Commission.
Issued: December 12, 2001.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–31057 Filed 12–17–01; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of November, 2001.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicted that increased imports did not contribute importantly to worker separations at the firm.

TA–W–39,869; Cognis Corp/ Lock Haven, Castanea, PA
TA–W–39,979; Fort Atkinson Industries, Fort Atkinson, WI
TA–W–39,471; Besser Co., Alpena, MI
TA–W–39,880; Tuscarora Yarns, James C. Fry Plant, Kinston, NC
TA–W–39,724; L.E. Smith Glass Co., Mt. Pleasant, PA
TA–W–38,944; Crane Pumps and Systems, Piqua, OH
TA–W–39,882; JSJ Corp., Grand Haven South Plant, Grand Haven, MI
TA–W–39,312; Formtech Enterprises, Orwigsburg, PA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–39,579; Newell Window Furnishing, Inc./Kirsch, Waco, TX
TA–W–40,274; A.O. Smith Corp., Electrical Products Co., Owosso, MI
TA–W–39,950; Antec Network Plastics, a/k/a Arris, El Paso, TX
TA–W–40,121; Connelly North America, El Paso, TX
TA–W–40,052 & A; Emsar, Inc., Bridgeport, CT and Stratford, CT
TA–W–39,417; Innovex, Inc., Chandler, AZ
TA–W–39,414; Marshall and Williams Products, Inc., Providence, RI
TA–W–39,778; Coats North America, Thomasville, GA
TA–W–40,048; Three-Five Systems, Inc., Tempe, AZ
TA–W–39,849; Square D, Scheider Electric, Huntington, IN

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–39,382; Allied Vaughn, Clinton, TN
TA–W–39,693; Winkel Industries, Inc., Confield, OH

The investigation revealed that criteria (2) and (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increased imports did not contribute importantly to worker separations at the firm.

TA–W–39,878; Pennzoil/Quaker State Co., Shreveport Refinery, Shreveport, LA

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–39,954 & A; Pulp and Paper of America, Berlin, NH and Gorham, NH: August 21, 2000.
TA–W–40,046; Parker Hannifim Corp., Integrated Hydraulics Div., Lincolnshire, IL: August 31, 2000.
TA–W–39,619; Converse, Inc., Charlotte, NC: June 25, 2000.
TA–W–39,616; United States Ceramic Tile Co., East Sparta, OH: June 24, 2000.
TA–W–39,401; Industrial Seaming Co., Inc., Granite Falls, NC: June 14, 2000.
TA–W–38,974; Randy Industries, Inc., New York, NY: March 26, 2000.
TA–W–39,536; Georgia-Pacific Corp., West, Bellingham, WA: June 15, 2000.
TA–W–39,613; Dutton Manufacturing, Laconia, NH: June 27, 2000.
TA–W–40,264; Winona Knitting Mills, Div. of Hampshire Designers, Inc., Winona, MN: April 15, 2001.
TA–W–39,359; G.E. Marquette Medical, d/b/a Corometrics, Wallingford, CT: May 15, 2001.
TA–W–39,695; PEC of America Corp., Santee, CA: July 11, 2000.
TA–W–39,473; Boston Scientific Corp., Watertown, MA: June 7, 2000.
TA–W–40,092; MICTEC, Inc., Canonsburg, PA: September 7, 2000.
TA–W–39,986; Lexington Fabrics, Inc., Geraldine, AL: August 22, 2000.
TA–W–39,177; Wand Tool Co., Inc., Wheeling, IL: April 5, 2000.
TA–W–39,389; Precision Marshall Steel Co., Washington, PA: May 12, 2000.
TA–W–39,963 & A; Thomasville Furniture Industries, Inc., West

Jefferson Plant, West Jefferson, NC and Sawmills Plant, Hudson, NC: August 15, 2000.

TA–W–39,957 & A, B; Acushnet Rubber Co., Inc., Belleville Facility, New Bedford, MA, Riverside Facility, New Bedford, MA and Warehouse, New Bedford, MA: August 15, 2000.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for (NAFTA–TAA) issued during the month of November, 2001.

In order for an affirmative determination to be made and a certification of eligibility to apply for (NAFTA–TAA) the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number of proportion of the workers in the worker's firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation to the decline in sales or production of such firm or subdivision or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations (NAFTA–TAA)

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–04972; Besser Co., Alpena, MI

NAFTA–TAA–05382; Wilson Sporting Goods Co., Racquet Sports, Fountain Inn, SC

NAFTA–TAA–05445; Graphic Packaging Portland, OR

NAFTA–TAA–05289; JSJ Corp., Grand Haven South Plant, Grand Haven, MI

NAFTA–TAA–04793; Johnstown America Corp., Freight Car Div., Johnstown, PA

NAFTA–TAA–05257; J.T. Fennell Co., Inc., Chillicothe, IL

NAFTA–TAA–05249; Anvil International, Inc., Statesboro, GA

NAFTA–TAA–05210; Elastic Corporation of America, Inc., Hemingway, SC

NAFTA–TAA–05179; Pennzoil/Quaker State Co., Shreveport Refinery, Shreveport, LA

The workers firm does not produce an article as required for certification under section 250(a), Subchapter D, Chapter 2, Title II, of the trade Act of 1974, as amended.

NAFTA–TAA–04985; Winona, Inc., Nashville, IN

NAFTA–TAA–04942; Allied Vaughn, Clinton, TN

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–05380; Joplin Manufacturing, Orica USA, Inc., Joplin, MO: September 26, 2000.

NAFTA–TAA–05489; Arvin Meritor, Fayette, AL: October 19, 2000.

NAFTA–TAA–04788; J and L Speciality Steel, Inc., Midland, PA: April 14, 2000.

NAFTA–TAA–05313; Bolivar Tees, Bolivar, MO: September 4, 2000.

NAFTA–TAA–05167; Coats North America, Thomasville, GA: July 18, 2000.

NAFTA–TAA–05356; Eaton Corp., Torque Control Products Div., Marshall, MI: September 18, 2000.

NAFTA–TAA–05012; Jaymar-Ruby, Inc., d/b/a Trans Apparel Group, Michigan City, IN: June 13, 2000.

NAFTA–TAA–05417 & A; FCI USA, Inc., Fremont, CA and Cypress, CA: October 8, 2000.

NAFTA–TAA–05283; W P Textile Processing Corp., Richmond, VA: September 4, 2000.

I hereby certify that the aforementioned determinations were issued during the month of November, 2001. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: November 30, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–31147 Filed 12–17–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,693 AND NAFTA–04514]

Summit Timber Co., Darrington, WA; Notice of Negative Determination on Reconsideration

On September 24, 2001, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The notice as published in the **Federal Register** on October 19, 2001 (66 FR 53253).

The Department initially denied TAA to workers of Summit Timber Company because the ''contributed importantly'' group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended, was not met. None of the customers increased their import purchases of softwood dismenional lumber, while reducing their purchases from the subject firm.

The Department denied NAFTA–TAA because the ''contributed importantly'' group eligibility requirement of Section 250 was not met and because there was no shift in production to either Mexico or Canada. None of the customers increased their import purchases of softwood dimensional lumber from Canada or Mexico, while reducing their purchases from the subject firm.

The workers at the subject firm were engaged in employment related to the production of softwood dimensional lumber.

The company supplied an additional list of customers that they believed were importing softwood dimensional lumber.

On reconsideration, the Department conducted a survey of Summit Timber Company's additional customer list regarding their purchases of softwood dimensional lumber during 1999, 2000 and January through September 2001. The survey revealed that there were no meaningful increased customer purchases of imported (including from Canada or Mexico) softwood dimensional lumber, while customers decreased their purchases from the subject plant during the relevant period. Any customer import purchases of softwood lumber were relatively small

in relation to the declines in sales at the subject firm.

Conclusion

After reconsideration, I affirm the original notice of negative determinations regarding eligibility to apply for worker adjustment assistance and NAFTA-Transitional Adjustment Assistance for workers and former workers of Summit Timber Company, Darrington, Washington.

Signed at Washington, DC, this 28th day of November 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–31149 Filed 12–17–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,644]

A–1 Manufacturing Inc.; Garment Corporation of America; Brilliant, AL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on July 16, 2001 in response to a worker petition which was filed on behalf of workers at A–1 Manufacturing, Inc., Brilliant, Alabama.

An active certification covering the petitioning group of workers is already in effect (TA–W–39,204, as amended). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Dated: Signed in Washington, DC this 13th day of August, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–31138 Filed 12–17–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,025]

The Aquaterra Biochemical Corp. of America, Retail Products Group Manufacturing, Retail Products Group, the Bramton Company, Dallas, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 27, 2001, applicable to workers of The Bramton Co., Retail Products Group, Dallas, Texas. The notice was published in the **Federal Register** on October 11, 2001 (66 FR 51973).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New findings show that the Department incorrectly identified the subject firm name. The Department is amending the certification determination to correctly identify the subject firm title name to read The Aquaterra Biochemical Corp. of America, Retail Products Group Manufacturing, Retail Products Group, The Bramton Co.

The amended notice applicable to TA–W–40,025 is hereby issued as follows:

All workers of The Aquaterra Biochemical Corp. of America, Retail Products Group Manufacturing, Retail Products Group, The Bramton Co., Dallas, Texas, engaged in the production of sewing cloth pet products, who became totally or partially separated from employment on or after August 20, 2000, through September 27, 2003, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 30th day of November, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–31152 Filed 12–17–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,452]

ARA Cutting, LC, Miami, FL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 13, 2001, applicable to workers of ARA Cutting, LC, Miami, Florida. The notice was published in the **Federal Register** on April 5, 2001 (66 FR 18118).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of pants and shorts. New information provided by the State shows that workers separated from employment at ARA Cutting, LC had their wages reported under two separate unemployment insurance (UI) tax accounts; ADP Total Source FL XZII, Inc., Miami, Florida and United Enterprises of Southwest Florida. Inc., d/b/a Fidelity United Miami, Florida.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of ARA Cutting, LC adversely affected by increased imports.

The amended notice applicable to TA–W–38,452 is hereby issued as follows:

All workers of the ARA Cutting, LC, Miami, Florida, including those receiving their compensation through ADP Total Source FL XZII, Inc., Miami, Florida and United Enterprises of Southwest Florida, Inc., d/b/a Fidelity United, Miami, Florida, who became totally or partially separated from employment on or after December 6, 1999, through February 13, 2003, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC this 3rd day of December, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance

[FR Doc. 01–31151 Filed 12–17–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,224]

Centis, Inc.; Formerly Known as 20th Century Plastics; Brea, CA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistant on August 20, 2001, applicable to workers of Centis, Inc., Brea, California. The notice was published in the **Federal Register** on September 11, 2001 (66 FR 47243).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of thin sheer transparent plastic page protectors. The subject firm originally named 20th Century Plastics was renamed Centis, Inc. in January 2000. The State agency reports that some workers wages at the subject firm are

being reported under the Unemployment Insurance (UI) tax account for Centis, Inc., formerly known as 20th Century Plastics, Brea, California.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Centis, Inc. who were adversely affected by imports.

The amended notice applicable to TA–W–39,224 is hereby issued as follows:

All workers of Centis Inc., formerly known as 20th Century Plastics, Brea, California who became totally or partially separated from employment on or after April 25, 2000, through August 20, 2003, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 29th day of November, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–31141 Filed 12–17–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,243]

Color-Tex International, North Carolina Finishing Division, Salisbury, North Carolina; Notice of Revised Determination on Reconsideration

On April 16, 2001, the Department issued a notice of affirmative determination regarding application for reconsideration of the denial of trade adjustment assistance for workers of the subject firm. The notice was published in the **Federal Register** on May 3, 2001 (66 FR 22263).

Workers of Color-Tex International, North Carolina Finishing Division, Salisbury, North Carolina, engaged in employment related to dying and finishing fabric, were initially denied TAA because the ''contributed importantly'' criterion of the Trade Act of 1974, as amended, was not met.

The petitioner provided a listing of additional customers of the subject firm. A survey of the additional customers revealed that they had reduced purchases from North Carolina Finishing and increased imports of dyed and finished fabric during the time period relevant to the investigation.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that increases in imports of articles like or directly competitive with dyed and finished fabric produced at the subject firm contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers of Color-Tex International, North Carolina Finishing Division, Salibury, North Carolina, who became totally or partially separated from employment on or after October 4, 1999, through two years from the date of this issuance, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 25th day of October 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–31146 Filed 12–17–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,819]

Engineered Sintered Components Troutman, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, and investigation was initiated on August 13, 2001 in response to a worker petition which was filed by a company official on behalf of workers at Engineered Sintered Components, Troutman, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and their investigation has been terminated.

Signed in Washington, DC this 28th day of November, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–31145 Filed 12–17–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39, 154]

Jonathan Manufacturing, d/b/a/ Jonathan Engineered Solutions, Fullerton, CA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 8, 2001, applicable to workers of Jonathan Engineered Solutions, Fullerton, California. The notice was published in the **Federal Register** on May 23, 2001 (66 FR 28554).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the activities related to the production of aluminum slides (assembly and fabrication). The workers are separately identifiable from workers producing steel slides at the subject plant.

New information provided by the State shows that Jonathan Manufacturing is the parent firm of Jonathan Engineered Solutions, Fullerton, California. Information also shows that some of the claimants' wages are reported under the Unemployment Insurance (UI) tax account for Jonathan Manufacturing, d/b/a Jonathan Engineered Solutions, Fullerton, California.

The intent of the Department's certification is to include all workers of Jonathan Engineered Solutions who were adversely affected by imports.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA–W–39,154 is hereby issued as follows:

All workers of Jonathan Manufacturing , D/B/A Jonathan Engineered Solutions, Fullerton, California, engaged in employment related to the production of aluminum slides (fabrication and assembly) who became totally or partially separated from employment on or after April 6, 2000, through May 8, 2003, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 29th day of November, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–31153 Filed 12–17–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 28, 2001.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 28, 2001.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 19th day of November, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 11/19/2001]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
40,356	Littonian Shoe (Co.)	Littlestown, PA	11/13/2001	Children's Shoes.
40,357	Flextronics International (Co.)	Palm Harbor, FL	11/07/2001	Assemble Electronic Boards.
40,358	Precon New Products (Wkrs)	Boise, ID	10/29/2001	Retractable Phone Cards.
40,359	Nocona Athletic Goods (Co.)	Nocona, TX	10/18/2001	Baseball Gloves and Mitts.
40,360	Reptron Manufacturing (Wkrs)	Gaylord, MI	11/08/2001	Electronic Circuit Boards.
40,361	Donaldson Company (Co.)	Bloomington, MN	11/09/2001	Air Cleaning Equipment.
40,362	American Tissue Mills (Wkrs)	Augusta, ME	11/05/2001	Tissue Paper.
40,363	William Carter Co. (The) (Co.)	Barnesville, GA	11/09/2001	Children's Apparel.
40,364	Nutec Tooling Systems (Co.)	Meadville, PA	10/15/2001	Design and Build Jigs and Fixtures.
40,365	Saucony, Inc (Co.)	Bangor, ME	11/09/2001	Athletic Footwear.

OTAA INSTITUTIONS

[Petitions Instituted on 11/19/2001; Contact: Regina Chapman (202) 219–5555]

Subject firm (petitioners)	Location	Contact person	Telephone	TA–W No.	Date of petition
Littonian Shoe (Co.)	Littlestown, PA	Laverne L. Leese	717–359–5194	40,356	11/13/2001
Flextronics International (Co.)	Palm Harbor, FL	John Robinson	727–939–4417	40,357	11/07/2001
Precon New Products (Wkrs)	Boise, ID	John Quapp	208–323–1003	40,358	10/29/2001
Nocona Athletic Goods (Co.)	Nocona, TX	Robert M Storey, Jr.	940–825–3326	40,359	10/18/2001
Reptron Manufacturing (Wkrs)	Gaylord, MI	Lindsey Adams	989–732–6244	40,360	11/08/2001
Donaldson Company (Co.)	Bloomington, MN	Steve Michel	952–887–3555	40,361	11/09/2001
American Tissue Mills (Wkrs)	Augusta, ME	Craig Gray	207–622–9900	40,362	11/05/2001
William Carter Co. (The) (Co.)	Barnesville, GA	Tammie T. Merritt	770–233–2140	40,363	11/09/2001
Nutec Tooling Systems (Co.)	Meadville, PA	Bruce Courtney	814–724–6336	40,364	10/15/2001
Saucony, Inc (Co.)	Bangor, ME	Kerry Smith	978–532–9000	40,365	11/09/2001

[FR Doc. 01–31137 Filed 12–17–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administrative

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purposes of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or

threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 28, 2001.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 28, 2001.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, DC this 26th day of November, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted On 11/26/2001]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
40,366	Mike Dent Enterprises (Co.)	Burns, OR	10/31/2001	Harvested Lumber.
40,367	B/E Aerospace, SPG (Co.)	Litchfield, CT	11/05/2001	Airline Seats.
40,368	SEH—America (Wkrs)	Vancouver, WA	11/07/2001	Silicon Wafers.
40,369	PSW Industries (Co.)	Michigan City, IN	11/09/2001	Metal Stamping, Tool and Die Making.
40,370	Valley Precision Tool (Co.)	Tower City, PA	11/13/2001	Electronic Connector Assemblies.
40,371	Regal Rugs, Inc. (Co.)	North Vernon, IN	11/01/2001	Bath and Accent Rugs.
40,372	Square D Co. (IBEW)	Middletown, OH	11/15/2001	Switchgear Boxes.
40,373	Siemens Energy and Auto. (Co.)	Osceoloa, IA	11/09/2001	Electrical, Motor Controls and Parts.
40,374	OSAN Manufacturing (UNITE)	Boyertown, PA	11/16/2001	Men's Pants.
40,375	EGS Electrical (Co.)	Lake Geneva, WI	08/30/2001	Industrial Transformers.

[FR Doc. 01–31136 Filed 12–17–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,565A]

Thomaston Mills, Inc., Finishing Division, Thomaston, GA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Determination Regarding Eligibility to Apply for Worker Adjustment Assistance on November 15, 2001, applicable to workers of Thomaston Mills, Inc., Finishing Division, Finishing Consumer Department, Thomaston, Georgia engaged in the production of sheets, pillowcases and comforters and related accessories. All workers of Thomaston Mills, Inc., Finishing Division, Finishing Apparel Department, Thomaston, Georgia were denied eligibility to apply for adjustment assistance. The notice was published in the **Federal Register** on November 30, 2001 (66 FR 59817).

At the request of the company, the Department reviewed the certification for workers of the subject firm. Findings show that the Department limited its certification coverage to workers of the subject firms's Finishing Consumer Department in the Finishing Division engaged in the production of sheets, pillowcases and comforters and related accessories. The workers employed in the Finishing Apparel Department were denied eligibility because they did not meet the group eligibility requirements of the Trade Act. The company provides new information indicating that the workers are not separately identifiable within the Finishing Division.

It is the intent of the Department to include ''all workers'' of Thomaston Mills, Inc., Finishing Division, Thomaston, Georgia adversely affected by increased imports.

Accordingly, the Department is amending this certification determination to include all workers in the Finishing Division.

The amended notice applicable to TA–W–39,565A is hereby issued as follows:

All workers of Thomaston Mills, Inc., Finishing Division, Thomaston, Georgia who became totally or partially separated from employment on after June 20, 2000, through November 15, 2003, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 6th day of December, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–31134 Filed 12–17–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–04812]

Cemex Kosmos Cement Company, Pittsburgh Plant, Pittsburgh, PA; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of July 20, 2001 the International Brotherhood of Boiler Makers, Iron Ship Builders, Blacksmiths, Forgers and Helpers requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for NAFTA Transitional Adjustment Assistance, applicable to petition number NAFTA 04613. The denial notice was signed on June 26, 2001 and published in the **Federal Register** on July 11, 2001 (66 FR 36329).

The union requested administrative reconsideration based on the belief that Cemex (the acquiring company of the subject plant) replaced the subject plants customer base with imported cement products from Mexico.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC this 3rd day of December 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–31150 Filed 12–17–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–04830]

Centis, Inc.; Formerly Known as 20th Century Plastics; Brea, CA; Amended Certification Regarding Eligibility To Apply for NAFTA–Transitional Adjustment Assistance

In accordance with section 250(A), subchapter D, chapter 2, Title II, of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on August 16, 2001, applicable to workers of Centis, Inc., Brea, California. The notice was published in the **Federal Register** on August 23, 2001 (66 FR 44380).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of thin sheer transparent plastic page protectors. The subject firm originally named 20th Century Plastics was renamed Centis, Inc. in January 2000. The State agency reports that some workers wages at the subject firm are being reported under the Unemployment Insurance (UI) tax account for Centis, Inc., formerly known as 20th Century Plastics, Brea, California.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Centis, Inc., who were adversely affected by a shift in the production of thin sheer transparent plastic page protectors to Mexico.

The amended notice applicable to NAFTA–04830 is hereby issued as follows:

All workers of Centis, Inc., formerly known as 20th Century Plastics, Brea, California who became totally or partially separated from employment on or after April 24, 2000, through August 16, 2003, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC, this 29th day of November 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–31142 Filed 12–17–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–5247]

Fedders Corporation, Columbia Specialities, Inc., Columbia, Tennessee; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with section 250(a), subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on August 20, 2001, in response to a petition filed on behalf of workers at Fedders Corporation, Columbia Specialities, Inc., Columbia, Tennessee.

The petitioners requested that the petition for NAFTA–TAA be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 29th day of November 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–31144 Filed 12–17–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–04403]

Gynecare, Ethicon, A Johnson and Johnson Co.; Menlo Park, CA; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with section 250(A), subchapter D, chapter 2, Title II, of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on March 21, 2001, applicable to workers of Gynecare, Melo Park, California. The notice was published in the **Federal Register** on April 16, 2001 (66 FR 19522).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of medical catheters. New information shows that Ethicon, A Johnson and Johnson Co. is the parent firm of Gynecare, Menlo Park, California.

Information also shows that workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Gynecare, Ethicon, A Johnson and Johnson Co. Menlo Park, California.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Gynecare, Menlo Park, California who were adversely affected by a shift of production of medical catheters to Mexico.

The amended notice applicable to NAFTA–04403 is hereby issued as follows:

All workers of Gynecare, Ethicon, A Johnson and Johnson Co., Menlo Park, California who became totally or partially separated from employment on or after December 21, 1999, through March 21, 2003, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC, this 29th day of November 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–31139 Filed 12–17–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–04888]

Imperial Home Decor Group, Plattsburgh, NY; Notice of Negative Determination Regarding Application for Reconsideration

By application dated June 22, 2001, the petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for North American Free Trade Agreement-eligibility Adjustment Assistance (NAFTA–TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on June 4, 2001, and was published in the **Federal Register** on June 27, 2001 (66 FR 34257).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The denial of NAFTA–TAA for workers providing warehousing, maintenance and security at Imperial Home Decor Group, Plattsburgh, New York, as based on the finding that the workers do not produce an article as required for certification under section 250(a) of the Trade Act of 1974, as amended.

The petitioner claims that the workers engaged in the warehousing, maintenance and security at the subject plant should be certified for eligibility under NAFTA–TAA since the plant was under an existing certification (NAFTA–02904), which expired on March 22, 2001. The petitioner further states that warehouse functions were transferred to Canada.

Review of the investigation shows that no production has been performed at the subject firm since November 1998. They were not in direct support of a certified facility producing a product during the relevant period. All workers terminated during the NAFTA–TAA certification (NAFTA–02904) period are eligible to apply for benefits.

Since no production at the subject firm has been performed after November 1998, the workers terminated after March 22, 2001 cannot be considered engaged in production as required in Section 250(a) of the Trade Act, as amended. The workers are considered for eligibility based on what they did during the relevant period and cannot be connected to the previous certification or previous plant production that was done before the relevant period of the investigation.

Workers of Imperial Home Decor Group, Plattsburgh, New York may be certified only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to the subject firm by ownership, or a firm related by control. Additionally, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and the reduction must directly relate to the product impacted by imports. These conditions have not been met for workers at the subject firm.

Further, any shift in warehousing functions to Canada as depicted by the petitioner, does not meet the eligibility requirements for the same reason as discussed above.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, DC this 30th day of November, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–31140 Filed 12–17–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under section 250(b)(1) of subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Division of Trade Adjustment Assistance (DTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes action pursuant to paragraphs (c) and (e) of section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment on or after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of DTAA at the U.S. Department of Labor (DOL) in Washington, DC provided such request if filed in writing with the Director of DTAA not later than December 28, 2001.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of DTAA at the address shown below not later than December 28, 2001.

Petitions filed with the Governors are available for inspection at the Office of the Director, DTAA, ETA, DOL, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 5th day of December, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Indiana Knitwear—Willacy Apparel (Co.)	Lyford, TX	11/13/2001	NAFTA–5,539	Sportswear apparel.
Plaid Clothing (UNITE)	Erlander, KY	10/30/2001	NAFTA–5,540	Men's tailored clothing.
Donaldson Aercology (Co.)	Old Saybrook, CT	11/13/2001	NAFTA–55,541	Air filtration equipment.
Lea Wayne Knitting Mills (Co.)	Morristown, TN	11/10/2001	NAFTA–5,542	Socks and hosiery.
Nokia Networks (Wkrs)	Ft. Worth, TX	11/19/2001	NAFTA–5,543	Prototype and prezero modules.
Powerbrace Corporation (Wkrs)	Kenosha, WI	11/19/2001	NAFTA–5,544	Railcar gates and lock rods.
Daniel Woodhead (Co.)	Northbrook, IL	11/16/2001	NAFTA–5,545	Electrical lighting products.
Storm Copper Components (Co.)	Decatur, TN	11/16/2001	NAFTA–5,546	Wire harnesses.
Marconi (Wkrs)	Milwaukee, WI	11/16/2001	NAFTA–5,547	Telecommunication cabinets.

APPENDIX—Continued

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Clebert's Hosiery Mill (Co.)	Connelly Springs, NC	11/16/2001	NAFTA–5,548	Knit, seam and inspect hosiery.
Western Log Homes (Co.)	Chiloquin, OR	11/05/2001	NAFTA–5,549	Rails, vineyard posts, retaining walls.
DataMark (Wkrs)	El Paso, TX	11/15/2001	NAFTA–5,550	Data entries.
Foredtert Malting (UAW)	Milwaukee, WI	11/15/2001	NAFTA–5,551	Malt for breweries.
Segro Colonial Abrasives (Co.)	Aberdeen, NC	11/14/2001	NAFTA–5,552	Abrasives.
Gulford Mills (UNITE)	Pine Grove, PA	11/13/2001	NAFTA–5,553	Apparel.
PSW Industries—Tempel Steel (Co.)	Michigan City, IN	11/13/2001	NAFTA–5,554	Steel laminations.
Gillette Company (IBT)	Iowa City, IA	11/13/2001	NAFTA–5,555	Toothbrushes etcs.
Alfa Laval—Tri Clover (Wkrs)	Pleasant Prairie, WI	11/19/2001	NAFTA–5,556	Piping systems.
Teleflex Automotive (Wkrs)	Waterbury, CT	11/16/2001	NAFTA–5,557	Automotive cables.
MoCaro Dyeing and Finishing (Co.)	Statesville, NC	11/19/2001	NAFTA–5,558	T-shirts and sweatshirts.
Mike Dent Enterprises (Co.)	Barns, OR	11/09/2001	NAFTA–5,559	Logging.
Fine Tech—Daeduck International (Co.)	Durham, NC	11/20/2001	NAFTA–5,560	Printed circuit boards.
OSAN (UNITE)	Boxertown, PA	11/20/2001	NAFTA–5,561	Men's pants.
Kellogg Crankshaft (Wkrs)	Jackson, MI	11/20/2001	NAFTA–5,562	Crankshafts.
CNB International (Wkrs)	Hastings, MI	11/20/2001	NAFTA–5,563	Precision repair parts.
Como Products (UAW)	Columbus, IN	11/16/2001	NAFTA–5,564	Television cabinets.
R. G. Barry, Texas LP (Co.)	San Angelo, TX	11/21/2001	NAFTA–5,565	House slipper shoe sole.
Lucent Technologies (IBEW)	Columbus, OH	10/15/2001	NAFTA–5,566	Elecom equipment.
Akers National Roll (Co.)	Hyde Park, PA	11/20/2001	NAFTA–5,567	Steel rolls.
Dimension Carbide (Co.)	Guys Mill, PA	11/20/2001	NAFTA–5,568	Grinding of carbide dies and punches.
NACCO Materials Handling (Co.)	Greenville, NC	11/20/2001	NAFTA–5,569	Lower weldments.
Antec Corporation (Co.)	El Paso, TX	11/20/2001	NAFTA–5,570	Plastic molded parts.
Wesley Industries (Co.)	Bloomfield Hills, MI	11/26/2001	NAFTA–5,571	Heads, rotors and bearing caps.
Regal Manufacturing (Wkrs)	Hickory, NC	11/26/2001	NAFTA–5,572	Yarn.
Metalloy (Wkrs)	Hudson, MI	11/26/2001	NAFTA–5,573	Freightliner.
VF Corporation (Wkrs)	Lebanon, MO	11/26/2001	NAFTA–5,574	Jeans.
Saturn Electronics and Engineering (Wkrs).	Auburn Hills, MI	11/20/2001	NAFTA–5,575	Circuit boards.
Von Hoffman Press (Wkrs)	Owensville, MO	11/26/2001	NAFTA–5,576	Textbooks, college and children's books.
ESP—Jocessee Trading (Co.)	Easley, SC	11/20/2001	NAFTA–5,577	Comforters, sheets, pillows etc.
Detroit Tool and Engineering (Wkrs)	Lebanon, MO	11/26/2001	NAFTA–5,578	Household appliances.
A. S. Haight (UNITE)	Cartersville, GA	11/27/2001	NAFTA–5,579	Screen printing cloth.
InterMetro Industries (Co.)	Douglas, GA	11/26/2001	NAFTA–5,580	Wire steel shelving.
Galey and Land (G and L Service) (Wkrs).	Eagle Pass, TX	12/03/2001	NAFTA–5,581	Men's and women's pants.
Kentucky Textiles (Wkrs)	Paris, KY	11/20/2001	NAFTA–5,582	Swimsuits.
Weavexx (Wkrs)	Greenville, TN	11/27/2001	NAFTA–5,583	Paper machinebetting.
Carrier Corporation (Wkrs)	Conway, AR	11/28/2001	NAFTA–5,584	Ice cream and frozen novelty cases.
VF Jeanswear (Wkrs)	Andrew, NC	11/27/2001	NAFTA–5,585	Denim jeans.
Celectica Corporation (Co.)	Milwaukie, OR	11/28/2001	NAFTA–5,586	Design power supplies.
Glenayre Electronics (Wkrs)	Quincy, IL	11/28/2001	NAFTA–5,587	Power amplifiers.
TRW Automotive Breaking Systems (UAW).	Milford, MI	11/28/2001	NAFTA–5,588	Valves.
GDX Automotive—Gencorp (USWA)	Marion, IN	11/28/2001	NAFTA–5,589	Bubber weather seals.
Hoskins Manufacturing (Co.)	Mio, MI	11/28/2001	NAFTA–5,590	Thermal couple, resistance wire etc.
Hoskins Thermal Systems (Co.)	Lewiston, MI	11/28/2001	NAFTA–5,591	Thermal couple and resistance wire etc.
VF Jeanswear (Co.)	Jackson, TN	11/28/2001	NAFTA–5,592	Jeans.
Boeing Defence and Space (Wkrs)	Oak Ridge, TN	11/30/2001	NAFTA–5,593	Boeing airplane parts.
Square D (Wkrs)	Middletown, OH	11/27/2001	NAFTA–5,594	Heavy duty safety switch.
Tenneco Automotive (Co.)	Ligonier, IN	11/29/2001	NAFTA–5,595	Car exhaust systems.
Teva Pharmaceuticals (Co.)	Elmwood Park, NJ	11/18/2001	NAFTA–5,596	Antibiotics.
Spicer Driveshaft (Co.)	Lima, OH	11/30/2001	NAFTA–5,597	Companion flanges.
Kraft Foods (Co.)	Minneapolis, MN	11/21/2001	NAFTA–5,598	Hot cereals.
Artex International (Co.)	Boiling Springs, NC	12/04/2001	NAFTA–5,599	Linen napkins and table skiring.
DK Mold Engineering (Co.)	Wyoming, MI	10/21/2001	NAFTA–5,600	Die for plastic injection molds.

[FR Doc. 01–31135 Filed 12–17–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–04775]

Jonathan Manufacturing d/b/a/ Jonathan Engineered Solutions Fullerton, CA; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with section 250(A), subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 U.S.C. 2273), the Department of labor issued a Certification for NAFTA Transitional Adjustment Assistance on May 8, 2001, applicable to workers of Jonathan Engineered Solutions, Fullerton, California. The notice was published in the **Federal Register**on May 23, 2001 (66 FR 28554).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the activities related to the production of aluminum slides (assembly and fabrication). The workers are separately identifiable from workers producing steel slides at the subject plant.

New information provided by the State shows that Jonathan Manufacturing is the parent firm of Jonathan Engineered Solutions, Fullerton, California. Information also shows that some of the claimants' wages are reported under the Unemployment Insurance (UI) tax account for Jonathan Manufacturing, d/b/a Jonathan Engineered Solutions, Fullerton California.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Jonathan Engineered Solutions who were adversely affected by a shift in the production of aluminum slides to Mexico.

The amended notice applicable to NAFTA–04775 is hereby issued as follows:

All workers of Jonathan Manufacturing, D/B/A Jonathan Engineered Solutions, Fullerton, California, engaged in employment related to the production of aluminum slides (fabrication and assembly) who became totally or partially separated from employment on or after March 27, 2000, through May 8, 2003, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC this 30th day of November, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–31132 Filed 12–17–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,632 & NAFTA–5059, et al.]

JPS Apparel Fabrics Corporation Greenville, SC, et al.; Notice of Determination on Reconsideration

On October 10, 2001, the Department issued a Notice of Affirmative Determination Regarding Application for Reconsideration for TAA and NAFTA–TAA applicable to workers and former workers of the subject firm. The notice was published in the **Federal Register** on October 30, 2001 (66 FR 54785).

The initial TAA and NAFTA–TAA petition investigations for workers at JPS Apparel Corporation, Greenville, South Carolina (TA–W–39,632 & NAFTA–5059), South Boston, Virginia (TA–W–39,632A & NAFTA–5059A), New York, New York (TA–W–39,632B & NAFTA–5059B), and Laurens, South Carolina (TA–W–39,632C & NAFTA–5059C) were denied based on the finding that the subject firm and customers of the subject firm did not increase their import (including from Canada and Mexico) purchases of spun filament greige woven apparel fabrics during the relevant period.

The company supplied an additional list of customers that they believed were importing spun filament greige woven apparel fabrics.

On reconsideration, the Department conducted a survey of JPS Apparel Corporation's additional customers (accounting for a meaningful portion of the subject firms customer base) regarding their purchases of spun filament greige woven apparel fabrics during 1999, 2000 and January through July 2001. The survey revealed that some respondents increased their reliance on imported (no meaningful imports from Canada or Mexico) spun filament greige woven apparel fabrics, contributing to the layoffs at the subject firm during the relevant period.

On reconsideration the Department further examined U.S. import data that was not available during the initial investigation. The import data shows that selected fabrics like or directly competitive with what the subject plant produced increased significantly during the relevant period. The industry data also depicts a meaningful increase in the import to shipment ratio of these products during the relevant period. However, aggregate U.S. imports from Canada and/or Mexico of selected fabrics like and directly competitive with what the subject plant produced remained relatively stable during the relevant period. The imports from Canada and/or Mexico are relatively low in relation to total aggregate U.S. imports.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with spun and filament greige woven apparel fabrics, contributed importantly to the decline in sales or production and to the total or partial separation of workers of JPS Apparel Corporation, Greenville, South Carolina (TA–W–39,632), South Boston, Virginia (TA–W–39,632A), New York, New York (TA–W–39,632B), and Laurens, South Carolina (TA–W–39,632C). In accordance with the provisions of the Act, I make the following revised determination:

All workers of JPS Apparel Corporation, Greenville, South Carolina (TA–W–39,632), South Boston, Virginia (TA–W–39,632A), New York, New York (TA–W–39,632B), and Laurens, South Carolina (TA–W–39,632C) who became totally or partially separated from employment on or after July 16, 2000, through two years from the date of this issuance, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974; and

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974 for workers and former workers of JPS Apparel Corporation, Greenville, South Carolina (NAFTA–5059), South Boston, Virginia (NAFTA–5059A), New York, New York (NAFTA–5059B), and Laurens, South Carolina (NAFTA–5059C).

Signed in Washington, DC this 30th day of November 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–31148 Filed 12–17–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–5412]

Laser Tool, Saegertown, PA; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–1 concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2331), an investigation was initiated on October 12, 2001, in response to a petition filed by the company on behalf of workers at Laser Tool, Saegertown, Pennsylvania. Workers produce plastic injection molds and manifolds.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 26th day of November, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–31143 Filed 12–17–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–05014A]

Thomaston Mills, Inc., Finishing Division, Thomaston, GA, Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with section 250(A), subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Notice of Determination Regarding Eligibility to Apply for NAFTA Transitional Adjustment Assistance on October 25, 2001, applicable to workers of Thomaston Mills, Inc., Finishing Division, Finishing Consumer Department, Thomaston, Georgia engaged in the production of sheets, pillowcases and comforters and related accessories. All workers of Thomaston Mills, Inc., Finishing Division, Finishing Apparel Department, Thomaston, Georgia engaged in the production of textiles for home furnishings and piece dyed goods of apparel were denied eligibility to apply for NAFTA Transitional Adjustment Assistance. The notice was published in the **Federal Register** on November 6, 2001 (66 FR 56126).

At the request of the company, the Department reviewed the certification for workers of the subject firm. Findings show that the Department limited its certification coverage to workers of the subject firms' Finishing Consumer Department in the Finishing Division engaged in the production of sheets, pillowcases and comforters and related accessories. The workers employed in the Finishing Apparel Department were denied eligibility because they did not meet the group eligibility requirements of the Trade Act. The company provides new information indicating that the workers are not separately identifiable within the Finishing Division.

It is the intent of the Department to include ''all workers'' of Thomaston Mills, Inc., Finishing Division, Thomaston, Georgia adversely affected by increased imports from Canada and Mexico.

Accordingly, the Department is amending the certification determination to include all workers in the Finishing Division.

The amended notice applicable to NAFTA–05014A is hereby issued as follows:

All workers of Thomaston Mills, Inc., Finishing Division, Thomaston, Georgia who became totally or partially separated from employment on or after June 16, 2000, through October 25, 2003, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC this 6th day of December 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–31133 Filed 12–17–01; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Leadership Initiatives Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that two meetings of the Leadership Initiatives Advisory Panel to the National Council on the Arts (Folk & Traditional Arts' Infrastructure Initiative and Media Arts' Arts on Radio & Television categories) will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506 as follows:

Arts on Radio & Television (ARTV): January 8–10, 2002, Room 716. A portion of this meeting, from 9 a.m. to 10 a.m. on January 10th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6:30 p.m. on January 8th and 9th, and from 10 a.m. to 5:30 p.m. on January 10th, will be closed.

Infrastructure Initiative: January 9–10, 2002, Room 714. A portion of this meeting, from 3 p.m. to 4 p.m. on January 10th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6:30 p.m. on January 9th, and from 9 a.m. to 3 p.m. and 4 p.m. to 5:30 p.m. on January 10th, will be closed.

The closed portions of these meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 22, 2001, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: December 12, 2001.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 01–31050 Filed 12–17–01; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Partnerships Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Partnerships Advisory Panel (State Partnership Agreements), to the National Council on the Arts will be held on January 17–18, 2002. The panel will meet from 9:00 a.m. to 5:30 p.m on January 17 and from 8:30 a.m. to 5:00 p.m. on January 18 in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506.

This meeting will be open to the public on a space available basis. Topics will include review of the State Partnership Agreement and Regional Partnership Agreement applications, review of proposals for Challenge America Partnership funds, and discussion of guidelines and policy issues.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: December 12, 2001.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 01–31051 Filed 12–17–01; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL INDIAN GAMING COMMISSION

Fee Rates

AGENCY: National Indian Gaming Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given, pursuant to 25 CFR 514.1(a)(3), that the National Indian Gaming Commission has adopted final annual fee rates of 0.00% for tier 1 and 0.075% (.00075) for tier 2 for calendar year 2001. These rates shall apply to all assessable gross revenues from each gaming operation under the jurisdiction of the Commission.

FOR FURTHER INFORMATION CONTACT: Bobby Gordon, National Indian Gaming Commission, 1441 L Street, NW., Suite 9100, Washington, DC 20005; telephone 202/632–7003; fax 202/632–7066 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act established the National Indian Gaming Commission which is charged with, among other things, regulating gaming on Indian lands.

The regulations of the Commission (25 CFR part 514), as amended, provide for a system of fee assessment and payment that is self-administered by gaming operations. Pursuant to those regulations, the Commission is required to adopt and communicate assessment rates; the gaming operations are required to apply those rates to their revenues, compute the fees to be paid, report the revenues, and remit the fees to the Commission on a quarterly basis.

The regulations of the Commission and the preliminary annual rate being adopted today are effective for calendar year 2001. Therefore, all gaming operations within the jurisdiction of the Commission are required to self-administer the provisions of these regulations and report and pay any fees that are due to the Commission by December 31, 2001.

Montie R. Deer,

Chairman, National Indian Gaming Commission.

[FR Doc. 01–31090 Filed 12–17–01; 8:45 am]

BILLING CODE 7565–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–352 and 50–353]

Exelon Generation Company, LLC, Limerick Generating Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the Code of Federal Regulations (10 CFR), part 50, Appendix E, Items IV.F.2. b and c, for Facility Operating License Nos. NPF–39 and NPF–85, issued to Exelon Generation Company, LLC (Exelon, the licensee), for operation of the Limerick Generating Station, Units 1 and 2, located in Montgomery County, Pennsylvania. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow a one-time exemption from the requirements of 10 CFR part 50, Appendix E, Items IV.F.2.b and c, regarding conduct of a full-participation exercise of the onsite and offsite emergency plan every 2 years. Under the proposed exemption, the licensee would reschedule the exercise originally scheduled for November 1, 2001, and complete the exercise requirements by December 31, 2002.

The proposed action is in accordance with the licensee's application for an exemption dated October 16, 2001.

The Need for the Proposed Action

Currently under 10 CFR part 50, Appendix E, Items IV.F.2. b and c, each licensee at each site is required to conduct a full-participation exercise of its onsite and offsite emergency plans every 2 years. Federal agencies, such as the Federal Emergency Management Agency, observe these exercises and evaluate the performance of the licensee, State, and local authorities having a role under the emergency plan.

The licensee had initially planned to conduct an exercise of its offsite emergency plan on November 1, 2001, which was within the required 2-year interval. However, due to the ongoing national security threat in the United States, and the response, recovery, and other offsite agency activities associated with the September 11, 2001, terrorist attacks, the licensee has decided to postpone the exercise. The licensee does not plan to conduct the full-participation exercise until after the 2-year interval has expired.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the proposed action involves an administrative activity unrelated to plant operations.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental

impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any different resource than those previously considered in the Final Environmental Statement for the Limerick Generating Station, Units 1 and 2, dated April 1984.

Agencies and Persons Consulted

On December 6, 2001, the staff contacted the Pennsylvania State official, Dennis Dyckman of the Pennsylvania Department of Environment and Natural Resources, regarding the environmental impact of the proposed action. The State official had no comments. In addition, the licensee notified the Federal Emergency Management Agency and the Pennsylvania Emergency Management Agency, who indicated support for rescheduling the exercise.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

Further details with respect to the proposed action can be found in the licensee's letter dated October 16, 2001. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC web site, *http://www.nrc.gov* (the Electronic Reading Room). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail at *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 12th day of December 2001.

For the Nuclear Regulatory Commission.

Christopher Gratton,

Sr. Project Manager, Section 2, Project Directorate 1, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–31157 Filed 12–17–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

International Uranium (USA) Corporation; Notice or Consideration of Issuance of Amendments to Facility Operation Licenses, ProposedNo Significant Hazards Consideration Determination, Opportunity for a Hearing; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance; correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on December 11, 2001 (66 FR 64064), that considers issuance of notice of opportunity for hearing issued to the International Uranium (USA) Corporation. This action is necessary to correct an erroneous text.

FOR FURTHER INFORMATION CONTACT: Mr. William von Till, Fuel Cycle Licensing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, telephone (301) 415–6251.

SUPPLEMENTARY INFORMATION: On page 64064, in the third column, in the first complete paragraph, the text is changed from ''The U.S. Nuclear Regulatory Commission (NRC) proposes to accept the license amendment for the NRC Materials License SUA–1358 to authorize the licensee, International Uranium (USA) Corporation (IUSA), to allow for the and reclamation of the White Mesa uranium mill, located near Blanding, Utah,'' to read, ''The U.S. Nuclear Regulatory Commission (NRC) proposes to accept the license amendment for the NRC Materials License SUA–1358 to authorize the licensee, International Uranium (USA) Corporation (IUSA), to allow for the receipt and processing of alternate feed material, from the Molycorp facility located in Mountain Pass, California, at the White Mesa uranium mill, located near Blanding, Utah.'' Also, on page 64065 in the second column, in the fifth complete paragraph the text is changed from ''The NRC staff has prepared an Environmental Assessment for the proposed reclamation plan for NRC Source Material License SUA–1358,'' to read, ''The NRC staff has prepared an Environmental Assessment to assess the potential environmental impacts of allowing for the receipt and processing of alternate feed material, from the Molycorp facility located in Mountain Pass, California, for NRC Source Material License SUA–1358.''

Dated at Rockville, Maryland, this 12th day of December, 2001.

Melvyn N. Leach,

Chief, Fuel Cycle Licensing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 01–31156 Filed 12–17–01; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Request for Comments on an Outline for Discussion: Concepts for Postal Transformation

AGENCY: Postal Service.

ACTION: Extension of comment period.

SUMMARY: The Postal Service published a notice with request for public comment in the **Federal Register** (66 FR 51480–51481) on October 9, 2001. The document on which comments are requested is available on the Postal Service's public Web site at *www.usps.com/strategicdirection* or at *www.usps.com* keyword: transformation. Comments were due November 1, 2001. The comment period is hereby extended until January 31, 2002.

DATES: The Postal Service must receive your comments on or before January 31, 2002. No additional extensions on the comment period will be granted.

ADDRESSES: Those responding are encouraged to e-mail their comments to *transformation@email.usps.gov.* Those wishing to send written comments should mail them to Julie S. Moore, Executive Program Director, Office of Transformation, Strategic Planning, Room 4011, United States Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington, DC 20260–1520.

FOR FURTHER INFORMATION CONTACT: Paul Van Coverden (202) 268–8130.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 01–31167 Filed 12–17–01; 8:45 am]

BILLING CODE 7710–12–P

RAILROAD RETIREMENT BOARD

Proposed Data Collection Available for Public Comment and Recommendations

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collection, the Railroad Retirement Board will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of information collection: Representative Payee Parental Custody Monitoring.

Under Section 12(a) of the Railroad Retirement Act (RRA), the Railroad Retirement Board (RRB) is authorized to select, make payments to, and to conduct transactions with, a beneficiary's relative or some other person willing to act on behalf of the beneficiary as a representative payee. The RRB is responsible for determining if direct payment of the beneficiary or payment to a representative payee would best serve the beneficary's interest. Inherent in the RRB's authorization to select a representative payee is the responsibility to monitor the payee to assure that the beneficiary's interests are protected. Triennially, the RRB utilizes Form G–99d, Parental Custody Report, to obtain information needed to verify that a parent-for-child representative payee still has custody of the child. One response is required from each respondent. The RRB proposes minor non-burden impacting editorial changes to Form G–99d.

Estimate of Annual Respondent Burden

The estimated annual respondent burden is as follows:

Form/Nos.	Annual responses	Time (min)	Burden (hrs)
G–99d	1,850	5	154

FOR FURTHER INFORMATION CONTACT: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer,

[FR Doc. 01–31106 Filed 12–17–01; 8:45 am]

BILLING CODE 7905–01–M

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Employee Non-Covered Service Pension Questionnaire; OMB 3220–0154.

Section 215(a)(7) of the Social Security Act provides for a reduction in social security benefits based on employment not covered under the Social Security Act or the Railroad Retirement Act (RRA). This provision applies a different social security benefit formula to most workers who are first eligible after 1985 to both a pension based in whole or in part on non-covered employment and a social security retirement or disability benefit. There is a guarantee provision that limits the reduction in the social security benefit to one-half of the portion of the pension based on non-covered employment after 1956. Section 8011 of P.L. 100–647 changed the effective date of the onset from the first month of eligibility to the first month of concurrent entitlement to the non-covered service benefit and the RRA benefit.

Section 3(a)(1) of the RRA provides that the Tier I benefit of an employee annuity will be equal to the amount (before any reduction for age or deduction for work) the employee would receive if he or she would have been entitled to a like benefit under the Social Security Act. The reduction for a non-covered service pension also applies to a Tier I portion of employees under the RRA where the annuity or non-covered service pension begins after 1985. Since the amount of a Tier I benefit of a spouse is one-half of the employee's Tier I, the spouse annuity is also affected by the employee's non-covered service pension reduction of his or her Tier I benefit.

The RRB utilizes Form G–209, Employee Non-covered Service Pension Questionnaire, to obtain needed information from railroad retirement employee applicants or annuitants about the receipt of a pension based on employment not covered under the Railroad Retirement Act or the Social Security Act. It is used as both a supplement to the employee annuity application, and as an independent questionnaire to be completed when an individual who is already receiving an employee annuity, becomes entitled to a pension. One response is requested of each respondent. Completion is required to obtain or retain benefits. The RRB proposes no changes to Form G–209.

Estimate of Annual Respondent Burden

The estimated annual respondent burden is as follows:

Form Nos.	Annual responses	Time (min)	Burden (hrs)
G–209 (partial questionnaire)	100	1	2
G–209 (full questionnaire)	400	8	53
Total	500		55

FOR FURTHER INFORMATION CONTACT: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 01–31107 Filed 12–17–01; 8:45 am]

BILLING CODE 7905–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3386]

State of Arkansas (And contiguous counties in Mississippi and Tennessee)

Crittenden and Desha Counties and the contiguous counties of Arkansas, Chicot, Cross, Drew, Lee, Lincoln, Mississippi, Phillips, Poinsett and St. Francis Counties in the State of Arkansas; Bolivar, Coahoma, DeSoto and Tunica Counties in the State of Mississippi; and Shelby and Tipton Counties in the State of Tennessee constitute a disaster area as a result of severe storms and flooding that occurred from November 27 through November 30, 2001. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on February 11, 2002 and for economic injury may be filed until the close of business on September 11, 2002 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155.

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 numbers assigned to this disaster for physical damage are 338611 for Arkansas; 338711 for Mississippi; and 338811 for Tennessee. The numbers assigned to this disaster for economic injury are 9N8100 for Arkansas; 9N8200 for Mississippi; and 9N8300 for Tennessee.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 11, 2001.

Hector V. Barreto,

Administrator.

[FR Doc. 01–31099 Filed 12–17–01; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

New Markets Venture Capital Companies; Minimum Draw Under SBA's Leverage Commitment

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Notice.

SUMMARY: This Notice provides a minimum dollar amount of $100,000 for draws against SBA leverage commitments to New Markets Venture Capital Companies under the New Markets Venture Capital Program. This Notice will be effective until superceded by another **Federal Register** Notice.

DATES: This notice is effective December 18, 2001.

ADDRESSES: Austin J. Belton, Director, Office of New Markets Venture Capital, Investment Division, U.S. Small Business Administration, 409 Third Street, SW, 6th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Peter C. Gibbs, Deputy Director, Office of New Markets Venture Capital, telephone: (202) 205–7574, or at the e-mail address, peter.gibbs@sba.gov.

SUPPLEMENTARY INFORMATION: SBA's New Markets Venture Capital (NMVC) Program (Program) is authorized by the NMVC Program Act of 2000, 15 U.S.C. 689–689q. Information about the Program is available at http://www.sba/gov/INV. The implementing regulations for this Program were issued on May 23, 2001 (66 FR 28602).

Under these rules, SBA has the authority and discretion to determine a minimum dollar amount for draws against SBA's Leverage commitments. 13 CFR 108.1230(b). Leverage means financial assistance provided to a NMVC Company by SBA through the guaranty of a NMVC Company's Debentures, and any other SBA financial assistance evidenced by a security of the NMVC Company.

Pursuant to 13 CFR 108.1230(b), the amount of a draw that a NMVC Company may take against SBA's leverage commitment must be a multiple of $5,000. Any minimum dollar amount for draws determined in SBA's discretion are published in Notices in the **Federal Register** from time to time. This is the first Notice SBA has issued establishing a minimum dollar amount for draws. Under the authority set forth in this Notice, effective the date of publication of this Notice, and until further notice, the minimum dollar amount of a draw is $100,000. (For example, for each draw, a NMVC Company may request a draw in the amount of $100,000 or $105,000 or $110,000, and so on up to the total amount of Leverage committed to but not yet drawn by that NMVC Company.)

Program Authority: 15 U.S.C. §§ 689–689q.

Dated: December 11, 2001.

Harry Haskins,

Acting Associate Administrator for Investment.

[FR Doc. 01–31100 Filed 12–17–01; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board; Public Meeting

The U.S. Small Business Administration National Small Business DevelopmentCenter Advisory Board

will hold a public meeting on Sunday, January 13, 2002, from 11 am to 5 pm CST, in the Executive Board Room at the Doubletree Hotel located in Little Rock, Arkansas. This meeting will be held to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration or others present.

Anyone wishing to make an oral presentation to the Board must contact EllenThrasher, in writing by letter or fax no later than January 2, 2002 in order to be included on the agenda. For further information, please write or call Ellen Thrasher, Designated Federal Officer U.S. Small Business Administration, 409 Third Street, SW., Fourth Floor, Washington, DC 20416. Telephone number (202) 205–6817, FAX (202) 205–7727.

Steve Tupper,

Committee Management Officer.

[FR Doc. 01–31098 Filed 12–17–01; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

Connecticut District Advisory Council; Public Meeting

The U.S. Small Business Administration Connecticut District Advisory Council, located in the geographical area of Hartford, Connecticut will hold a public meeting at 8:30 a.m., on Monday, January 14, 2002, Connecticut District Office, 330 Main Street, Hartford, Connecticut 06106, to discuss such matters as may be presented. For further information, write or call Marie Record, District Director, U.S. Small Business Administration, 330 Main Street, Hartford, Connecticut—(860) 240–4700.

Anyone wishing to attend and make an oral presentation to the Board must contact Marie A. Record, no later than January 9, 2002 via E-mail or fax. Marie A. Record, District Director, U.S. Small Business Administration, Connecticut District Office 330 Main Street, Hartford, CT 06106 (860) 240–4670 phone or (860) 240–4714 fax or E-mail *marie.record@sba.gov.*

Steve Tupper,

Committee Management Officer.

[FR Doc. 01–31097 Filed 12–17–01; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3854]

Bureau of Political-Military Affairs; Export of Non-lethal Defense Articles to Indonesia

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that requests for export and retransfer of non-lethal defense articles and spare parts to Indonesia pursuant to section 38 of the Arms Export Control Act will be considered on a case-by-case basis.

EFFECTIVE DATE: September 19, 2001.

FOR FURTHER INFORMATION CONTACT: Peter J. Berry, Chief, Arms Licensing Division, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202) 663–2700.

SUPPLEMENTARY INFORMATION: On October 14, 1999, a **Federal Register** notice was published (64 FR 55805) that suspended all licenses and approvals to export or otherwise transfer defense articles and defense services to Indonesia, except for certain exports related to commercial communication satellites and Y2K compliance activities that were not for the Indonesian military. The October 14, 1999 **Federal Register** notice set forth a policy of denial for new export requests except those that met the exception.

A **Federal Register** notice was published on January 25, 2001 (66 FR 7836) that permitted review, on a case-by-case basis, of requests for the export of C–130 spare parts to Indonesia, including for the Government of Indonesia. On March 22, 2001, a **Federal Register** notice was published (66 FR 16085) that expanded the review, on a case-by-case basis, of defense articles/defense services exported to Indonesia for ultimate end-use by a third-country.

This Notice expands categories of defense articles/defense services eligible for consideration for export/transfer to Indonesia, on a case-by-case basis, to include: (a) Non-lethal defense articles and spare parts; and (b) non-lethal, safety-of-use spare parts for lethal end-items. An example of safety-of-use items would be cartridge actuated devices, propellant actuated devices and technical manuals for military aircraft for purposes of enhancing the safety of the aircraft crew. For non-lethal defense end-items, no distinction will be made between Indonesia's existing and new inventory.

For the purposes of this policy, ''nonlethal defense articles'' means an article that is not a weapon, ammunition, or other equipment or material that is designed to inflict serious bodily harm or death (see, e.g. 10 U.S.C. 2557).

Dated: November 30, 2001.

Lincoln P. Bloomfield, Jr.,

Assistant Secretary, Bureau of Political-Military Affairs, Department of State.

[FR Doc. 01–31170 Filed 12–17–01; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 3853]

Notice of Meeting of the Cultural Property Advisory Committee

AGENCY: Department of State.

ACTION: Notice.

The Cultural Property Advisory Committee will meet on Wednesday, January 23, 2002, from approximately 9 a.m. to 5 p.m., and on Thursday, January 24, from approximately 9 a.m. to 2 p.m., at the Department of State, Annex 44, Room 800–A, 301 4th St., SW., Washington, DC. During its meeting the Committee will review a request from the Government of the Republic of Honduras to the Government of the United States of America. Concerned that its cultural heritage is in jeopardy from pillage, the Government of the Republic of Honduras made this request under Article 9 of the 1970 UNESCO Convention.

The Committee's responsibilities are carried out in accordance with provisions of the Convention on CulturalProperty Implementation Act (19 U.S.C. 2601 *et seq.*). A copy of the Act, a public summary of this request, a bibliography of documents researched by the Committee that are otherwise available to the public, and related information may be found at: *http://exchanges.state.gov/education/culprop.* During its meeting on January 23, the Committee will hold an open session, 10:30 a.m.–12:30 p.m., to receive oral public comment on the Honduras request. Persons wishing to attend this open session should notify the CulturalProperty office at (202) 619–6612 by Tuesday, January 15,2002, to arrange for admission, as seating is limited. Those who wish to make oral presentations should also request to be scheduled, and submit a written text of the oral comments by January 15 to allow time for distribution of them to Committee members prior to the meeting. Oral comments will be limited to five minutes each to allow time for

questions from members of the Committee and must specifically address the determinations under section 303(a)(1) of the Convention on Cultural PropertyImplementation Act, 19 U.S.C. 2602, for which the Committee must make findings.

Those determinations are: ''(A) That the cultural patrimony of the State Party (Honduras) is in jeopardy from pillage of archaeological or ethnological materials; (B) that the State Party has taken measures consistent with the Convention to protect its cultural patrimony; (C) that (i) the application of the import restrictions, if applied in concert with similar restrictions implemented, or to be implemented within a reasonable period of time, by those nations * * * individually having a significant import trade in such material, would be of substantial benefit in deterring a serious situation of pillage, and (ii) remedies less drastic than the application of the restrictions * * * are not available; and (D) that the application of import restrictions. is consistent with the general interest of the international community in the interchange of cultural property among nations for scientific, cultural, and educational purposes * * *''. The Committee also invites written comments and asks that they be submitted by January 15. All written materials, including the written texts of oral statements, should be faxed to (202) 619–5177.

Other portions of the meeting on January 23 and 24 will be closed pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h).

Dated: December 11, 2001.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 01–31028 Filed 12–17–01; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF STATE

[Public Notice 3830]

Advisory Committee on International Communications and Information Policy; Meeting Notice

The Department of State is announcing the next meeting of its Advisory Committee on International Communications and Information Policy (ACICIP).

The Committee provides a formal channel for regular consultation and coordination on major economic, social and legal issues and problems in international communications and information policy, especially as these issues and problems involve users of information and communications services, providers of such services, technology research and development, foreign industrial and regulatory policy, the activities of international organizations with regard to communications and information, and developing country interests.

David Gross, Deputy Assistant Secretary and U.S. Coordinator for International Communications and Information Policy, will attend the meeting together with others from the Office of Communications andInformation Policy at the Department of State. Items on the agenda will include communications policy issues, discussion regarding countries of particular interest to ACICIP, general discussion of the bilateral foreign consultation process, and differences between the US and EU approaches on internet service regulation. Mr. Gross also would like to solicit ideas from ACICIP on methods to improve communications between industry and the Department of State, as well as on specific issues of interest related to upcoming bilateral meetings withArgentina, Brazil, the European Commission, France, and the UnitedKingdom, as well as potential meetings elsewhere.

This meeting will be held on Thursday, January 10, 2002, from 9:30 a.m. to 12 p.m. in Room 1105 of the Main Building of the U.S. Department of State, located at 2201 ''C'' Street, NW., Washington, DC 20520.

Members of the public may attend these meetings up to the seating capacity of the room. While the meeting is open to the public, admittance to the Department of State building is only by means of a pre-arranged clearance list. In order to be placed on the pre-clearance list, please provide your name, title, company, social security number, date of birth, and citizenship to Pamela M. Bates at <batespm2@state.gov> no later than 5 p.m. on Tuesday, January 8, 2002. All attendees for this meeting must use the 23rd Street entrance. One of the following valid ID's will be required for admittance: any U.S. driver's license with photo, a passport, or a U.S. government agency ID. Non-U.S. government attendees must be escorted by Department of State personnel at all times when in the building.

For further information, please contact Pamela M. Bates, Executive Secretary of the Committee, at (202) 647–5820 or<*batespm2@state.gov*>.

Dated: December 10, 2001.

Pamela M. Bates,

Executive Secretary, Advisory Committee on International Communications and Information Policy, Department of State.

[FR Doc. 01–31027 Filed 12–17–01; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Privacy Act of 1974: System of Records

AGENCY: Office of the Secretary, DOT.

ACTION: Notice to amend a system of records.

SUMMARY: DOT intends to amend a system of record under the Privacy Act of 1974.

EFFECTIVE DATE: January 28, 2002.

FOR FURTHER INFORMATION CONTACT: Yvonne L. Coates, Department of Transportation, Office of the Secretary, 400 7th Street, SW., Washington, DC 20590, (202) 366–6964 (telephone), (202) 366–7024 (fax), *Yvonne.Coates@ost.dot.gov* (Internet address).

SUPPLEMENTARY INFORMATION: The Department of Transportation system of records notice subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, has been published in the **Federal Register** and is available from the above mentioned address.

DOT/ALL 7

SYSTEM NAME:

Departmental Accounting and Financial Information System (DAFIS) and Delphi Accounting System.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

The system is located in Department of Transportation (DOT), DOT Accounting offices and selected application service provider program, policy, and budget offices. These offices are located within the Office of the Secretary, OST; the Research and Special Programs Administration, RSPA; the Federal Aviation Administration, FAA; the United States Coast Guard, USCG; the Federal Highway Administration, FHWA; the National Highway Traffic Safety, NHTSA; the Federal Transit Administration, FTA; the Maritime Administration, MARAD; the Federal Railroad Administration, FRA; the Federal Motor Carrier Safety

Administration, FMCSA; the Bureau of Transportation Statistics, BTS; Transportation Administrative Service Center, TASC, and the Transportation Security Administration, TSA. These offices exercise systems and operational control over applicable records within the system. The system software is centrally maintained by the FAA's Mike Monroney Aeronautical Center, Oklahoma City, Oklahoma. Some centralized reporting functions are performed at Oklahoma City.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM OF RECORDS:

The systems cover: All employees of DOT, and only of DOT, which includes FAA, USCG, NHTSA, FHWA, OST, RSPA, FRA, FTA, MARAD, USCG, FMCSA, BTS, TASC, and TSA. Any other Federal agencies that use the system are responsible for Privacy Act compliance for their own employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories include application service provider records and credit cards of government employees, and payment records for non-payroll related expenses, payment records for payroll made offline, collection records for payroll offsets, and labor cost records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C 301; 49 U.S.C. 322; 31 U.S.C. 3512 (b).

PURPOSE(S):

The purpose for collecting the data in the DAFIS and Delphi System of Records is to control and facilitate the accounting and reporting of financial transactions for DOT.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Accounting office personnel use these records to: Provide employees with off-line paychecks, travel advances, travel reimbursements, travel processing, and other official reimbursements; Facilitate the distribution of labor charges for costing purposes; Track outstanding travel advances, receivables, and other non-payroll amounts paid to employees, etc.; and, Clear advances that were made through the system in the form of off-line paychecks, payments for excess household goods made on behalf of the employee, garnishments, overdue travel advances, etc. See Prefatory Statement of General Routine Uses.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to ''consumer reporting agencies'' as defined in the Fair Credit Reporting Act (15 U.S.C. 168a(f)) or the Federal Claims Collection Act of 1982 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on magnetic tape, magnetic disk, microforms, and in file folders. Storage of file folders and microforms is at the geographic locations of the servicing accounting office. Magnetic tape and disk records are maintained at the central maintenance site in Oklahoma City.

RETRIEVABILITY:

Records are retrieved by employee name and social security number. Retrieval is accomplished by use of telecommunications.

SAFEGUARDS:

Access to magnetic tape, disk records, and website records is limited to authorized agency personnel through password, encryption, firewalls, and secured operating system. Hard copy files are accessible to authorized personnel and are kept in locked file cabinets during non-duty hours.

RETENTION AND DISPOSAL:

Original payment vouchers and supporting documentation are retained and disposed in compliance with the General Records Schedules, National Archives and Records Administration, Washington, DC 20408. The following schedules apply: General Records Schedule (GRS) 1, Civilian Personnel Records; GRS 2, Payrolling and Pay Administration Records; GRS 3, Procurement, Supply and Grant Records; GRS 4, Property Disposal Records; GRS 5, Budget Preparation, Presentation, and Appointment Records; GRS 6, Accountable Officers' Accounts Records; GRS 7, Expenditure Accounting Records; GRS 8, Stores, Plant and Cost Accounting Records; and, GRS 9, Travel and Transportation Records.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Financial Management (B–30), Office of the Secretary, Office of Financial Management, 400 Seventh Street SW., Washington, DC 20590.

NOTIFICATION PROCEDURE:

Inquiries should be directed to the managers of the accounting office supporting the employee's agency. Agency officials will contact the System Manager listed above if any centralized support is required for responses.

RECORD ACCESS PROCEDURES:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURES:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Information is provided by the employee directly or through the DOT Consolidated Uniform Payroll System.

EXEMPTION CLAIMED FOR THE SYSTEM:

None.

OMB CONTROL NUMBER:

Not applicable

Dated: December 7, 2001.

Yvonne L. Coates,

Privacy Act Coordinator.

[FR Doc. 01–30837 Filed 12–17–01; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2001–11149]

Guidelines for Assessing Merchant Mariners through Demonstrations of Proficiency for Persons in Charge of Medical Care

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability and request for comments.

SUMMARY: The Coast Guard announces the availability of, and seeks public comments on, the national performance measures proposed here for use as guidelines when mariners demonstrate their proficiency as Persons in Charge of Medical Care. These measures were developed from recommendations and input provided by the Merchant Marine Personnel Advisory Committee (MERPAC).

DATES: Comments related material must reach the Docket Management Facility on or before February 19, 2002.

ADDRESSES: Please identify your comments and related material by the docket number of this rulemaking [USCG 2001–11149]. Then, to make sure they enter the docket just once, submit them by just one of the following means:

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

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

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

(4) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov.*

In choosing among these means, please give due regard to the recent difficulties with delivery of mail by the U.S. Postal Service to Federal facilities.

The Docket Management Facility maintains the public docket for this notice. Comments and related material received from the public, as well as documents mentioned in this Notice, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

The measures proposed here are also available from Mr. Mark Gould, Maritime Personnel Qualifications Division, Office of Operating and Environmental Standards, Commandant (G–MSO–1), U.S. Coast Guard Headquarters, telephone 202–267–0229, or e-mail address *mgould@comdt.uscg.mil.*

FOR FURTHER INFORMATION CONTACT: For questions on this Notice or on the national performance measures proposed here, e-mail or call Mr. Gould where indicated under **ADDRESSES.** For questions on viewing or submitting material to the docket, call Ms. Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

What Action Is the Coast Guard Taking?

Section A–VI/4–2 of the Code accompanying the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978, as amended in 1995, articulates qualifications for ensuring merchant mariners' attaining the minimum standard of competence through demonstrations of their proficiency as Persons in Charge of Medical Care. The Coast Guard tasked MERPAC with referring to the Section, modifying and specifying it as it deemed necessary, and recommending national performance measures. The Coast Guard has reviewed the measures recommended by MERPAC and has developed a final set that we are proposing here for use as guidelines for assessing that proficiency.

The guidelines are set up as follows: First we set forth the Competency within the STCW a mariner must demonstrate to meet the STCW section. Next we give a series of examples of Performance Conditions, a set of Performance Behaviors for each Performance Condition, and a set of Performance Standards for each Performance Behavior.

For example, if the Competency to demonstrate is: ''Provide medical care to the sick and injured while they remain on board,'' a Performance Condition for that Competency demonstrating knowledge, understanding, and proficiency is: In a graded practical exercise, given a patient simulating a head injury, * * *

A Performance Behavior for that Condition is: * * * the candidate will demonstrate the techniques for conducting a neurological assessment.

A Performance Standard for that Behavior is: The candidate correctly demonstrates the following assessment techniques and states the significance of each finding: (a) Pupillary reaction; (b) Level of consciousness; (c) Verbal communication; and (d) Sensory motor status.

If the mariner properly meets all of the Performance Standards, he or she passes the practical demonstration. If he or she fails to properly carry out any of the Standards, he or she fails it.

Why Is the Coast Guard Taking This Action?

The Coast Guard is taking this action to comply with STCW, as amended in 1995 and incorporated into domestic regulations at 46 CFR parts 10, 12, and 15 in 1997. Guidance from the International Maritime Organization on shipboard assessments of proficiency suggests that Parties develop standards and measures of performance for practical tests as part of their programs for training and assessing seafarers.

How May I Participate in This Action?

You may participate in this action by submitting comments and related material on the national performance measures proposed here. (Although the Coast Guard does not seek public comment on the measures recommended by MERPAC, as district from the measures proposed here, those measures are available on the Internet at the homepage of MERPAC, *http://www.uscg.mil/hq/g–m/advisory/merpac/merpac.htm.*) These measures are available on the Internet at *http://dms.dot.gov,* under this docket number [USCG 2001–11149]. They are also available from Mr. Gould where indicated under **ADDRESSES.** If you submit written comments please include—

- Your name and address;
- The docket number for this Notice [USCG 2001–11149];
- The specific section of the performance measures to which each comment applies; and
- The reason for each comment.

You may mail, deliver, fax, or electronically submit your comments and related material to the Docket Management Facility, using an address or fax number listed in **ADDRESSES.** Please do not submit the same comment or material more than once. If you mail or deliver your comments and material, they must be on 8½-by-11-inch paper, and the quality of the copy should be clear enough for copying and scanning. If you mail your comments and material and would like to know whether the Docket Management Facility received them, please enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments and material received during the 60-day comment period.

Once we have considered all comments and related material, we will publish a final version of the national performance measures for use as guidelines by the general public. Individuals and institutions assessing the competence of mariners may refine the final version of these measures and develop innovative alternatives. If you vary from the final version of these measures, however, you must submit your alternative to the National Maritime Center for approval by the Coast Guard under 46 CFR 10.303(e) before you use it as part of an approved course or training program.

Dated: December 6, 2001.

Joseph J. Angelo,

Director, of Standards, Marine Safety and Environmental Protection.

Assessment Guidelines for Table A–VI/4–2

Specification for Minimum Standard of Competency

Proficiency for Persons in Charge of Medical Care

Each candidate for an STCW endorsement as Person in Charge of Medical Care must meet the standards of competence set out in STCW Code Table A–VI/4–2. To accomplish this, he or she must:

- Complete approved education and training and meet all the competencies listed in the table;
- Pass a written examination for the portion of the competencies on knowledge and understanding; and
- Successfully accomplish a practical demonstration of skill for selected competencies.

The United States Coast Guard requires each mariner seeking proficiency as Person in Charge of Medical Care aboard ship to attend a course approved by the National Maritime Center. For this reason, these guidelines contain the assessment criteria for both requirements, knowledge (listed in the paragraph below) and skill, Table A–VI/4–2.

Written Assessments

The knowledge-based or understanding-based portion of the following competencies may be assessed through a written multiple-choice examination. The candidate must achieve a minimum passing grade of 70% in each kind of knowledge or understanding within the competency: Signs and symptoms of bleeding; signs and symptoms of burns, scalds and frostbite; types of wounds and their treatment; signs of infection; procedures to manage systemic pain; procedures to manage pain before cleaning; uses of lidocaine with and without epinephrine; suturing a wound and removing sutures; identifying wounds that may be sutured and criteria for removing sutures; signs, symptoms, and emergency treatment for acute abdominal conditions; steps involved in minor surgical procedures; steps for treating an abdominal evisceration; bandaging a sucking chest wound; identifying general principles of nursing care; inserting or simulating inserting a urinary drainage catheter (male and female); inserting a naso-gastric tube; injecting medicine by intramuscular and subcutaneous route; signs, symptoms and treatments for hyperglycemia, anaphylaxis, dehydration, gonorrhea, syphilis, genital herpes, systemic infections, malaria, and hepatitis A and B; signs of alcoholism and drug abuse, signs of and treatment for toothache and other dental problems; sings, symptoms, and treatments for gynecological conditions, pregnancy and childbirth; methods to determine cause of death and how to prepare a body for storage at sea; personal hygiene; preventing disease aboard ship; preventing disease through vaccination; preparing a patient for evacuation; and methods of cooperation with health authorities in port.

Demonstrations of Skill

In addition to passing a written examination, the competency entitled ''Provide medical care to the sick and injured while they remain on board'' requires a practical demonstration of skill to assess proficiency. These assessment guidelines establish the conditions under which the assessment will occur, the performance or behavior the candidate is to accomplish, and the standards against which to measure the performance. The examiner should use a checklist in conducting assessments of practical demonstrations of skill. Checklists allow a training institution or designated examiner to avoid overlooking critical tasks when evaluating a candidate's practical demonstration. Training institutions and designated examiners should develop their own checklists for use in conducting the assessments in a complete and structured manner.

TABLE A–VI/4–2.—GUIDELINES FOR ASSESSMENT—SPECIFICATION OF MINIMUM STANDARD OF COMPETENCE—PERSONS IN CHARGE OF MEDICAL CARE

STCW competence	Knowledge, understanding and proficiency	Performance condition	Performance behavior	Performance standard
Provide medical care to the sick and injured while they remain on board.	Care of the casualty involving head and spinal injuries*.	In a graded practical exercise, given a patient simulating a head injury.	The candidate will demonstrate the techniques for conducting a neurological assessment.	The candidate correctly demonstrates the following assessment techniques and states the significance of each finding: 1. Pupillary reaction; 2. Level of consciousness; 3. Verbal communication; and 4. Sensory motor status.
	Care of the casualty involving injuries to ear, nose, throat and eye*.	In a graded practical exercise, given a patient simulating a bleed from the ear.	The candidate will use external bandages to control bleeding from the ear.	The candidate correctly: Applies an external bandage to stem bleeding of the ear; and 2. Does not pack the ear.
		In a graded practical exercise, given a patient simulating a nose bleed.	The candidate will demonstrate the proper techniques to stop bleeding from the nose.	The candidate: 1. Positions the patient sitting upright with the head tilted forward; 2. Pinches the bridge of the nose; and 3. places ice on the back of the neck or the forehead.
		In a graded practical exercise, given a patient simulating an object impaled in the eye.	The candidate will demonstrate the proper method of bandaging an eye impaled by a foreign object.	The student: 1. Immobilizes the object impaled in eye; and 2. bandages both the affected and unaffected eye.

TABLE A–VI/4–2.—GUIDELINES FOR ASSESSMENT—SPECIFICATION OF MINIMUM STANDARD OF COMPETENCE—PERSONS IN CHARGE OF MEDICAL CARE—Continued

STCW competence	Knowledge, understanding and proficiency	Performance condition	Performance behavior	Performance standard
		In a graded practical exercise, given a patient simulating a foreign liquid or solid substance in the eye.	The candidate will demonstrate the proper method of treating a foreign liquid or solid substance in the eye.	The candidate flushes the affected eye for at least 20 minutes with copious amount of water (saline, if immediately available) to wash away chemicals or solid particles.
		In a graded practical exercise, given a patient simulating a soft-tissue injury to the throat.	The candidate will demonstrate the proper method of treating a soft-tissue injury to the throat.	The student: 1. Anticipates a compromised airway; and 2. Maintains airway management techniques.
	Care of the casualty involving external and internal bleeding*.	In a graded practical exercise, given a patient simulating bleeding wound.	The candidate will demonstrate application of pressure dressing and location of pressure points.	The candidate correctly demonstrates the: 1. Location of the brachial and femoral pressure points; and 2. Application of a pressure dressing at the would site.
		In a graded practical exercise, given a patient simulating an arterial bleed of an extremity.	The candidate will state when to use a tourniquet.	The candidate correctly states that a tourniquet will only be applied when: 1. All other methods of controlling bleeding have failed; and 2. Continued bleeding is life-threatening.
	Care of the casualty involving fractures, dislocations and muscular injuries*.	In a graded practical exercise, given a patient simulating a fracture of the ankle and a dislocated shoulder, and materials for splinting.	The candidate will demonstrate the splinting of an ankle fracture and immobilization of a dislocated shoulder.	The candidate correctly applies a pillow splint to an ankle fracture, following the following procedures: 1. Manually stabilizes the fractured ankle or leg; 2. Assesses distal neuro-vascular function; 3. Applies pillow to the ankle and lower leg, wrapping it around the ankle and leg and keeping the foot exposed; 4. Secures pillow using cravats or other device to tie ends together; 5. Re-assesses distal neuro-vascular function; and 6. Seeks medical advice by radio. The candidate correctly immobilizes a dislocated shoulder using the following procedures: 1. Assesses distal neuro-vascular; 2. Applies sling using triangular bandage or commercial-type sling (knot of sling should not be pressing on neck); 3. Using a cravat or other binding, applies a swath over sling and around body; and 4. Re-assesses distal neuro-vascular functions.

TABLE A–VI/4–2.—GUIDELINES FOR ASSESSMENT—SPECIFICATION OF MINIMUM STANDARD OF COMPETENCE—PERSONS IN CHARGE OF MEDICAL CARE—Continued

STCW competence	Knowledge, understanding and proficiency	Performance condition	Performance behavior	Performance standard
	Care of the casualty involving techniques of sewing and clamping*.	In a graded practical exercise, given a simulated wound, suturing needle and thread, clamps, and suture-removal scissors.	The candidate will demonstrate a method to suture a would and method to remove sutures.	The candidate correctly demonstrates a standard instrument tie to include the following: 1. Ties all knots to one side of the wound; 2. Begins sutures at center of wound and proceeds outward; and 3. Uses strategic sutures to match up obvious points in irregular wounds. The candidate correctly demonstrates suture removal to include the following: 1. Lifts suture with forceps; 2. Cuts suture near skin surface; and 3. Pulls suture out holding the knotted end of the suture.
		In a graded practical evaluation, given a simulated chest wound, occlusive dressing materials, and tape.	The candidate will bandage a sucking chest wound.	The candidate correctly demonstrates the following: 1. Surveys and determines the entrance (and exit) wound(s); 2. Covers wound(s) with occlusive dressing; 3. Tapes three sides of the dressing over the wound; and 4. Monitors respiratory effort of victim.
	Nursing care*	In a graded practical evaluation, given a real patient or urinary-catheterization simulator, and supplies for urinary-catheter insertion.	The candidate will insert or simulate inserting a urinary-drainage catheter (male and female).	The candidate correctly demonstrates the following: 1. Maintenance of correct sterile techniques; 2. Cleansing of the meatus; 3. Lubrication of the catheter; 4. Insertion of the catheter into urethra until urine drains; and 5. Opening of the roller clamp of the tubing.
		In a graded practical evaluation, given a mannequin and supplies for nasogastric tube insertion.	The candidate will insert a naso-gastric tube.	The candidate correctly demonstrates the following: 1. Utilizes proper precautions for isolating bodily substances; 2. Measures length of tube to insert; 3. Lubricates tube; 4. Positions patient; 5. Inserts tube through nose; 6. Demonstrates one test to confirm placement; and 7. Secures tube to nose with tape.

TABLE A–VI/4–2.—GUIDELINES FOR ASSESSMENT—SPECIFICATION OF MINIMUM STANDARD OF COMPETENCE—PERSONS IN CHARGE OF MEDICAL CARE—Continued

STCW competence	Knowledge, understanding and proficiency	Performance condition	Performance behavior	Performance standard
		In a graded practical evaluation, given a real or simulated patient, and supplies for injections of medicine.	The candidate will administer medication injection by intramuscular route.	The candidate: 1. Confirms the medicine order, calculates proper dosage, identifies correct medicine and confirmed expiration date; 2. Draws up correct dosage from medicine vial using sterile technique, checking medicine to medicine order at least three times and using correct needle and syringe for injection based on location of injection and amount of medicine; 3. Locates the injection site (deltoid, glutens, or vastus lateralis); 4. Cleanses the injection site with alcohol pad using circular motion; 5. Inserts the needle into muscle at 90° angle; and 6. Aspirates the syringe, and, if no blood, injects the medication.
		In a graded practical evaluation, given a real or simulated patient, and supplies for injections of medicine.	The candidate will inject medicine by subcutaneous route.	The candidate: 1. Confirms the medicine order, calculates proper dosage, identifies correct medicine and confirms expiration date; 2. Draws up the correct dosage from medicine vial using sterile technique, checking medicine to medicine order at least three times and using correct needle and syringe for injection based on location of injection and amount of medicine; 3. Locates the injection site; 4. Cleanses the injection site with alcohol pad using circular motion; 5. Inserts the needle into subcutaneous tissue at 45° angle; and 6. Aspirates the syringe, and, if no blood, injects the medicine.

* Indicates a proficiency from Table A–VI/4–2

[FR Doc. 01–31173 Filed 12–17–01; 8:45 am]
BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2001–94]

Petitions for Exemption; Summary of Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on December 13, 2001.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2001–9815 (previously Docket No. 29397).

Petitioner: Japan Airlines Company, Ltd.

Section of 14 CFR Affected: 14 CFR 145.47(b).

Description of Relief Sought/ Disposition: To permit JAL to use the calibration standards of the Metrology Institute of Japan in lieu of the calibration standards of the U.S. National Institute of Standards and Technology, to test its inspection and test equipment. *Grant, 10/31/2001, Exemption No. 7050A.*

Docket No.: FAA–2001–11025.

Petitioner: Miller Aviation, L.L.C.

Section of 14 CFR Affected: 14 CFR § 135.143(c)(12).

Description of Relief Sought/ Disposition: To permit MAL to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft. *Grant, 11/21/ 2001, Exemption No. 7663.*

Docket No.: FAA–2001–10984 (previously Docket No. 28842).

Petitioner: Air Tahoma.

Section of 14 CFR Affected: 14 CFR § 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Air Tahoma to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft. *Grant, 11/21/2001, Exemption No. 7664.*

Docket No.: FAA–2001–9786 (previously Docket No. 26029).

Petitioner: ABX Air, Inc., dba Airborne Express.

Section of 14 CFR Affected: 14 CFR §§ 121.503(b), 121.505(a), and 121.511(a).

Description of Relief Sought/ Disposition: To permit ABX flightcrews consisting of two pilots and one flight engineer to complete certain transcontinental flight schedules before being provided with at least 16 hours of rest. *Grant, 11/23/2001, Exemption No. 5167F.*

Docket No.: FAA–2001–10587.

Petitioner: American Airlines, Inc.

Section of 14 CFR Affected: 14 CFR 121.457(a) and V.A.1. of Appendix I to part 121.

Description of Relief Sought/ Disposition: To permit American employees performing safety-sensitive functions for TWA Airlines LLC to perform identical functions for American without being subject to additional preemployment drug testing. *Grant, 11/14/2001, Exemption No. 7661.*

Docket No.: FAA–2001–9942.

Petitioner: McMahon Helicopter Services.

Section of 14 CFR Affected: 14 CFR § 135.152(a).

Description of Relief Sought/ Disposition: To permit MHS to operate its three Sikorsky S–58T helicopters (Registration Nos. N58S, N589S, and N598S, and Serial Nos. 1502, 740, and 1196, respectively) without those helicopters being equipped with an approved digital flight data recorder. *Grant, 11/14/2001, Exemption No. 7662.*

[FR Doc. 01–31183 Filed 12–17–01; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 196: Night Vision Goggle (NVG) Appliances and Equipment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 196 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 199: Night Vision Goggle (NVG) Appliances and Equipment.

DATES: The meeting will be held January 2, 2002, starting at 1:00 p.m.

ADDRESSES: The meeting will be held at Northrop Grumman Electro-Optical Systems, 12024 Forestgate Drive, Dallas, TX 75243. *This meeting will also take place by telecon. Please RSVP to Lorry Faber (609–485–5461 or Lorry.Faber@faa.gov) or Jim Winkel (972–840–5775 or jwinkel@LITTON–EOS.com) if you intend to participate by telephone. Those parties interested in attending the meeting at the Dallas location need to RSVP NLT December 20th, 2001.*

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1140 Connecticut Avenue, NW., 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 (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 196 meeting. The agenda will include:

- January 2:
- Opening Session (Welcome and Introductory Remarks, Agenda Overview, Approve Minutes of Previous Meeting).
- Overview of SC–196 Working Group Activities.
- Operational Concept/Requirements.
- Minimum Operational Performance Standard (MOPS)—Night Vision Imaging Systems Equipment.
- Working Group 5 (Training Guidelines/Considerations).
- EUROCAE Working Group 57 Activities.
- Other NVG Regulatory and Advisory Group Activities.
- Advisory Circular 27–IB and Advisory Circular 29–2C Amendment for inclusion of NVG Certification of Normal and Transport Category Rotorcraft.
- Technical Standard Order for Night Vision Goggles.

• Aviation Rulemaking Advisory Committee for Night Vision Goggles Training and Operations.

• Issue Paper, ''Human Factors Issues for Civil Aviation Use of Night Vision Goggles''.

• Closing Session (NVG Research Requests, Status of SC–196, Other Business, Establish Agenda for Next Meeting, Date and Place of Next Meeting).

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 December 10, 2001.

Janice L. Peters,

FAA Special Assistance, RTCA Advisory Committee.

[FR Doc. 01–31181 Filed 12–17–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice to PFC Approvals and Disapprovals. In November 2001, there were 15 applications approved. This notice also includes information on one application, approved in October 2001, inadvertently left off the October 2001 notice. Additionally, seven approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: City of Rhinelander and Oneida County, Rhinelander, Wisconsin.

Application Number: 01–07–C–00–RHI.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $34,405.

Earliest Charge Effective Date: January 1, 2004.

Estimated Charge Expiration Date: April 1, 2004.

Class of Air Carriers Not Required to Collect PFC's: Part 135 air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Rhinelander-Oneida County Airport.

Brief Description of Projects Approved for Collection and Use: Communication tower. Repaint runway with beads. Airfield signage. Runway safety area grading. Survey and clear obstructions. PFC application administrative costs.

Decision Date: October 5, 2001.

FOR FURTHER INFORMATION CONTACT: Daniel J. Millenacker, Minneapolis Airports District Office, (612) 713–4350.

Public Agency: Port of Oakland, Oakland, California.

Application Number: 01–10–C–00–OAK.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $32,000,000.

Earliest Charge Effective Date: February 1, 2002.

Estimated Charge Expiration Date: October 1, 2003.

Classes of Air Carriers Not Required to Collect PFC's: (1) Non-scheduled/on-demand air carriers filing FAA Form 1800–31; (2) commuters or small certificated air carriers filing Department of Transportation Form 298–C T1 or E1.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that each approved class accounts for less than 1 percent of the total annual enplanements at Oakland International Airport.

Brief Description of Projects Approved for Collection and Use: Terminal One ticket counter expansion, phase 1. Overlay runway 11/29. Terminals One and Two restroom improvements. Multi-user system equipment in Terminal One.

Brief Description of Withdrawn Projects: Construct remote overnight aircraft parking apron. Terminal One gate improvement.

Determination: These projects were withdrawn by the public agency by letter dated September 24, 2001. Therefore, the FAA did not rule on these projects in this decision.

Decision Date: November 1, 2001.

FOR FURTHER INFORMATION CONTACT: Marlys Vandervelde, San Francisco Airports District Office, (650) 876–2806.

Public Agency: Waterloo Airport Commission, Waterloo, Iowa.

Application Number: 01–04–C–00–ALO.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $291,800.

Earliest Charge Effective Date: May 1, 2003.

Estimated Charge Expiration Date: July 1, 2004.

Class of Air Carriers not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use: Runway 12/30 rejuvenation. Runway 18/36 rejuvenation. Reconstruct taxiway E. Reconstruct and overlay taxiway A.

Brief Description of Project Approved for Use: Terminal building modernization—construction.

Decision Date: November 6, 2001.

FOR FURTHER INFORMATION CONTACT: Lorna Sandridge, Central Region Airports Division, (816) 329–2641.

Public Agency: City of Macon Municipal Aviation Department, Macon, Georgia.

Application Number: 01–01–C–00–MCN.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $356,842.

Earliest Charge Effective Date: March 1, 2002.

Estimated Charge Expiration Date: April 1, 2005.

Class of Air Carriers not Required to Collect PFC's: Air taxi/commercial operators.

Determination: Approved. Based on the information in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Middle Georgia Regional Airport.

Brief Description of Projects Approved for Collection and Use: Rehabilitate runway 5/23. Passenger terminal improvements.

Brief Description of Disapproved Project: Airport entrance road.

Determination: The FAA has determined that this project does not meet the requirements of § 158.25(b)(14)(ii). The public agency

did not provide a list of alternative projects to use PFC revenue.

Decision Date: November 8, 2001.

FOR FURTHER INFORMATION CONTACT: Daniel Gaetan, Atlanta Airports District Office, (404) 305–7146.

Public Agency: Kenton County Airport Board, Covington, Kentucky.

Application Number: 01–07–C–00–CVG.

Application Type: Impose and use a PFC.

PFC Levbel: $3.00.

Total PFC Revenue Approved in This Decision: $27,138,000.

Earliest Charge Effective Date: June 1, 2002.

Estimated Charge Expiration Date: June 1, 2003.

Classes of Air Carriers Not Required to Collect PFC's: (1) Part 121 supplemental operators which operate at the airport without an operating agreement with public agency and enplane less than 1,500 passengers per year; (2) Part 135 on-demand air taxis, both fixed wing and rotary.

Determination: Approved. Based on the information in the public agency's application, the FAA has determined each of the approved classes accounts for less than 1 percent of the total annual enplanements at Cincinnati/Northern Kentucky International Airport.

Brief Description of Projects Approved for Collection and Use: Concourse C improvements: south infill expansion; and north infill expansion and entry and canopy renovation. Deicing system enhancements: in stream treatment system engineering/design; and glycol processing and recycling facility. Taxiway M extension and connecting taxiways. Taxiways N extension. Aircraft rescue and firefighting satellite building (phase I). Planning study updates: airport master plan update (2002); and part 150 study update (2003).

Brief Description of Projects Partially Approved for Collection and Use: Runway 27 safety zone improvements: realign taxiway M; and runway 27 runway safety and area improvements.

Determination: The FAA has determined that the threshold relocation should not be constructed as proposed because of safety concerns. Therefor, the project was partially approved.

FOR FURTHER INFORMATION CONTACT: Jerry O. Bowers, Memphis Airports District Office, (901) 544–3495.

Public Agency: Metropolitan Nashville Airport Authority, Nashville, Tennessee.

Application Number: 01–09–C–00–BNA.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $26,005,000.

Earliest Charge Effective Date: October 1, 2002.

Estimated Charge Expiration Date: October 1, 2004.

Class of Air Carriers Not Required to Collect PFC's: Part 135 (air taxi).

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at the Nashville International Airport.

Brief Description of Projects Approved for Collection and Use: Donelson Pike and Terminal Drive relocation. Inbound baggage carousel security cages. Elevator on A concourse. Airfield pavement rehabilitation. Airfield hold bar modifications. Precision approach path indicator lights on runways 2L and 31. Aircraft rescue and firefighting vehicle. Cargo area infrastructure and utility improvements. Live scan fingerprint equipment.

FOR FURTHER INFORMATION CONTACT: Cynthia K. Wills, Memphis Airports District Office, (901) 544–3495.

Public Agency: Telluride Regional Airport Authority, Telluride, Colorado.

Application Number: 01–03–I–00–TEX.

Application Type: Impose a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $430,000.

Earliest Charge Effective Date: April 1, 2002.

Estimated Charge Expiration Date: January 1, 2007.

Class of Air Carriers Not Required to Collect PFC's: Air taxi operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at the Telluride Regional Airport.

Brief Description of Projects Approved for Collection: Land acquisition. Design engineering.

Decision Date: November 13, 2001.

FOR FURTHER INFORMATION CONTACT: Chris Schaffer, Denver Airports District Office, (303) 342–1258.

Public Agency: County of Brown, Green Bay, Wisconsin.

Application Numbers: 01–03–C–00–GRB.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $1,023,400.

Earliest Charge Effective Date: March 1, 2002.

Estimated Charge Expiration Date: October 1, 2002.

Class of Air Carriers Not Required to Collect PFC's: Part 135 air taxi/commercial operators.

Determination: Approved. Based on the information in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Austin Straubel International Airport.

Brief Description of Projects Approved for Collection and Use: Parallel taxiways D and M construction. PFC administrative costs.

Decision Date: November 11, 2001.

FOR FURTHER INFORMATION CONTACT: Daniel J. Millenacker, Minneapolis Airports District Office, (612) 713–4350.

Public Agency: Yakima Air Terminal Board, Yakima, Washington.

Application Number: 01–07–I–00–YKM.

Application Type: Impose a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $456,000.

Earliest Charge Effective Date: March 1, 2002.

Estimated Charge Expiration Date: March 1, 2004.

Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on the information in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Yakima Air Terminal—McAllister Field.

Brief Description of Project Approved for Collection: Runway 27 safety area improvements, phase II.

Decision Date: November 13, 2001.

FOR FURTHER INFORMATION CONTACT: Suzanne Lee-Pang, Seattle Airports District Office, (425) 227–2654.

Public Agency: County of Routt, Hayden, Colorado.

Application Number: 01–04–C–00–HDN.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $150,833.

Earliest Charge Effective Date: June 1, 2002.

Estimated Charge Expiration Date: November 1, 2002.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use: Runway 10/28 distance to go signs. Snow removal equipment. Air carrier apron drainage (glycol containment). Master plan update. Taxiway A rehabilitation and lighting improvements.

Brief Description of Withdrawn Project: Construction of new taxiway.

Determination: This project was withdrawn by the public agency by letter dated August 17, 2001. Therefore, the FAA did not rule on this project in this decision.

Decision Date: November 15, 2001.

FOR FURTHER INFORMATION CONTACT: Chris Schaffer, Denver Airports District Office, (303) 342–1258.

Public Agency: Wicomico County Airport Commission, Salisbury, Maryland.

Application Number: 01–01–C–00–SBY

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $44,892

Earliest Charge Effective Date: February 1, 2002.

Estimated Charge Expiration Date: October 1, 2004.

Class of Air Carriers Not Required to Collect PFC'S: Both unscheduled Part 135 and Part 121 charter operators for hire to the general public.

Determination: Approved. Based on the information in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Salisbury-Ocean City: Wicomico Regional Airport.

Brief Description of Projects Approved for Collection and Use: Develop PFC program and PFC application. Install airfield guidance signs and electrical vault. Design and construct fillet widening for runway 5/23 with joint reconstruction. Construct taxiway B extension and overlay taxiway B. Rehabilitate taxiway C. Rehabilitate taxiway D. Acquire land. Runway 5 and 23 approaches. Rehabilitate runway 5/23 medium intensity runway lights and runway 5 runway end intensity lights. Conduct environmental assessment. Acquire snow removal equipment. acquire passenger lift equipment.

Decision Date: November 21, 2001.

FOR FURTHER INFORMATION CONTACT: Eleanor Schifflin, Eastern Region Airports Division, (718) 553–3354.

Public Agency: Metropolitan Airport Authority of Rock Island County, Moline, Illinois.

Application Number: 01–04–C–00–MLI.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $1,520,320

Earliest Charge Effective Date: July 1, 2016.

Estimated Charge Expiration Date: July 1, 2017.

Class of Air Carriers Not Required to Collect PFC'S: Part 135 air taxi/commercial operators.

Determination: Approved. Based on the information in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Quad City International Airport.

Brief Description of Projects Approved for Collection and Use: Aircraft rescue and firefighting equipment purchase. Purchase of regional jet boarding bridges.

Decision Date: November 23, 2001.

FOR FURTHER INFORMATION CONTACT: Richard A. Pur, Chicago Airports District Office, (847) 294–7527.

Public Agency: Northwestern Regional Airport Commission, Traverse City, Michigan.

Application Number: 01–02–C–00–TVC.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $420,019.

Earliest Charge Effective Date: January 1, 2017.

Estimated Charge Expiration Date: January 1, 2018.

Class of Air Carriers Not Required to Collect PFC'S: Part 135 air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on the information in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Cherry Capital Airport.

Brief Description of Project Approved for Use: Design and construct new terminal building, ramp for new terminal, and taxiway for new terminal.

Brief Description of Projects Approved for Collection and Use: Pavement sensor system. Terminal expansion. Connector taxiway. High intensity runway lights, runway 10/28. Terminal apron lighting. Snow removal equipment procurement, plow truck. Taxiway D. Tie-down apron and taxi streets. Retention ponds. Expand equipment storage building. Deer control fence. Airfield signs. Taxiway to west hangar area. Bituminous overlay taxiways A, B, and J. Holding apron, runway 28 end. Security fencing and power gates. Screen wall and blast deflectors. Expansion of airline terminal. Snow removal equipment procurement. Rehabilitate southeast general aviation apron and airline apron. Loading bridge. Master plan. Snow removal equipment procurement (snow blower). Friction testing vehicle. Rehabilitate airport access road. Relocate water main. Jet bridge for regional carrier. Restroom addition to airline terminal. Relocate beacon. Security fencing. Conduct phase I of financial and land use plan.

Decision Date: November 23, 2001.

FOR FURTHER INFORMATION CONTACT: Arlene B. Draper, Detroit Airports District Office, (734) 487–7282.

Public Agency: County of Beltrami and City of Bemidji, Bemidji, Minnesota.

Application Number: 01–02–C–00–BJI.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $201,952.

Earliest Charge Effective Date: February 1, 2002.

Estimated Charge Expiration Date: August 1, 2003.

Classes of Air Carriers Not Required to Collect PFC's: (1) Non-scheduled/on-demand air carriers filing FAA Form 1800–31; (2) commuters or small certificated air carriers filing Department of Transportation Form 298–C or E1.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that each approved class accounts for less than 1 percent of the total annual enplanements at Bemidji/Beltrami County Airport.

Brief Description of Projects Approved for Collection and Use: Acquire aircraft rescue and firefighting vehicle. Improve terminal. Replace runway and taxiway lighting cables. Install deer fence (phase I). Expand auto parking lot. Improve boundary fence. Seal coat parking lot. Install terminal security. PFC application. Rehabilitate apron. Update master plan. Replace snow removal equipment.

Decision Date: November 23, 2001.

FOR FURTHER INFORMATION CONTACT: Daniel J. Millenacker, Minneapolis Airports District Office, (612) 713–4350.

Public Agency: Capital Region Airport Authority, Lansing, Michigan.

Application Number: 01–04–C–00–LAN.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $8,913.046.

Earliest Charge Effective Date: July 1, 2005.

Estimated Charge Expiration Date: August 1, 2011.

Class of Air Carriers Not Required to Collect PFC's: Non-scheduled part 135 and air taxi operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at the Capital City Airport.

Brief Description of Projects Approved for Collection and Use: Replace multi-user flight information display system. Replace security access control system. Overlay taxiway C and end of runway 24. Reconstruct terminal appron. Master plan/part 150 update. Relocate rental car lot. National Pollutant Discharge Elimination System (NPDES) permit—mitigation phase II. NPDES permit—mitigation phase III. PFC consultation fees. Replace baggage claim equipment. Baggage claim expansion.

Brief Description of Projects Approved for Collection: Reconstruct taxiway fillets. Gate expansion. Purchase and install ground level loading bridges.

Decision Date: November 28, 2001.

FOR FURTHER INFORMATION CONTACT: Arlene B. Draper, Detroit Airports District Office, (734) 487–7282.

Public Agency: City of Naples Airport Authority, Naples, Florida.

Application Number: 01–03–I–00–APF.

Application Type: Impose a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $850,000.

Earliest Charge Effective Date: February 1, 2002.

Estimated Charge Expiration Date: June 1, 2007.

Class of Air Carriers Not Required to Collect PFC's: Non-scheduled air carriers and charter flights using aircraft with less than 10 seats.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at the Naples Municipal Airport.

Brief Description of Project Approved for Collection: Rehabilitate and extend taxiway B.

Decision Date: November 30, 2001.

FOR FURTHER INFORMATION CONTACT: Jennifer Ganley, Orlando Airports District Office, (407) 812–6331, extension 25.

AMENDMENTS TO PFC APPROVALS

Amendment No. city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
95–01–03–SAN, San Diego, CA	08/23/01	$97,705,000	$105,896,731	09/01/00	03/01/01
98–02–C–01–SAN, San Diego, CA	08/23/01	28,089,000	49,972,839	01/01/02	06/01/03
*96–01–1–01–TVC, Traverse City, MI	10/25/01	14,846,381	14,846,381	01/01/17	01/01/17
*96–04–C–02–SMF, Sacramento, CA	10/31/01	78,993,780	78,993,780	04/01/06	02/01/03
93–01–C–01–RNO, Reno, NV	10/31/01	33,896,157	37,973,702	05/01/99	05/01/99
98–07–1–03–PHL, Philadelphia, PA	11/09/01	672,000,000	946,267,790	07/01/07	02/01/11
99–08–U–02–PHL, Philadelphia, PA	11/09/01	NA	NA	07/01/07	02/01/11

Note: The amendments denoted by an asterisk (*) include a change to the PFC level charged from $3.00 per enplaned passenger to $4.50 per enplaned passenger. For Sacramento, CA and Traverse City, MI, this change is effective on January 1, 2002.

Issued in Washington, DC, on December 12, 2001.

Barry Molar,

Manager, Airports Financial Assistance Division.

[FR Doc. 01–31184 Filed 12–17–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Palm Beach International Airport, West Palm Beach, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Palm Beach International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before January 17, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bruce V. Pelly, Director of Airports of the Palm Beach County Department of Airports at the following address: Palm Beach County Department of Airports, 846 Palm Beach International Airport, West Palm Beach, Florida 33406–1470.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Palm Beach County Department of Airports under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Vernon P. Rupinta, Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822, (407) 812–6331, Extension 24. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Palm Beach International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On December 10, 2001, the FAA determined that the application to use the revenue from a PFC submitted by Palm Beach County Department of Airports was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application,

in whole or in part, no later than March 27, 2002.

The following is a brief overview of the application.

PFC Application No.: 02–06–U–00–PBI.

Level of the proposed PFC: $3.00

Proposed charge effective date: December 1, 2000.

Proposed charge expiration date: December 1, 2005.

Total estimated net PFC revenue: $6,684,000.

Brief description of proposed project(s): Construct Taxiway ''A'' and Canal Relocation; Construct Perimeter Road.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators Filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Palm Beach County Department of Airports.

Issued in Orlando, Florida on December 10, 2001.

W. Dean Stringer,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 01–31182 Filed 12–17–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket No. NHTSA–01–10911]

Reports, Forms, and Record Keeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under new procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before February 19, 2002.

ADDRESSES: Direct all written comments to U.S. Department of Transportation Dockets, 400 Seventh Street, SW., Plaza 401, Washington, DC 20590. Docket No. NHTSA–01–10911.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Block, Contracting Officer's Technical Representative, Office of Research and Traffic Records (NTS–31), National Highway Traffic Safety Administration, 400 Seventh Street, SW., Room 6240, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) how to enhance the quality, utility, and clarity of the information to be collected; and

(iv) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks public comment on the following proposed collection of information:

Buckle Up America Telephone Surveys 2002–2004

Type of Request—New information collection requirement.

OMB Clearance Number—None.

Form Number—This collection of information uses no standard forms.

Requested Expiration Date of Approval—December 31, 2004.

Summary of the Collection of Information—NHTSA proposes to conduct telephone surveys both immediately before, and after, biannual national mobilizations carried out as part of the Buckle Up America (BUA) Campaign. Participation by respondents would be voluntary. The national mobilizations are conducted each year during May and November. The mobilizations are designed to increase seat belt and child restraint use through education and enforcement of restraint laws. NHTSA would conduct four survey waves per year over a three year period beginning in 2002. During each year, NHTSA would conduct a survey wave: (1) Immediately preceding the May Mobilization; (2) immediately following the May Mobilization; (3) immediately preceding the November Mobilization; and (4) immediately following the November Mobilization. Each survey wave would be composed of a national sample of 1200 respondents, as well as multiple independent State samples of 500 respondents each. An average of 25 independent State samples would be surveyed per survey wave across the three year period, producing an average of 13,700 total interviews per survey wave. Prior to each mobilization, NHTSA would select specific States to be included among the independent State samples based on mobilization activities planned within the States. The surveys would collect information regarding public awareness of the mobilization, public perceptions of enforcement of motor vehicle restraint laws, public attitudes concerning motor vehicle restraint use, and the public's reported use of motor vehicle restraint systems.

In conducting the proposed survey, the interviewers would use computer-assisted telephone interviewing to reduce interview length and minimize recording errors. A Spanish-language translation and bilingual interviewers would be used to minimize language barriers to participation. The proposed survey would be anonymous and confidential.

Description of the Need for the Information and Proposed Use of the Information

The National Highway Traffic Safety Administration (NHTSA) was established to reduce the mounting number of deaths, injuries and economic losses resulting from motor vehicle crashes. As part of this statutory mandate, NHTSA is authorized to conduct research as a foundation for the development of motor vehicle standards and traffic safety programs.

Wearing a seat belt is the most effective action a person can take to avert death or injury in the event of a

motor vehicle crash. Research has found that lap/shoulder belts reduce the risk of fatal injury to front-seat passenger car occupants by 45 percent and the risk of moderate-to-critical injury by 50 percent. For light truck occupants, seat belts reduce the risk of fatal injury by 60 percent and moderate-to-critical injury by 65 percent.

Buckle Up America (BUA) is a Presidential Initiative for increasing seat belt use and child restraint use nationwide. National goals are to increase seat belt use to 90 percent by 2005, and reduce child (0–4 years) occupant fatalities by 25 percent (from the 1995 number) by 2005. The BUA strategic plan, developed with input from both the public and private sectors, contains four key elements for achieving the goals: (1) Building public-private partnerships; (2) enactment of strong legislation by States; (3) active, high visibility law enforcement; and (4) effective public education. Guided by the strategic plan, the BUA Campaign carries out regularly scheduled national mobilizations that combine high visibility enforcement with education.

The national mobilizations are a major component of the BUA Campaign. As such, there is a need to evaluate their effectiveness. The proposed surveys would provide pre- and post-test measures for each mobilization conducted during the three year period beginning May 2002. The two measures would be compared to assess whether the mobilization activities and messages penetrated public awareness, whether the public found the message of increased enforcement activity credible, and whether the mobilization affected attitudes and (self-reported) behavior concerning restraint use. Many of the comparisons would need to be made at the State level because of substantial differences across States in their mobilization activities (e.g., intensity of enforcement efforts, use of media, publicized support, etc.). NHTSA would select specific States from which to draw independent samples based on their planned mobilization activities.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)

Under this proposed effort, a telephone interview averaging ten minutes in length would be administered to randomly selected members of the general public age 16 and older in telephone households. There would be a total of 12 survey waves conducted over a period of three years (four per year). An average of 13,700 persons would be interviewed per survey wave. Each survey wave would be comprised of a national sample, and multiple independent State samples. The national sample would be selected from all 50 States plus the District of Columbia. The independent State samples would be composed of 500 persons per State. There would be an average of 25 independent State samples per survey wave. Together with the national sample, there would be an average of 13,700 interviews per survey wave. Interviews would be conducted with persons at residential phone numbers selected through random digit dialing. Businesses are ineligible for the sample and would not be interviewed. No more than one respondent would be selected per household. Each member of the sample would complete one interview. No respondent would participate in more than one survey wave.

Estimate of the Total Annual Reporting and Record Keeping Burden Resulting From the Collection of Information

NHTSA estimates that each respondent in the sample would require an average of 10 minutes to complete the telephone interview. The number of estimated reporting burden hours a year on the general public (13,700 respondents multiplied by one interview multiplied by 10 minutes multiplied by four survey waves) would be 9,133. The respondents would not incur any reporting cost from the information collection. The respondents also would not incur any record keeping burden or record keeping cost from the information collection.

Rose A. McMurray,

Associate Administrator, Office of Traffic Safety Programs.

[FR Doc. 01–31109 Filed 12–17–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2000–6887; Notice 2]

Reports, Forms, and Record Keeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on additional collection of information for an existing collection.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections. This document describes one collection of information for which NHTSA intends to seek OMB approval. This collection is an additional collection of information for an existing collection.

DATES: Comments must be received on or before February 19, 2002.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance Number. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: For further information, contact Mr. Roger Kurrus, Office of Planning and Consumer Programs, 400 Seventh Street, SW., Washington, DC 20590. Mr. Kurrus' telephone number is (202) 366–2750. His FAX number is (202) 493–2290. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) how to enhance the quality, utility, and clarity of the information to be collected;

(iv) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: Tires and Rim Labeling and Vehicle Placard Requirements.

OMB Control Number: 2127–0503.

Affected Public: Tire and Rim Manufacturers, Vehicle Manufacturers.

Abstract: Each tire manufacturer and rim manufacturer must label their tire and rim with the applicable safety information. These labeling requirements ensure that tires are mounted on the appropriate rims, that necessary tire recall information is readily available, and that the rims and tires are mounted on the vehicles for which they are intended. Each vehicle manufacturer must provide labels and placards to ensure that proper load limit and tire inflation pressure information is available. This labeling must be in accordance with Federal Motor Vehicle Safety Standards and regulations.

Estimated Annual Burden: 265,702.

Estimated Number of Respondents: 7,608.

Issued on: December 12, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 01–31115 Filed 12–17–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2001–9477; Notice 2]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on additional collection of information for an existing collection.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before February 19, 2002.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance Number. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 9 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: For further information, contact Roger Saul, NHTSA, 400 Seventh Street, SW., Room 5320, NPS–11,Washington, DC 20590. Mr. Saul's telephone number is (202) 366–1740. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) how to enhance the quality, utility, and clarity of the information to be collected;

(iv) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: Consolidated Vehicle Owner's Manual Requirements for Motor Vehicles and Motor Vehicle Equipment.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2127–0541.

Affected Public: Individuals, Households, Business, other for-profit, Not-for-profit, Farms, Federal Government and State, Local or Tribal Government.

Abstract: 49 U.S.C. 30117 authorizes the Secretary to require that manufacturers provide technical information, as for example information directed for publication in a vehicle owner's manual, related to the performance and safety specified in the Federal motor vehicle safety standards for the purposes of educating the consumer and providing safeguards against improper use. Using this authority, the agency issued the following FMVSS and regulations, specifying that certain safety precautions regarding items of motor vehicle equipment appear in the vehicle owner's manual to aid the agency in achieving many of its safety goals.

FMVSS No. 108—Lamps, Reflective Devices, and Associated Equipment

This standard requires that certain lamps and reflective devices with certain performance levels be installed on motor vehicles to assure that the roadway is properly illuminated, that vehicles can be readily seen, and the signals can be transmitted to other drivers sharing the road, during day, night and inclement weather. Since the specific manner in which headlamp aim is to be performed is not regulated (only the performance of the device is), aiming devices manufactured or installed by different vehicle and headlamp manufacturers may work in significantly different ways. As a consequence, to assure that headlamps can be correctly aimed, instructions for proper use must be part of the vehicle as a label, or optionally, in the vehicle owner's manual.

FMVSS 110—Tire Selection and Rims

This standard specifies requirements for tire selection to prevent tire overloading. The vehicle's normal load and maximum load on the tire shall not be greater than applicable specified limits. The standard requires a permanently affixed vehicle placard specifying vehicle capacity weight, designated seating capacity, manufacturer recommended cold tire inflation pressure, and manufacturer's recommended tire size. The standard

further specifies rim construction requirements, load limits of non-pneumatic spare tires, and labeling requirements for non-pneumatic spare tires, including a required placard. Owner's manual information is required for ''Use of Spare Tire''. Revision of FMVSS 110 will require additional owner's manual information on the revised vehicle placard and tire information label, on revised tire labeling, and on tire safety and load limits and terminology.

FMVSS No. 205—Glazing Materials

This standard specifies requirement for all glazing material used in windshields, windows, and interior partitions of motor vehicles. Its purpose is to reduce the likelihood of lacerations and to minimize the possibility of occupants penetrating the windshield in a crash. More detailed information regarding the care and maintenance of such glazing items, as the glass-plastic windshield is required to be placed in the vehicle owner's manual.

FMVSS No. 208—Occupant Crash Protection

This standard specifies requirements for both active and passive occupant crash protection systems for passenger cars, multipurpose passenger vehicles, trucks and small buses. Certain safety features, such as air bags, or the care and maintenance of air bag systems, are required to be explained to the owner by means of the owner's manual. For example, the owner's manual must describe the vehicle's air bag system and provide precautionary information about the proper positioning of the occupants, including children. The owner's manual must also warn that no objects, such as shotguns carried in police cars, should be placed over or near the air bag covers.

FMVSS No. 210–Seat Belt Assembly Anchorages

This standard specifies requirements for seat belt assembly anchorages to ensure effective occupant restraint and to reduce the likelihood of failure in a crash. The standard requires that manufacturers place the following information in the vehicle owner's manual:

a. an explanation that child restraints are designed to be secured by means of the vehicle's seat belts, and,

b. a statement alerting vehicle owners that children are always safer in the rear seat.

FMVSS No. 213—Child Restraint Systems

This standard specifies requirements for child restraint systems and requires that manufacturers provide consumers with detailed information relating to child safety in air bag-equipped vehicles. The vehicle owner's manual must include information about the operation and do's and don'ts of built-in child seats.

Part 575 Section 103—Camper Loading

This standard requires that manufacturers of slide-in campers designed to fit into the cargo bed of pickup trucks affix a label to each camper that contains information relating to certification, identification and proper loading, and to provide more detailed loading information in the owner's manual of the truck.

Part 575 Section 105—Utility Vehicles

This regulation requires manufacturers of utility vehicles to alert drivers that the particular handling and maneuvering characteristics of utility vehicles require special driving practices when these vehicles are operated on paved roads. For example, the vehicle owner's manual is required to contain a discussion of vehicle design features that cause this type of vehicle to be more likely to roll over, and to include a discussion of driving practices that can reduce the risk of roll over. A statement is provided in the regulation that manufacturers shall include, in its entirety or equivalent form, in the vehicle owner's manual.

Estimated Annual Burden: 1,771 hours.

Number of Respondents: 25.

Issued on: December 12, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 01–31116 Filed 12–17–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on May 1, 2001 [66 FR 21813–21814].

DATES: Comments must be submitted on or before January 17, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Benn at the National Highway Traffic Safety Administration, Office of Safety Performance Standards (NPS–20), 202–366–2264. 400 Seventh Street, SW, Room 5320, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: Consolidated Justification of Owner's Manual Requirements for Motor Vehicles and Equipment.

OMB Number: 2127–0541.

Type of Request: Extension of a currently approved collection.

Abstract: 49 U.S.C. 30117 authorizes the Secretary to require that manufacturers provide technical information, as for example information directed for publication in a vehicle owner's manual, related to the performance and safety specified in the Federal motor vehicle safety standards for the purposes of educating the consumer and providing safeguards against improper use. Using this authority, the agency issued the following FMVSS and regulations, specifying that certain safety precautions regarding items of motor vehicle equipment appear in the vehicle owner's manual to aid the agency in achieving many of its safety goals.

Affected Public: Individuals, households, business, other-for-profit, not-for-profit, farms, Federal Government and State, Local, or Tribal Government.

Estimated Total Annual Burden: 1371.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be

collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on December 3, 2001.

Delmas Johnson,

Acting Associate Administrator for Administration.

[FR Doc. 01–31114 Filed 12–17–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1065–B and Schedule K–1

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1065–B, U.S. Return of Income for Electing Large Partnerships, and Schedule K–1, Partner's Share of Income (Loss) From an Electing Large Partnership.

DATES: Written comments should be received on or before February 19, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to George Freeland, Internal Revenue Service, room 5577, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Form 1065–B, U.S. Return of Income for Electing Large Partnerships, and Schedule K–1, Partner's Share of Income (Loss) From an Electing Large Partnership.

OMB Number: 1545–1626.

Form Number: Form 1065–B and Schedule K–1.

Abstract: Internal Revenue Code Section 6031 and Regulation section 1.6031–1 requires partnerships to file a return. Internal Revenue Code sections 771–777, enacted by the Taxpayer Relief Act of 1997, allow large partnerships to elect to file a simplified return which requires fewer items to be reported to partners. Form 1065–B is used for this purpose.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and farms.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: Varies.

Estimated Total Annual Burden Hours: 456,109.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 13, 2001.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 01–31158 Filed 12–17–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2001–56

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2001–56, Demonstration Automobile Use.

DATES: Written comments should be received on or before February 19, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to George Freeland, Internal Revenue Service, room 5577, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Demonstration Automobile Use.

OMB Number: 1545–1756.

Revenue Procedure Number: Revenue Procedure 2001–56.

Abstract: Revenue Procedure 2001–56 provides optional simplified methods for determining the value of the use of demonstration automobiles provided to employees by automobile dealerships.

Current Actions: There are no changes being made to this revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 20,000.

Estimated Time Per Respondent: 5 hours.

Estimated Total Annual Burden Hours: 100,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to

respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 12, 2001.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 01–31159 Filed 12–17–01; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Tuesday,
December 18, 2001

Part II

Environmental Protection Agency

40 CFR Parts 9, 122, et al.

National Pollutant Discharge Elimination System: Regulations Addressing Cooling Water Intake Structures for New Facilities; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 122, 123, 124, and 125

[FRL–7105–4]

RIN 2040–AC34

National Pollutant Discharge Elimination System: Regulations Addressing Cooling Water Intake Structures for New Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today's final rule implements section 316(b) of the Clean Water Act (CWA) for new facilities that use water withdrawn from rivers, streams, lakes, reservoirs, estuaries, oceans or other waters of the United States (U.S.) for cooling purposes. The final rule establishes national technology-based performance requirements applicable to the location, design, construction, and capacity of cooling water intake structures at new facilities. The national requirements establish the best technology available, based on a two-track approach, for minimizing adverse environmental impact associated with the use of these structures.

Based on size, Track I establishes national intake capacity and velocity requirements as well as location- and capacity-based requirements to reduce intake flow below certain proportions of certain waterbodies (referred to as ''proportional-flow requirements''). It also requires the permit applicant to select and implement design and construction technologies under certain conditions to minimize impingement mortality and entrainment. Track II allows permit applicants to conduct site-specific studies to demonstrate to the Director that alternatives to the Track I requirements will reduce impingement mortality and entrainment for all life stages of fish and shellfish to a level of reduction comparable to the level the facility would achieve at the cooling water intake structure if it met the Track I requirements.

EPA expects that this final regulation will reduce impingement and entrainment at new facilities. Today's final rule establishes requirements that will help preserve aquatic organisms and the ecosystems they inhabit in waters used by cooling water intake structures at new facilities. EPA has considered the potential benefits of the rule; these include a decrease in expected mortality or injury to aquatic organisms that would otherwise be subject to entrainment into cooling water systems or impingement against screens or other devices at the entrance of cooling water intake structures. Benefits may also accrue at population, community, or ecosystem levels of ecological structures. The preamble discusses these benefits to the extent possible in qualitative terms.

DATES: This regulation shall become effective January 17, 2002. For judicial review purposes, this final rule is promulgated as of 1:00 p.m. Eastern Standard Time (EST) on January 2, 2002, as provided in 40 CFR 23.2.

ADDRESSES: The public record for this rule is established under docket number W–00–03. Copies of comments received, EPA responses, and all other supporting documents (except for information claimed as Confidential Business Information (CBI)) are available for review in the EPA Water Docket, East Tower Basement, Room EB–57, 401 M Street, SW., Washington, DC 20460. The record is available for inspection from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding legal holidays. For access to the docket materials, please call (202) 260–3027 to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: For additional technical information contact Deborah G. Nagle at (202) 260–2656. For additional biological information contact Debbi Hart at (202) 260–0905. For additional economic information contact Ghulam Ali at (202) 260–9886. The e-mail address for the above contacts is *rule.316b@epa.gov.*

SUPPLEMENTARY INFORMATION:

What Entities Are Regulated by This Action?

This final rule applies to new greenfield (defined by example in section I. of this preamble) and stand alone facilities that use cooling water intake structures to withdraw water from waters of the U.S. and that have or require a National Pollutant Discharge Elimination System (NPDES) permit issued under section 402 of the CWA. New facilities subject to this regulation include those that have a design intake flow of greater than two (2) million gallons per day (MGD) and that use at least twenty-five (25) percent of water withdrawn for cooling purposes. Generally, facilities that meet these criteria fall into two major groups: new steam electric generating facilities and new manufacturing facilities. If a new facility meets these conditions, it is subject to today's final regulations. If a new facility has or requires an NPDES permit but does not meet the two MGD intake flow threshold or uses less than 25 percent of its water for cooling water purposes, the permit authority will implement section 316(b) on a case-by-case basis, using best professional judgment. This final rule defines the term ''cooling water intake structure'' to mean the total physical structure and any associated constructed waterways used to withdraw water from a water of the U.S. The cooling water intake structure extends from the point at which water is withdrawn from the surface water source up to and including the intake pumps. Today's rule does not apply to existing facilities including major modifications to existing facilities that would be ''new sources'' in 40 CFR 122.29 as that term is used in the effluent guidelines and standards program. Although EPA has not finished examining the costs of technology options at existing facilities, the Agency anticipates that existing facilities would have less flexibility in designing and locating their cooling water intake structures than new facilities and that existing facilities might incur higher compliance costs than new facilities. For example, existing facilities might need to upgrade or modify existing intake structures and cooling water systems to meet requirements of the type contained in today's rule, which might impose greater costs than use of the same technologies at a new facility. Retrofitting technologies at an existing facility might also require shutdown periods during which the facility would lose both production and revenues, and certain retrofits could decrease the thermal efficiency of an electric generating facility. Site limitations, such as lack of undeveloped space, might make certain technologies infeasible at existing facilities. Accordingly, EPA does not intend that today's rule or preamble serve as guidance for developing section 316(b) requirements for existing facilities. Permit writers should continue to apply best professional judgment in making case-by-case section 316(b) determinations for existing facilities, based on existing guidance and other legal authorities. EPA will address existing facilities fully in Phase II and Phase III rulemakings.

The following table lists the types of entities that EPA believes are potentially subject to this final rule. This table is not intended to be exhaustive; rather, it provides a guide for readers regarding entities likely to be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria at § 125.81 of the rule. If you

have questions regarding the applicability of this action to a particular entity, consult one of the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Category	Examples of regulated entities	Standard Industrial Classification (SIC) Codes	North American Industry Classification System (NAICS) Codes
Federal, State and Local Government.	Operators of steam electric generating point source dischargers that employ cooling water intake structures.	4911 and 493	221111, 221112, 221113, 221119, 221121, 221122, 221111, 221112, 221113, 221119, 221121, 221122.
Industry	Operators of industrial point source dischargers that employ cooling water intake structures.	See below	See below.
	Steam electric generating	4911 and 493	221111, 221112, 221113, 221119, 221121, 221122, 221111, 221112, 221113, 221119, 221121, 221122.
	Agricultural production	0133	111991, 11193.
	Metal mining	1011	21221.
	Oil and gas extraction (excluding offshore and coastal subcategories).	1311, 1321	211111, 211112.
	Mining and quarrying of nonmetallic minerals.	1474	212391.
	Food and kindred products	2046, 2061, 2062, 2063, 2075, 2085	311221, 311311, 311312, 311313, 311222, 311225, 31214.
	Tobacco products	2141	312229, 31221.
	Textile mill products	2211, 2261	31321.
	Lumber and wood products, except furniture.	2415, 2421, 2436, 2493	321912, 321113, 321918, 321999, 321212, 321219.
	Paper and allied products	2611, 2621, 2631, 2676, 2679	3221, 322121, 32213, 322121, 322122, 32213, 322291.
	Chemical and allied products	28 (except 2822, 2835, 2836, 2842, 2843, 2844, 2861, 2895, 2893, 2851, and 2879).	325 (except 325182, 32591, 32551, 32532).
	Petroleum refining and related industries.	2911, 2999	32411, 324199.
	Rubber and miscellaneous plastics products.	3011, 3069	326211, 31332, 326192, 326299.
	Stone, clay, glass, and concrete products.	3241	32731.
	Primary metal industries	3312, 3313, 3315, 3316, 3317, 3334, 3339, 3353, 3357.	324199, 331111, 331112, 331492, 331222, 332618, 331221, 22121, 331312, 331419, 331315, 331521, 331524, 331525.
	Fabricated metal products, except machinery and transportation equipment.	3421, 3499	332211, 337215, 332117, 332439, 33251, 332919, 339914, 332999.
	Industrial and commercial machinery and computer equipment.	3523, 3531	333111, 332323, 332212, 333922, 22651, 333923, 33312.
	Transportation equipment	3724, 3743, 3764	336412, 333911, 33651, 336416.
	Measuring, analyzing, and controlling instruments; photographic, medical, and optical goods; watches and clocks.	3861	333315, 325992.
	Electric, gas, and sanitary services	4911, 4931, 4939, 4961	221111, 221112, 221113, 221119, 221121, 221122, 22121, 22133.
	Educational services	8221	61131.
	Engineering, Accounting, Research, Management, and Related Services.	8731	54171.

Supporting Documentation

The final regulation is supported by two major documents:

1. *Economic Analysis of the Final Regulations Addressing Cooling Water Intake Structures for New Facilities* (EPA–821–R–01–035), hereafter referred to as the *Economic Analysis.* This document presents the analysis of compliance costs, barrier to entry, and energy supply effects. In addition, the document provides an assessment of potential benefits.

2. *Technical Development Document for the Final Regulations Addressing Cooling Water Intake Structures for New Facilities* (EPA–821–R–01–036), hereafter referred to as the *Technical Development Document.* This document presents detailed information on the methods used to develop unit costs and describes the set of technologies that may be used to meet the rule's requirements.

How To Obtain Supporting Documents

You can obtain the *Economic Analysis* and *Technical Development Document* from the Agency's 316(b) website (http://www.epa.gov/ost/316b). The documents are also available from the National Service Center for Environmental Publications, P.O. Box

42419, Cincinnati, OH 45242–2419; telephone (800) 490–9198 and the Water Resource Center , U.S. EPA, 1200 Pennsylvania Avenue, N.W. (RC 4100), Washington D.C. 20460 (202) 260–2814.

Organization of This Document

I. Scope of This Rulemaking
- A. What Is a New Facility?
- B. What Is a Cooling Water Intake Structure?
- C. What Cooling Water Use and Design Intake Flow Thresholds Result in a New Facility Being Subject to This Final Rule?
- D. Does This Rule Apply to My Facility If It Does Not Have a Point Source Discharge Subject to an NPDES Permit?
- E. What Requirements Must I Meet Under the Final Rule?

II. Legal Authority, Purpose and Background of Today's Regulation
- A. Legal Authority
- B. Purpose of Today's Regulation
- C. Background

III. Environmental Impact Associated With Cooling Water Intake Structures

IV. Summary of the Most Significant Revisions to the Proposed Rule
- A. Data Updates
- B. Regulatory Approach

V. Basis for the Final Regulation
- A. Major Options Considered for the Final Rule
- B. Why EPA Is Establishing EPA's Preferred Two-Track Option as the Best Technology Available for Minimizing Adverse Environmental Impact?
- C. Why EPA Is Not Adopting Dry Cooling as the Best Technology Available for Minimizing Adverse Environmental Impact?
- D. Why EPA Is Not Accepting the Industry Two-Track Approach in Full

VI. Summary of Major Comments on the Proposed Rule and Notice of Data Availability (NODA)
- A. Scope/Applicability
- B. Environmental Impact Associated With Cooling Water Intake Structures
- C. Location
- D. Flow and Volume
- E. Velocity
- F. Dry Cooling
- G. Implementation-Baseline Biological Characterization
- H. Cost
- I. Benefits
- J. Engineering and Economic Analysis Limitations
- K. EPA Authority
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I. Scope of This Rulemaking

Today's final rule establishes technology-based performance requirements applicable to the location, design, construction, and capacity of cooling water intake structures at new facilities under section 316(b) of the Clean Water Act. The rule establishes the best technology available for minimizing adverse environmental impact associated with the use of these structures. Today's final rule also partially fulfills EPA's obligation to comply with a consent decree entered in the United States District Court, Southern District of New York in *Riverkeeper Inc., et al.* v. *Whitman*, No. 93 Civ. 0314 (AGS). (For a more detailed discussion of the consent decree, see II.C.2).

This final rule applies to new greenfield or stand alone facilities: (1) that use a newly constructed cooling water intake structure, or a modified existing cooling water intake structure whose design capacity is increased that withdraws water from waters of the U.S.; and (2) that has or is required to have a National Pollutant Discharge Elimination System (NPDES) permit issued under section 402 of the CWA. Specifically, the rule applies to you if you are the owner or operator of a facility that meets all of the following criteria:

- Your greenfield or stand alone facility meets the definition of new facility specified in § 125.83 of this rule;
- Your new facility uses a newly constructed or modified existing cooling water intake structure or structures, or your facility obtains cooling water by any sort of contract or arrangement with an independent supplier who has a cooling water intake structure;
- Your new facility's cooling water intake structure(s) withdraw(s) water from waters of the U.S. and at least twenty-five (25) percent of the water withdrawn is used for contact or noncontact cooling purposes;
- Your new facility has a design intake flow of greater than two (2) million gallons per day (MGD); and
- Your new facility has an NPDES permit or is required to obtain one.

If a new facility meets these conditions, it is subject to today's final regulations. If a new facility has or requires an NPDES permit but does not meet the two MGD intake flow threshold or the twenty-five percent cooling water use threshold, it is not subject to permit conditions based on today's rule; rather, it is subject to permit conditions implementing section 316(b) of the CWA set by the permit director on a case-by-case basis, using best professional judgment.

A. What Is a New Facility?

A new facility subject to this regulation is any facility that meets the definition of ''new source'' or ''new discharger'' in 40 CFR 122.2 and 122.29(b)(1), (2), and (4); commences construction after January 17, 2002; and uses either a newly constructed cooling water intake structure, or an existing cooling water intake structure whose design capacity is increased; or obtains cooling water by any sort of contract or arrangement with an independent supplier who has a cooling water intake structure. The term ''commence construction'' is defined in 40 CFR 122.29(b)(4).

As stated above, this rule applies to only ''greenfield'' and ''stand-alone'' facilities. A greenfield facility is a facility that is constructed at a site at which no other source is located, or that totally replaces the process or production equipment at an existing facility (see 40 CFR 122.29(b)(1)(i) and (ii)). A stand-alone facility is a new, separate facility that is constructed on property where an existing facility is located and whose processes are substantially independent of the existing facility at the same site (see 40 CFR 122.29(b)(1)(iii)). An example of

total replacement is as follows: The power plant or manufacturer demolishes the power plant or manufacturing facility and builds a new plant or facility in its place. The pumps of the existing cooling water intake structure are replaced with new pumps that increase design capacity to accommodate additional cooling water needs, but the intake pipe is left in place. In this situation, the facility would be a new facility. Modifications to an existing cooling water intake structure that do not serve the cooling water needs of a greenfield or stand-alone facility in 40 CFR 122.2 and 122.29(b)(1), (2), and (4) (i.e., a facility that meets the definition of new source or new discharger and commences construction after the effective date of the rule) do not constitute a new facility subject to this rule. Thus, the definition of new facility under this rule is narrower than the definition of new source under section 306 of the CWA.

The definition of new facility also requires that the greenfield or stand-alone facility use ''a newly constructed cooling water intake structure or an existing cooling water intake structure whose design capacity is increased to accommodate the intake of additional cooling water.'' This means a facility that would otherwise be a ''new facility'' would *not* be treated as a new facility under this rule if it withdraws water from an existing cooling water intake structure whose design capacity has not been increased to accommodate the intake of additional cooling water. Routine maintenance and repair, such as replacement of pumps that does not increase the capacity of the structure, cleaning in response to biofouling, and repair or replacement of moving parts at a cooling water intake that is part of a greenfield or stand-alone facility, and that occur simply for operation and maintenance purposes, would not be a modification of that intake structure. One way to distinguish whether replacement of the pipes or the pumps is for maintenance and repair purposes or whether it is to accommodate construction of a new facility is to determine whether the replacement increases the original design capacity. Today's rule specifies that changes to a cooling water intake structure are considered modifications for purposes of this rule only if such changes result in an increase in design capacity. Thus, routine maintenance or repair of the cooling water intake structure, including the pumps, that does not result in an increase in design capacity does not modify a cooling water intake structure. However, if a change is made to the cooling water intake structure, including the pumps, that increases design capacity to any extent, then the cooling water intake structure has been modified; use of this structure by a greenfield or stand-alone facility would make the facility a new facility subject to this rule.

B. What Is a Cooling Water Intake Structure?

For the purposes of this rule a ''cooling water intake structure'' is defined as the total physical structure and any associated constructed waterways used to withdraw water from waters of the U.S. The cooling water intake structure extends from the point at which water is withdrawn from waters of the U.S. up to and including the intake pumps. EPA has defined ''cooling water'' as water used for contact or noncontact cooling, including water used for equipment cooling, evaporative cooling tower makeup, and dilution of effluent heat content. The Agency has specified that the intended use of cooling water is to absorb waste heat from production processes or auxiliary operations. In addition, for the final rule EPA has amended the definition of cooling water to ensure that the rule does not discourage the reuse of cooling water as process water. As such, heated cooling water that is subsequently used in a manufacturing process is considered process water for the purposes of calculating the percentage of a new facility's intake flow that is used for cooling purposes.

C. What Cooling Water Use and Design Intake Flow Thresholds Result in a New Facility Being Subject to This Final Rule?

This rule applies to new facilities that (1) withdraw cooling water from waters of the U.S. and use at least twenty-five (25) percent of the water withdrawn for cooling purposes and (2) have a cooling water intake structure with a design intake capacity of greater than or equal to two (2) million gallons per day (MGD) of source water. See 40 CFR 125.81 of this rule. The percentage of total water withdrawn that is used for cooling purposes is to be measured on an average monthly basis over a period of one year. See 40 CFR 125.81(c) of this rule. A new facility meets the 25 percent cooling water use threshold if, on the basis of the new facility's design when measured over a period of one year, any monthly average percentage of cooling water withdrawn is expected to equal or exceed 25 percent of the total water withdrawn. Waters of the U.S. include the broad range of surface waters that meet the regulatory definition at 40 CFR 122.2, which can include lakes, ponds, reservoirs, nontidal rivers or streams, tidal rivers, estuaries, fjords, oceans, bays, and coves.

Some commenters questioned whether the discussion of cooling ponds in the preamble to the proposal (65 FR 49067, col. 2) meant that EPA considers cooling ponds to be ''waters of the United States.'' EPA did not intend that discussion to change the regulatory status of cooling ponds. Cooling ponds are neither categorically included nor categorically excluded from the definition of ''waters of the United States'' at 40 CFR 122.2. EPA interprets 40 CFR 122.2 to give permit writers discretion to regulate cooling ponds as ''waters of the United States'' where cooling ponds meet the definition of ''waters of the United States.'' The determination whether a particular cooling pond is or is not ''waters of the United States'' is to be made by the permit writer on a case-by-case basis, informed by the principles enunciated in *Solid Waste Agency of Northern Cook County* v. *US Army Corps of Engineers,* 531 U.S. 159 (2001).

D. Does This Rule Apply to My Facility If It Does Not Have a Point Source Discharge Subject to an NPDES Permit?

Today's final rule applies only to new facilities as defined in § 125.83 that have an NPDES permit or are required to obtain one because they discharge or might discharge pollutants, including storm water, from a point source to waters of the United States. Requirements for minimizing the adverse environmental impact of cooling water intake structures will continue to be applied through NPDES permits.

E. What Requirements Must I Meet Under the Final Rule?

Today's final rule establishes a two-track approach for regulating cooling water intake structures at new facilities. Track I establishes uniform requirements based on facility cooling water intake capacity. Track II provides dischargers with the opportunity to establish that alternative requirements will achieve comparable performance. The regulated entity has the opportunity to choose which track it will follow. The Track I and Track II requirements are summarized below.

Under Track I, new facilities with a design intake flow equal to or greater than 10 MGD, must meet the following requirements:

(1) Cooling water intake flow must be at a level commensurate with that achievable with a closed-cycle,

recirculating cooling system; (40 CFR 125.84(b)(1))

(2) Through-screen intake velocity must be less than or equal to 0.5 feet per second; (40 CFR 125.84(b)(2))

(3) Location- and capacity-based limits on proportional intake flow must be met (for fresh water rivers or streams, intake flow must be less than or equal to 5 percent of the mean annual flow; for lakes or reservoirs, intake flow may not disrupt natural thermal stratification or turnover pattern (where present) of the source water except in cases where the disruption is determined to be beneficial to the management of fisheries for fish and shellfish by any fishery management agency(ies); for estuaries or tidal rivers, intake flow must be less than or equal to 1 percent of the tidal excursion volume; for oceans, there are no proportional flow requirements); (40 CFR 125.84(b)(3)) and

(4) Design and construction technologies for minimizing impingement mortality and entrainment must be selected and implemented if certain conditions exist where the cooling water intake structure is located. (40 CFR 125.84(b)(4) and (5))

Under Track I, new facilities with a design intake flow equal to or greater than 2 MGD, but less than 10 MGD, must meet the following requirements:

(1) Through-screen intake velocity must be less than or equal to 0.5 feet per second; (40 CFR 125.84(c)(1))

(2) Location- and capacity-based limits on proportional intake flow must be met (for fresh water rivers or streams, intake flow must be less than or equal to 5 percent of the mean annual flow; for lakes or reservoirs, intake flow may not disrupt natural thermal stratification or turnover pattern (where present) of the source water except in cases where the disruption is determined to be beneficial to the management of fisheries for fish and shellfish by any fishery management agency(ies); for estuaries or tidal rivers, intake flow must be less than or equal to 1 percent of the tidal excursion volume; for oceans, there are no proportional flow requirements); (40 CFR 125.84(c)(2)) and

(3) Design and construction technologies for minimizing impingement mortality must be selected if certain conditions exist where the cooling water intake structure is located 125.84(c)(3); and design and construction technologies for minimizing entrainment must be selected and implemented. (40 CFR 125.84(c)(4))

Under Track II, new facilities must meet the following requirements:

(1) Employ technologies that will reduce the level of adverse environmental impact to a comparable level to that which would be achieved under the Track I requirements (as demonstrated in a Comprehensive Demonstration Study); (40 CFR 125.84(d)(1))

(2) The same proportional intake flow limitations as in Track I, based on the intake source water, must be met; (40 CFR 125.84(d)(2)).

Section IV.B and V. of this preamble provides a more detailed discussion of the requirements included under this two-track approach. The two-track approach provides new facilities with a well-defined set of requirements that constitute best technology available (BTA) for minimizing adverse environmental impact and can be implemented relatively quickly. This approach also provides flexibility to operators who believe alternative or emerging technologies would be just as effective at reducing impingement and entrainment.

II. Legal Authority, Purpose and Background of Today's Regulation

A. Legal Authority

Today's final rule is issued under the authority of sections 101, 301, 304, 306, 308, 316, 401, 402, 501, and 510 of the Clean Water Act (CWA), 33 U.S.C. 1251, 1311, 1314, 1316, 1318, 1326, 1341, 1342, 1361, and 1370. This rule partially fulfills the obligations of the U.S. Environmental Protection Agency (EPA) under a consent decree in *Riverkeeper Inc., et al.* v. *Whitman,* United States District Court, Southern District of New York, No. 93 Civ. 0314 (AGS).

B. Purpose of Today's Regulation

Section 316(b) of the CWA provides that any standard established pursuant to section 301 or 306 of the CWA and applicable to a point source must require that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available (BTA) for minimizing adverse environmental impact. Today's final rule defines a cooling water intake structure as the total physical structure, including the pumps, and any associated constructed waterways used to withdraw water from waters of the U.S. Cooling water absorbs waste heat from processes employed or from auxiliary operations on a facility's premises. Single cooling water intake structures might have multiple intake bays. Today's final rule establishes requirements applicable to the location, design, construction, and capacity of cooling water intake structures at new facilities that withdraw at least two (2) million gallons per day (MGD) and use at least twenty-five (25) percent of the water they withdraw for cooling purposes. Today's final rule establishes best technology available for minimizing adverse environmental impact associated with the intake of water from waters of the U.S. at these structures. See part III for further discussion of the environmental impact associated with cooling water intake structures.

C. Background

1. The Clean Water Act

The Federal Water Pollution Control Act, also known as the Clean Water Act (CWA), 33 U.S.C. 1251 *et seq.*, seeks to ''restore and maintain the chemical, physical, and biological integrity of the nation's waters.'' 33 U.S.C. 1251(a). The CWA establishes a comprehensive regulatory program, key elements of which are (1) a prohibition on the discharge of pollutants from point sources to waters of the U.S., except as authorized by the statute; (2) authority for EPA or authorized States or Tribes to issue National Pollutant Discharge Elimination System (NPDES) permits that regulate the discharge of pollutants; and (3) requirements for EPA to develop effluent limitation guidelines and standards and for States to develop water quality standards that are the basis for the limitations required in NPDES permits.

Today's final rule implements section 316(b) of the CWA as it applies to ''new facilities'' as defined in this rule. 316(b) addresses the adverse environmental impact caused by the intake of cooling water, not discharges into water. Despite this special focus, the requirements of section 316(b) are closely linked to several of the core elements of the NPDES permit program established under section 402 of the CWA to control discharges of pollutants into navigable waters. For example, section 316(b) applies to facilities that withdraw water from the waters of the United States for cooling through a cooling water intake structure and are point sources subject to an NPDES permit. Conditions implementing section 316(b) are included in NPDES permits and will continue to be included in NPDES permits under this final rule.

Section 301 of the CWA prohibits the discharge of any pollutant by any person, except in compliance with specified statutory requirements. These requirements include compliance with technology-based effluent limitation guidelines and new source performance standards, water quality standards,

NPDES permit requirements, and certain other requirements.

Section 402 of the CWA provides authority for EPA or an authorized State or Tribe to issue an NPDES permit to any person discharging any pollutant or combination of pollutants from a point source into waters of the U.S. Forty-four States and one U.S. territory are authorized under section 402(b) to administer the NPDES permitting program. NPDES permits restrict the types and amounts of pollutants, including heat, that may be discharged from various industrial, commercial, and other sources of wastewater. These permits control the discharge of pollutants primarily by requiring dischargers to meet effluent limitations and other permit conditions. Effluent limitations may be based on promulgated federal effluent limitation guidelines, new source performance standards, or the best professional judgment of the permit writer. Limitations based on these guidelines, standards, or best professional judgment are known as technology-based effluent limits. Where technology-based effluent limits are inadequate to ensure compliance with water quality standards applicable to the receiving water, more stringent effluent limits based on applicable water quality standards are required. NPDES permits also routinely include monitoring and reporting requirements, standard conditions, and special conditions.

Sections 301, 304, and 306 of the CWA require that EPA develop technology-based effluent limitation guidelines and new source performance standards that are used as the basis for technology-based minimum discharge requirements in wastewater discharge permits. EPA issues these effluent limitation guidelines and standards for categories of industrial dischargers based on the pollutants of concern discharged by the industry, the degree of control that can be attained using various levels of pollution control technology, consideration of various economic tests appropriate to each level of control, and other factors identified in sections 304 and 306 of the CWA (such as non-water quality environmental impacts including energy impacts). EPA has promulgated regulations setting effluent limitation guidelines and standards under sections 301, 304, and 306 of the CWA for more than 50 industries. See 40 CFR parts 405 through 471. Among these, EPA has established effluent limitation guidelines that apply to most of the industry categories that use cooling water intake structures (e.g., steam electric power generation, iron and steel manufacturing, pulp and paper manufacturing, petroleum refining, chemical manufacturing).

Section 306 of the CWA requires that EPA establish discharge standards for new sources. For purposes of section 306, new sources include any source that commenced construction after the promulgation of applicable new source performance standards, or after proposal of applicable standards of performance if the standards are promulgated in accordance with section 306 within 120 days of proposal. CWA section 306; 40 CFR 122.2. New source performance standards are similar to the technology-based limitations established for existing sources, except that new source performance standards are based on the best available demonstrated technology instead of the best available technology economically achievable. New facilities have the opportunity to install the best and most efficient production processes and wastewater treatment technologies. Therefore, Congress directed EPA to consider the best demonstrated process changes, in-plant controls, and end-of-process control and treatment technologies that reduce pollution to the maximum extent feasible. In addition, in establishing new source performance standards, EPA is required to take into consideration the cost of achieving the effluent reduction and any non-water quality environmental impacts and energy requirements. As stated above, a ''new source'' under CWA section 306 applies to a broader set of facilities than the group of facilities subject to this rule.

2. Consent Decree

Today's final rule partially fulfills EPA's obligation to comply with an amended Consent Decree entered in the United States District Court, Southern District of New York, in *Riverkeeper Inc., et al.* v. *Whitman,* No. 93 Civ 0314 (AGS), a case brought against EPA by a coalition of individuals and environmental groups. The consent decree as entered on October 10, 1995, provided that EPA propose regulations implementing section 316(b) by July 2, 1999, and take final action with respect to those regulation by August 13, 2001. Under subsequent orders and an amended consent decree, EPA has divided the rulemaking into three phases and is working under new deadlines. In addition to taking final action on this rule governing new facilities by November 9, 2001, EPA must propose regulations for, at a minimum, existing power plants that use large volumes of cooling water by February 28, 2002, and take final action 18 months later. EPA must propose regulations for, at a minimum, smaller-flow power plants and factories in four industrial sectors (pulp and paper making, petroleum and coal products manufacturing, chemical and allied manufacturing, and primary metal manufacturing) by June 15, 2003.

3. What Prior EPA Rulemakings Addressed Cooling Water Intake Structures?

In April 1976 EPA published a rule under section 316(b) that addressed cooling water intake structures. 41 *FR* 17387 (April 26, 1976), proposed at 38 *FR* 34410 (December 13, 1973). The rule added a new § 401.14 to 40 CFR Chapter I that reiterated the requirements of CWA section 316(b). It also added a new part 402, which included three sections: (1) § 402.10 (Applicability), (2) § 402.11 (Specialized definitions), and (3) § 402.12 (Best technology available for cooling water intake structures). Section 402.10 stated that the provisions of part 402 applied to ''cooling water intake structures for point sources for which effluent limitations are established pursuant to section 301 or standards of performance are established pursuant to section 306 of the Act.'' Section 402.11 defined the terms ''cooling water intake structure,'' ''location,'' ''design,'' ''construction,'' ''capacity,'' and ''Development Document.'' Section 402.12 included the following language:

The information contained in the Development Document shall be considered in determining whether the location, design, construction, and capacity of a cooling water intake structure of a point source subject to standards established under section 301 or 306 reflect the best technology available for minimizing adverse environmental impact.

In 1977, fifty-eight electric utility companies challenged these regulations, arguing that EPA had failed to comply with the requirements of the Administrative Procedure Act (APA) in promulgating the rule. Specifically, the utilities argued that EPA had neither published the development document in the **Federal Register** nor properly incorporated the document into the rule by reference. The United States Court of Appeals for the Fourth Circuit agreed and, without reaching the merits of the regulations themselves, remanded the rule. *Appalachian Power Co.* v. *Train*, 566 F.2d 451 (4th Cir. 1977). EPA later withdrew part 402. 44 *FR* 32956 (June 7, 1979). 40 CFR 401.14 remains in effect.

4. How Is Section 316(b) Being Implemented Now?

Since the Fourth Circuit remanded EPA's section 316(b) regulations in 1977, NPDES permit authorities have made decisions implementing section 316(b) on a case-by-case, site-specific basis. EPA published draft guidance addressing section 316(b) implementation in 1977. See *Draft Guidance for Evaluating the Adverse Impact of Cooling Water Intake Structures on the Aquatic Environment: Section 316(b) P.L. 92–500* (U.S. EPA, 1977). This draft guidance describes the studies recommended for evaluating the impact of cooling water intake structures on the aquatic environment and recommends a basis for determining the best technology available for minimizing adverse environmental impact. The 1977 section 316(b) draft guidance states, ''The environmental-intake interactions in question are highly site-specific and the decision as to best technology available for intake design, location, construction, and capacity must be made on a case-by-case basis.'' (Section 316(b) Draft Guidance, U.S. EPA, 1977, p. 4). This case-by-case approach also is consistent with the approach described in the 1976 development document referenced in the remanded regulation.

The 1977 section 316(b) draft guidance suggests the general process for developing information needed to support section 316(b) decisions and presenting that information to the permitting authority. The process involves the development of a site-specific study of the environmental effects associated with each facility that uses one or more cooling water intake structures, as well as consideration of that study by the permitting authority in determining whether the facility must make any changes for minimizing adverse environmental impact. Where adverse environmental impact is present, the 1977 draft guidance suggests a stepwise approach that considers screening systems, size, location, capacity, and other factors.

Although the draft guidance describes the information that should be developed, key factors that should be considered, and a process for supporting section 316(b) determinations, it does not establish national standards based on the best technology available for minimizing adverse environmental impact. Rather, the guidance leaves the decisions on the appropriate location, design, capacity, and construction of each facility to the permitting authority. Under this framework, the Director determines whether appropriate studies have been performed and whether a given facility has minimized adverse environmental impact. The Director's determinations of whether the appropriate studies have been performed or whether a given facility has minimized adverse environmental impact have often been subject to challenges that can take a long time to resolve and may impose significant resource demands on permitting agencies, the public, and the permit applicant.

5. Proposed New Facility Rule

On August 10, 2000, EPA published proposed requirements for cooling water intake structures at new facilities to implement section 316(b) of the Clean Water Act. EPA proposed a tiered approach for reducing adverse environmental impact, with three degrees of stringency based on EPA's view of the relative vulnerability of each category of waterbody. EPA received numerous comments and data submissions concerning the proposal. See 65 *FR* 49060.

6. Notice of Data Availability

On May 25, 2001, EPA published a Proposed Rule Notice of Data Availability (NODA). This notice presented a summary of the data EPA had received or collected since proposal, an assessment of the relevance of the data to EPA's analysis, some modified technology options suggested by commenters, and an alternative regulatory approach suggested by a trade group representing the utility industry as well as EPA's ideas about how it might modify this suggested approach. See 66 *FR* 28853. On July 6, 2001, EPA reopened the comment period for certain documents and issues related to those documents. See 66 *FR* 35572.

7. Public Participation

EPA has worked extensively with stakeholders from the industry, public interest groups, State agencies, and other Federal agencies in the development of this final rule. In addition to comments received during the comment periods of the original proposal, the NODA, and the reopened comment period for certain documents referenced in the NODA, EPA conducted two public meetings: in June 1998, in Arlington, Virginia (63 *FR* 27958) and in September, 1998, in Alexandria, Virginia (63 *FR* 40683). In addition, in September 1998, EPA staff participated in a technical workshop sponsored by the Electric Power Research Institute on issues relating to the definition and assessment of adverse environmental impact. EPA staff have participated in other industry conferences, met upon request on numerous occasions with industry representatives, and met on a number of occasions with representatives of environmental groups. EPA has also met with stakeholders, attended conferences and held workshops concerning topics related to the existing source rulemaking effort.

In the months leading up to publication of the proposed rule, EPA conducted a series of stakeholder meetings to review the draft regulatory framework for the proposed rule and invited stakeholders to provide their recommendations for the Agency's consideration. EPA managers have met with the Utility Water Act Group, Edison Electric Institute, representatives from an individual utility, and with representatives from the petroleum refining, pulp and paper, and iron and steel industries. EPA conducted meetings with environmental groups attended by representatives from between 3 and 15 organizations. EPA also met with the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) and, with the assistance of ASIWPCA, conducted a conference call in which representatives from 17 states or interstate organizations participated. After publication of the proposed rule, EPA continued to meet with stakeholders at their request. These meetings are summarized in the record.

III. Environmental Impact Associated With Cooling Water Intake Structures

The proposed rule provided an overview of the magnitude and type of environmental impacts associated with cooling water intake structures, including several illustrative examples of documented environmental impacts at existing facilities (see 65 *FR* 49071 through 4). The majority of biological impacts associated with intake structures are closely linked to water withdrawals from the various waters in which the intakes are located.

Based on preliminary estimates from a questionnaire sent to more than 1,200 existing power plants and factories, industrial facilities in the United States withdraw more than 279 billion gallons of cooling water a day from waters of the U.S. The withdrawal of such large quantities of cooling water affects vast quantities of aquatic organisms annually, including phytoplankton (tiny, free-floating photosynthetic organisms suspended in the water column), zooplankton (small aquatic animals, including fish eggs and larvae, that consume phytoplankton and other

zooplankton), fish, crustaceans, shellfish, and many other forms of aquatic life. Aquatic organisms drawn into cooling water intake structures are either impinged on components of the cooling water intake structure or entrained in the cooling water system itself.

Impingement takes place when organisms are trapped against intake screens by the force of the water passing through the cooling water intake structure. Impingement can result in starvation and exhaustion (organisms are trapped against an intake screen or other barrier at the entrance to the cooling water intake structure), asphyxiation (organisms are pressed against an intake screen or other barrier at the entrance to the cooling water intake structure by velocity forces that prevent proper gill movement, or organisms are removed from the water for prolonged periods of time), and descaling (fish lose scales when removed from an intake screen by a wash system) and other physical harms.

Entrainment occurs when organisms are drawn through the cooling water intake structure into the cooling system. Organisms that become entrained are normally relatively small benthic,[1] planktonic,[2] and nektonic[3] organisms, including early life stages of fish and shellfish. Many of these small organisms serve as prey for larger organisms that are found higher on the food chain. As entrained organisms pass through a plant's cooling system they are subject to mechanical, thermal, and/or toxic stress. Sources of such stress include physical impacts in the pumps and condenser tubing, pressure changes caused by diversion of the cooling water into the plant or by the hydraulic effects of the condensers, sheer stress, thermal shock in the condenser and discharge tunnel, and chemical toxemia induced by antifouling agents such as chlorine. The mortality rate of entrained organisms varies by species and can be high under normal operating conditions.[4] [5] In the case of either impingement or entrainment, a substantial number of aquatic organisms are killed or subjected to significant harm.

In addition to impingement and entrainment losses associated with the operation of the cooling water intake structure, EPA is concerned about the cumulative overall degradation of the aquatic environment as a consequence of (1) multiple intake structures operating in the same watershed or in the same or nearby reaches and (2) intakes located within or adjacent to an impaired waterbody. Historically, impacts related to cooling water intake structures have been evaluated on a facility-by-facility basis. The potential cumulative effects of multiple intakes located within a specific waterbody or along a coastal segment are largely unknown (one relevant example is provided for the Hudson River; see discussion below). There is concern, however, about the effects of multiple intakes on fishery stocks. As an example, the Atlantic States Marine Fisheries Commission has been requested by its member States to investigate the cumulative impacts on commercial fishery stocks, particularly overutilized stocks, attributable to cooling water intakes located in coastal regions of the Atlantic.[6] Specifically, the study will focus on revising existing fishery management models so that they accurately consider and account for fish losses from intake structures.

EPA analyses suggest that over 99 percent of the existing facilities with cooling water withdrawal that EPA surveyed in its section 316(b) survey of existing facilities are located within 2 miles of waters that are identified as impaired and listed by a State or Tribe as needing development of a total maximum daily load (TMDL) to restore the waterbody to its designated use. EPA notes that the top four leading causes of waterbody impairment (siltation, nutrients, bacteria, and metals) affect the aquatic life uses of a waterbody. The Agency believes that cooling water intakes potentially contribute additional stress to waters already showing aquatic life impairment from other sources such as industrial discharges and urban stormwater.

EPA is also concerned about the potential impacts of cooling water intake structures located in or near habitat areas that support threatened, endangered, or other protected species. Although limited information is available on locations of threatened or endangered species that are vulnerable to impingement or entrainment, such impacts do occur. For example, EPA is aware that from 1976 to 1994, approximately 3,200 threatened or endangered sea turtles entered enclosed cooling water intake canals at the St. Lucie Nuclear Generating Plant in Florida.[7] The plant developed a capture-and-release program in response to these events. Most of the entrapped turtles were captured and released alive; however, approximately 160 turtles did not survive. More recently, the number of sea turtles being drawn into the intake canal increased to approximately 600 per year; this increase led to a requirement for barrier nets to minimize entrapment.

Finally, in the proposed rule EPA expressed concern about environmental impacts associated with the construction of new cooling water intake structures. Three main factors contribute to the environmental impacts: displacement of biota and habitat resulting from the physical placement of a new cooling water intake structure in an aquatic environment, increased levels of turbidity in the aquatic environment, and effects on biota and habitat associated with aquatic disposal of materials excavated during construction. Existing programs, such as the CWA section 404 program, National Environmental Policy Act (NEPA) program, and programs under State/Tribal law, include requirements that address many of the environmental impact concerns associated with the construction of new intakes (see Section VII. G for applicable Federal statutes). EPA recognizes that impacts related to construction of cooling water intake structures can occur and defers to the regulatory authority provided within the above-listed programs to evaluate the potential for impacts and minimize their extent.

In the proposed rule and NODA, EPA provided a number of examples of impingement and entrainment impacts that can be associated with existing facilities. It is important to note that these examples were *not* meant to predict effects at new facilities but rather to illustrate that the number of organisms impinged and entrained by a facility can be substantial. EPA also

[1] Refers to bottom dwellers that are generally small and sessile (attached) such as mussels and anemones, but can include certain large motile (able to move) species such as crabs and shrimp. These species can be important members of the food chain.

[2] Refers to free-floating microscopic plants and animals, including the egg and larval stages of fish and invertebrates that have limited swimming abilities. Plankton are also an important source of food for other aquatic organisms and an essential component of the food chain in aquatic ecosystems.

[3] Refers to free-swimming organisms (e.g., fish, turtles, marine mammals) that move actively through the water column and against currents.

[4] Mayhew, D.A., L.D. Jensen, D.F. Hanson, and P.H. Muessig. 2000. A comparative review of entrainment survival studies at power plants in estuarine environments. *Environmental Science and Policy* 3:S295–S301.

[5] EPRI. 2000. Review of entrainment survival studies: 1970–2000. Prepared by EA Engineering Science and Technology for the Electric Power Research Institute, Palo Alto, CA.

[6] Personal communication, telephone conversation between D. Hart (EPA) and L. Kline (ASMFC), 2001.

[7] Florida Power and Light Company. 1995. Assessment of the impacts at the St. Lucie Nuclear Generating Plant on sea turtle species found in the inshore waters of Florida.

notes that these are examples of the types of impacts that may occur without controls, that these examples are not representative of all sites whose facilities use cooling water intake structures, and that these examples may not reflect subsequent action that may have been taken to address these impacts on a site-specific basis. With these notes, EPA provides the following examples, illustrating that the impacts attributable to impingement and entrainment at individual facilities may result in appreciable losses of early life stages of fish and shellfish (*e.g.,* three to four billion individuals annually [8]), serious reductions in forage species and recreational and commercial landings (*e.g.,* 23 tons lost per year [9]), and extensive losses over relatively short intervals of time (*e.g.,* one million fish lost during a three-week study period [10]).

Further, some studies estimating the impact of impingement and entrainment on populations of key commercial or recreational fish have predicted substantial declines in population size. This has lead to concerns that some populations may be altered beyond recovery. For example, a modeling effort evaluating the impact of entrainment mortality on a representative fish species in the Cape Fear estuarine system predicted a 15 to 35 percent reduction in the species population.[11]

In addition, studies of entrainment at five Hudson River power plants during the 1980s predicted year-class reductions ranging from six percent to 79 percent, depending on the fish species.[12] An updated analysis of entrainment at three of these power plants predicted year-class reductions of up to 20 percent for striped bass, 25 percent for bay anchovy, and 43 percent for Atlantic tom cod, even without assuming 100 percent mortality of entrained organisms.[13] The New York Department of Environmental Conservation concluded that these reductions in year-class strength were ''wholly unacceptable'' and that any ''compensatory responses to this level of power plant mortality could seriously deplete any resilience or compensatory capacity of the species needed to survive unfavorable environmental conditions.''[14]

The following are summaries of other, documented examples of impacts occurring at existing facilities sited on a range of waterbody types. Also, see the discussion of the benefits of today's final rule in Section IX.

Brayton Point Generating Station. The Brayton Point Generating Station is located on Mt. Hope Bay, in Somerset, Massachusetts, within the northeastern reach of Narragansett Bay. Because of problems with electric arcing caused by salt drift and lack of fresh water for the closed-cycle recirculating cooling water system, the company converted Unit 4 from a closed-cycle, recirculating system to a once-through cooling water system in July 1984. The modification of Unit 4 resulted in a 41 percent increase in coolant flow, amounting to an intake flow of approximately 1.3 billion gallons per day and increased thermal discharge to the bay.[15] An analysis of fisheries data by the Rhode Island Division of Fish and Wildlife using a time series-intervention model showed an 87 percent reduction in finfish abundance in Mt. Hope Bay coincident with the Unit 4 modification.[16] The analysis also indicated that, in contrast, species abundance trends have been relatively stable in adjacent coastal areas and portions of Narragansett Bay that are not influenced by the operation of Brayton Point station.

San Onofre Nuclear Generating Station. The San Onofre Nuclear Generating Station (SONGS) is located on the coastline of the Southern California Bight, approximately 2.5 miles southeast of San Clemente, California.[17] The marine portions of Units 2 and 3, which are once-through, open-cycle cooling systems, began commercial operation in August 1983 and April 1984, respectively.[18] Since then, many studies evaluated the impact of the SONGS facility on the marine environment.

In a normal (non-El Niño) year, an estimated 121 tons of midwater fish (primarily northern anchovy, queenfish, and white croaker) are entrained at SONGS, of which at least 57 percent are killed during plant passage.[19] The fish lost include approximately 350,000 juveniles of white croaker, a popular sport fish; this number represents 33,000 adult individuals or 3.5 tons of adult fish. Within 3 kilometers of SONGS, the density of queenfish and white croaker in shallow-water samples decreased by 34 and 36 percent, respectively. Queenfish declined by 50 to 70 percent in deepwater samples.[20] A subsequent EPA review of the SONGS 316(b) demonstration concluded that although the plant incorporated technologies for minimizing adverse environmental impact, operations at SONGS cause adverse impacts to organisms in the cooling water system and to biological populations and communities in the vicinity of the intake and discharge locations for the plant.[21] These effects included mortality of fish, especially losses of millions of eggs and larvae, that are taken into the plant with cooling water and creation of a sometimes turbid plume that affects kelp, fish, and invertebrates in the San Onofre kelp bed.[22]

Pittsburg and Contra Costa Power Plants. The Pittsburg and Contra Costa Power Plants are located in the San Francisco Estuary, California. Because the San Francisco Bay Delta ecosystem has changed dramatically over the past century, several local species (e.g., Delta smelt, Sacramento splittail, chinook salmon, and steelhead) have been listed as threatened or endangered. Facility estimates for one of these species,

[8] EPA Region IV. 1979. Brunswick Nuclear Steam Electric Generating Plant of Carolina Power and Light Company, historical summary and review of section 316(b) issues.

[9] EPA Region IV. 1986. Findings and determination under 33 U.S.C. 1326, In the Matter of Florida Power Corporation Crystal River Power Plant Units 1, 2, and 3, NPDES permit no. FL0000159.

[10] Thurber, N.J and D. J. Jude. 1985. Impingement losses at the D.C. Cook Nuclear Power Plant during 1975–1982 with a discussion of factors responsible and possible impact on local populations. Special report no. 115 of the Great Lakes Research Division, Great Lakes and Marine Waters Center, University of Michigan.

[11] EPA Region IV. 1979. Brunswick Nuclear Steam Electric Generating Plant of Carolina Power and Light Company, historical summary and review of section 316(b) issues.

[12] Boreman J. and P. Goodyear. 1988. Estimates of entrainment mortality for striped bass and other fish species inhabiting the Hudson River Estuary. *American Fisheries Society Monograph* 4:152–160.

[13] Consolidated Edison Company of New York. 2000. Draft environmental impact statement for the state pollutant discharge elimination system permits for Bowline Point, Indian Point 2 & 3, and Roseton steam electric generating stations.

[14] New York Department of Environmental Conservation (NYDEC). 2000. Internal memorandum provided to the USEPA on NYDEC's position on SPDES permit renewals for Roseton, Bowline Point 1 & 2, and Indian Point 2 & 3 generating stations.

[15] Metcalf & Eddy. 1992. Brayton Point station monitoring program technical review. Prepared for USEPA.

[16] Gibson, M. 1995 (revised 1996). Comparison of trends in the finfish assemblages of Mt. Hope Bay and Narragansett Bay in relation to operations of the New England Power Brayton Point station. Rhode Island Division of Fish and Wildlife, Marine Fisheries Office.

[17] Southern California Edison. 1988. Report on 1987 data: marine environmental analysis and interpretation, San Onofre Nuclear Generating Station.

[18] Ibid.

[19] Swarbrick, S. and R.F. Ambrose. 1989. Technical report C: entrapment of juvenile and adult fish at SONGS. Prepared for Marine Review Committee.

[20] Kastendiek, J. and K. Parker. 1989. Interim technical report: midwater and benthic fish. Prepared for Marine Review Committee.

[21] SAIC. 1993. Draft review of Southern California Edison, San Onofre Nuclear Generating Station (SONGS) 316(b) demonstration. Prepared for USEPA Region IX.

[22] Ibid.

chinook salmon, indicate that the Pittsburg and Contra Costa intakes have the potential to impinge and entrain up to 36,567 chinook salmon each year.[23] Based on restoration costs, EPA estimates that losses for this species alone can be valued at $25–40 million per year.

Power Plants with Flows Less Than 500 MGD. The following information from facility studies documents impingement and entrainment losses for facilities with lower flows than the previous examples:

1. The Pilgrim Nuclear Power Station, located on Cape Cod Bay, Massachusetts, has an intake flow of 446 MGD.[24] The average annual total losses of fish (all life stages) was 26,800 due to impingement and 3.92 billion due to entrainment[25]

2. The Coleman Power Plant, located on the Ohio River in Henderson, Kentucky, has an intake flow of 337 MGD[25] and combined average impingement and entrainment losses of 702,630,800 fish per year (30,800 impinged and 702,600,000 entrained).[26]

Existing and historical studies like those described in this section may provide only a partial picture of the severity of environmental impact associated with cooling water intake structures. Most important, the methods for evaluating adverse environmental impact used in the 1970s and 1980s, when most section 316(b) evaluations were performed, were often inconsistent and incomplete, making detection and consideration of all impacts difficult in some cases, and making cross-facility comparison difficult for developing a national rule. For example, some studies reported only gross fish losses; others reported fish losses on the basis of species and life stage; still others reported percent losses of the associated population or subpopulation (e.g., young-of-year fish). Recent advances in environmental assessment techniques provide new and in some cases better tools for monitoring impingement and entrainment and detecting impacts associated with the operation of cooling water intake structures.[27] [28] EPA acknowledges that these new assessment techniques may in some cases provide additional rather than better tools and perspectives.

IV. Summary of the Most Significant Revisions to the Proposed Rule

A. Data Updates

1. Number and Characteristics of New Facilities

Chapter 5 of the *Economic Analysis* provides a detailed discussion of the data and methodology used to estimate the number of new electric generating facilities and new manufacturing facilities subject to the final section 316(b) new facility rule. This section provides a summary of primary revisions to the analyses since the proposal. The section discusses new combined-cycle facilities, new coal facilities, and new manufacturing facilities separately.

a. New Combined-Cycle Facilities

The general approach for estimating the number of new combined-cycle facilities subject to the final section 316(b) new facility rule has not changed since proposal. However, and as discussed in the notice of data availability (NODA), EPA has used new data, which have become available since the proposal, to update the analysis. As a result, the number of new combined-cycle facilities now projected to be in scope of this rule has increased from 24 in the proposed rule analysis to 69 in the updated analysis for the final rule.

(1) Proposed Rule

For the proposal analysis, EPA used a three-step approach to estimating the number of new combined-cycle facilities: (1) Determination of future combined-cycle capacity additions; (2) estimation of the percentage of all regulated combined-cycle facilities that are in-scope; and (3) estimation of the number of new facilities. EPA used the *Annual Energy Outlook 2000* (AEO2000), prepared and published by the Energy Information Administration (EIA) of the U.S. Department of Energy, as the basis for the projected number of new in-scope combined-cycle facilities. The AEO2000 forecast 131 gigawatts (GW) of new combined-cycle capacity to begin operation between 2001 and 2020. Since the AEO does not have any information on the number of new facilities, their size, or their cooling water characteristics, EPA used the January 2000 version of Resource Data International's NEWGen Database to determine the in-scope percentage of new combined-cycle facilities and their facility and cooling water characteristics.

In the January 2000 NEWGen database, 94 of 466 projects met the following screening criteria: (1) New facility; (2) located in the United States; (3) active project (*i.e.,* not canceled or tabled); (4) anticipated date of initial commercial operation after August 13, 2001; and (5) steam electric prime mover. All 94 facilities were included in the analysis of new combined-cycle facilities. EPA then consulted permitting authorities, other public agencies, and company websites to obtain data on the planned facility cooling water use. EPA obtained sufficient data to assess the in-scope status for 56 of the 94 facilities. Seven of the 56 facilities, or 12.5 percent, were found to be in scope of the proposed rule; 49 were found to be out of scope. To estimate the total number of new in-scope combined-cycle facilities projected to begin operation between 2001 and 2020, EPA applied the average facility size of the seven in-scope NEWGen facilities (723 MW) and the in-scope percentage (12.5 percent) to EIA's forecast of new combined-cycle capacity additions. EPA made the conservative assumption that all new combined-cycle capacity would be built at new facilities rather than at existing facilities. These calculations resulted in an estimate of 24 new in-scope combined-cycle facilities over the 2001–2020 period (see also Exhibit 1 below).

(2) Final Rule

For the final rule analysis and as discussed in the NODA, EPA used the same general methodology but obtained updated information. In particular, EPA used the forecast of capacity additions from the U.S. Department of Energy's *Annual Energy Outlook* (AEO2001) and the February 2001 NEWGen Database. AEO2001's forecast of new combined-cycle capacity additions between 2001 and 2020 was 204 GW, compared with 131 GW in the AEO2000. Similarly, the February 2001 NEWGen Database contains considerably more new energy projects than the version used for the proposed rule analysis: The database contains 941 new projects, of which 361 met the screening criteria discussed above. Of the 361 facilities, 320 are combined-cycle facilities. To increase the number of facilities upon which facility and cooling water use characteristics are based, EPA excluded the anticipated date of initial commercial operation as a screening criterion. The analysis for the final rule

[23] Southern Energy. 2000. Habitat conservation plan for the Pittsburg and Contra Costa Power Plants.

[24] Edison Electric Institute. 1994. EEI Power Statistics Database. Prepared by the Utility Data Institute.

[25] Data compiled by EPA from annual reports of impingement and entrainment losses from the Pilgrim Nuclear Power Station for the years 1991–1999.

[26] Hicks, D.B. 1977. Statement of findings for the Coleman Power Plant, Henderson, Kentucky.

[27] Schmitt, R.J. and C.W. Osenberg. 1996. *Detecting Ecological Impacts.* Academic Press, San Diego, CA.

[28] EPRI. 1999. Catalog of assessment methods for evaluating the effects of power plant operations on aquatic communities. TR–112013, EPRI, Palo Alto, CA.

therefore includes all facilities that meet the other four screening criteria, even if a facility will already have begun construction when the rule is promulgated and will therefore not be subject to the final rule.

EPA again consulted permitting authorities, other public agencies, and company websites to obtain data on the facilities' planned cooling water use. EPA obtained sufficient data to assess the cooling water characteristics for 199 of the 320 combined-cycle facilities. Of the 199 facilities, 57, or 28.6 percent, were found to be in scope of the final rule; 142 were found to be out of scope. The average size of all 199 facilities with cooling water information was approximately 741 MW. The average size of the 57 in-scope facilities was 747 MW. EPA made one other revision in estimating the total number of new in-scope combined-cycle facilities projected to begin operation between 2001 and 2020: Instead of assuming that all new combined-cycle capacity would be built at new facilities, EPA used information on combined-cycle capacity additions at existing facilities from the NEWGen Database to determine the actual share of capacity that will be built at new facilities. The database showed that 88 percent of new combined-cycle capacity is proposed at new facilities. EPA used the Department of Energy's estimate of new combined-cycle capacity additions (204 GW) and multiplied it by the percentage of capacity that will be built at new facilities (88 percent) to determine that 179 GW of new capacity will be constructed at new facilities. EPA then divided this value by the average facility size (741 MW) to determine that there would be a total of 241 potential new combined-cycle facilities (both in scope and out of scope of today's final rule). Finally, on the basis of EPA's estimate of the percentage of facilities that meet the two (2) MGD flow threshold (28.6 percent), EPA now estimates there will be 69 new in-scope combined-cycle facilities over the 2001–2020 period. Exhibit 1 summarizes the data differences for combined-cycle facilities between the proposal and the final rule analyses.

EXHIBIT 1.—SUMMARY OF COMBINED-CYCLE FACILITY RESEARCH (2001 TO 2020)

Information category	Proposed rule analysis	Final rule analysis
AEO2000 combined-cycle capacity additions	135 GW[a]	
AEO2001 combined-cycle capacity additions		204 GW
Percentage of combined-cycle capacity additions from new facilities	100%	88%
Capacity additions from new facilities	135 GW	179 GW
Average size of all combined-cycle facilities	723 MW	741 MW
Total number of new combined-cycle facilities	187	241
In-scope percentage	12.5%	28.6%
Number of new in-scope combined-cycle facilities	24	69
Average size of in-scope combined-cycle facilities	723 MW	747 MW

[a] Includes 4 GW of new coal capacity additions for 2001–2010.

The final step in the costing analysis for the final rule was to project cooling water characteristics of the 69 new in-scope combined-cycle facilities on the basis of the characteristics of the 57 in-scope NEWGen facilities. EPA developed six model facility types based on three main characteristics: (1) The facility's type of cooling system (once-through or recirculating system); (2) the type of water body from which the intake structure withdraws (freshwater or marine water); and (3) the facility's steam-electric generating capacity. The model facility characteristics were then applied to the 69 projected new combined-cycle facilities. EPA estimated that 64 new in-scope combined-cycle facilities will employ a recirculating system and only five will employ a once-through system. Of the 64 facilities with a recirculating system, 58 will withdraw from a freshwater body and six will withdraw from a marine water body. All five facilities with a once-through system are projected to withdraw from a marine water body.

b. New Coal Facilities

The general approach for estimating the number of new coal facilities subject to this final rule has not changed since proposal. However, as discussed in the NODA, EPA has used new data, which have become available since the proposal, to update the analysis. As a result, the number of new coal facilities projected to be in scope of this rule, decreased slightly, from 16 in the proposed rule analysis to 14 in the final rule analysis. However, most of the new in-scope coal facilities are now expected to begin operation earlier than under the proposal analysis.

(1) Proposed Rule

For the years 2001–2010, the AEO2000 projected limited new coal-fired steam electric generating capacity. In addition, the January 2000 NEWGen Database included no new coal-fired generating facilities. EPA therefore did not project any new coal facilities for 2001–2010. For the years 2011–2020, EPA used EIA's projected new capacity addition from coal-fired facilities, 17 GW, and information from the following sources to estimate the number and cooling water characteristics of new coal-fired power facilities subject to the rule: Form EIA–767 (Steam Electric Plant Operation and Design Report, Energy Information Administration, U.S. Department of Energy, 1994, 1997); Form EIA–860 (Annual Electric Generator Report, Energy Information Administration, U.S. Department of Energy, 1994, 1997); and Power Statistics Database (Utility Data Institute, McGraw-Hill Company, 1994). EPA estimated that 16 new coal facilities of 800 MW each would be subject to the proposed section 316(b) new facility rule and would begin operation between 2011 and 2020. Of these, 12 were projected to operate a recirculating system in the baseline, while four were projected to operate a once-through system.

(2) Final Rule

EPA used a similar methodology for the final rule analysis but obtained updated information and added data from the section 316(b) industry survey of existing facilities *(Industry Screener Questionnaire: Phase I Cooling Water Intake Structures, Detailed Industry Questionnaire: Phase II Cooling Water Intake Structures, and Industry Short Technical Questionnaire: Phase II Cooling Water Intake Structures).* To be consistent with the analysis for combined-cycle facilities, EPA used the forecast of capacity additions from the

AEO2001, which predicts 22 GW of new coal capacity between 2001 and 2020. In contrast to the proposal analysis, EPA considered the entire 2001–2020 period for the final rule analysis. In addition, EPA used information from the section 316(b) industry survey to determine the average size, in-scope percentage, and cooling water characteristics of new coal plants. The three surveys identified 111 unique coal-fired facilities that began commercial operation between 1980 and 1999. The facilities have a combined generating capacity of 53 GW, with an average of 475 MW each. The surveys further showed that 45 of the 111 facilities, or 40.5 percent, would be in scope of today's final rule if they were new facilities. These 45 facilities have an average generating capacity of 763 MW.

Information in the February 2001 version of the NEWGen Database on capacity additions at new and existing facilities showed that approximately 76 percent of new coal capacity will be built at new facilities. Applying this percentage (76 percent), as well as the average facility size (475 MW) and the in-scope percentage (40.5 percent), to EIA's forecast of new coal capacity additions resulted in 14 new in-scope coal facilities, with an average capacity of 763 MW, over the 2001–2020 period. Exhibit 2 summarizes the data differences for coal facilities between the proposal and the final rule analyses.

EXHIBIT 2.—SUMMARY OF COAL FACILITY RESEARCH

	Proposed rule analysis (2011–2020)	Final rule analysis (2001–2020)
AEO2000 coal capacity additions	17 GW	
AEO2001 coal capacity additions		22 GW
Percentage of coal capacity additions from new facilities	82%	76%
Capacity additions from new faciliteis	14 GW	17 GW
Average size of all coal facilities	800 MW	475 MW
Total number of new coal facilities	18	35
In-scope percentage	99.0%	40.5%
Number of new in-scope coal facilities	16	14
Average size of in-scope coal facilities	800 MW	763 MW

EPA projected cooling water characteristics of the 14 new in-scope coal facilities using data for recently-constructed plants from the section 316(b) industry survey. Similar to the combined-cycle facility analysis, EPA developed eight model facility types based on three main characteristics: (1) The facility's type of cooling system (once-though or recirculating system); (2) the type of water body from which the intake structure withdraws (freshwater or marine water); and (3) the facility's steam-electric generating capacity. The model facility characteristics were then applied to the 14 projected new coal facilities. EPA estimated that 10 new in-scope coal facilities will employ a recirculating system and three will employ a once-through system. One coal facility has a recirculating cooling pond and will exhibit characteristics more like a once-through facility. Of the10 facilities with a recirculating system, nine will withdraw from a freshwater body and only one facility will withdraw from a marine water body. All three facilities with a once-through system and the one facility with a cooling pond are projected to withdraw from a freshwater body.

c. Manufacturing Facilities

The general methodology used to estimate the number of new manufacturing facilities subject to the final section 316(b) new facility rule has not changed since proposal. However, on the basis of comments, EPA has altered some estimates and used new data to update the analysis. As a result, the number of new manufacturing facilities projected to be in scope of this rule has decreased from 58 at proposal to 38 in the final rule analysis.

(1) Proposed Rule

In the proposal analysis, EPA used three industry-specific estimates to project the number of new in-scope manufacturing facilities: (1) Industry growth forecasts; (2) the estimated percentage of the projected capacity growth accounted for by new facilities; and (3) data on the cooling water use at existing facilities. EPA used the projected growth of value of shipments in each industry to estimate likely future growth in capacity. A number of sources provided growth forecasts, including the annual U.S. Industry & Trade Outlook, *AEO2001,* and other sources specific to each industry. EPA assumed that the growth in capacity will equal growth in value of shipments, except where industry-specific information supported alternative assumptions. Not all industry growth, however, is expected to occur at new facilities: Some of the projected growth in capacity may result from increased utilization of existing capacity or capacity additions at existing facilities. Where information on the share of growth from new facilities was available, EPA used these data. For example, EIA projected that all increases in petroleum shipments will result from expanded capacity at existing facilities. Where this information was not available, EPA made the conservative estimate that 50 percent of the projected growth in capacity will be attributed to new facilities. Finally, EPA assumed that the cooling water use characteristics of new facilities in each industry, including the in-scope percentage, would be similar to those of existing facilities. Cooling water use data for existing facilities came from the *Industry Screener Questionnaire: Phase I Cooling Water Intake Structures.* To calculate the total number of new in-scope manufacturing facilities, EPA applied the industry-specific growth rate and the percentage of capacity growth from new facilities to the sample-weighted number of in-scope screener facilities in each industry.

(2) Final Rule

For the final rule analysis, EPA updated the projected growth in value of shipments for each industry using the most recent data available. On the basis of comments, three changes were made to the percentage of projected capacity growth that is attributed to new facilities. First, the American Chemistry Council stated that EPA overestimated the number of new in-scope chemical facilities in the proposal analysis because the percentage of growth that comes from new facilities (50 percent) was overstated. The comment did not provide a more accurate estimate. EPA

therefore revised this estimate for the chemical industry to 25 percent, which reduced the number of new chemical facilities by half. (The *Economic Analysis* documents the effect of using an alternative assumption of 37.5 percent, the midpoint between the proposal analysis estimate and the final rule analysis estimate, in analyzing the economic impacts of this rule.) Second, the petroleum industry commented that the assumption of no new petroleum refineries over the next 20 years is invalid. Even though the AEO2001 projects no new refineries in the United States, to be conservative EPA nevertheless revised this estimate and included two new in-scope petroleum refineries in the final rule analysis. Third, the American Forest & Paper Association stated that one or two new greenfield paper mills will be built over the next decade. EPA added two new in scope paper mills over the 20-year analysis period in response to this comment. In addition, EPA updated the water use characteristics of the projected new facilities by using data from the *Detailed Industry Questionnaire: Phase II Cooling Water Intake Structures instead of the Screener Questionnaire.* In the proposal analysis, EPA erroneously used the average daily intake flow rate, instead of the design intake flow rate, to determine whether a facility meets the two MGD flow threshold and is subject to the rule. Since the average intake flow is either lower than or equal to the design intake flow, this error likely underestimated the number of new in-scope manufacturing facilities. For the analysis of the final rule, EPA used the design intake flows reported in the section 316(b) industry survey.

Overall, because of the revisions described above, EPA's estimate of the number of new in-scope manufacturing facilities dropped from 58 at proposal to 38 in the cost analysis for this final rule.

2. Revisions to the Costing Estimates

Chapter 2 of the *Technical Development Document* provides a detailed description of the data and methodology used to develop compliance cost estimates for the final regulation. This section provides a summary of the main revisions in the costing inputs since the proposal.

At the time of the proposal, EPA included cost estimates for plume abatement at 50 percent of the electric generating facilities anticipated to install recirculating wet cooling towers to comply with the rule. This was an error. As described in the NODA (66 FR 28866 and 28867), EPA has since refined its estimates of cooling tower costs on a national basis to reflect plume abatement costs at a significantly lower proportion of facilities. EPA determined, on the basis of further research and information received from vendor manufacturers, that plume abatement measures were installed at only 3 to 4 percent of recent wet cooling tower projects. Therefore, the costing estimates for the final rule reflect this change.

At the time of the proposal, EPA included cost estimates for pumping of recirculating cooling water in the towers based on a flow rate equal to 15 percent of a comparable once-through cooling flow (based on the flow of make-up water). As explained in the NODA (66 FR 28866), this was an error. EPA has since refined its costing estimates to include the entire cooling flow. EPA's cost estimates for both capital and O&M costs for the final rule reflect appropriately sized pumps to recirculate the full design cooling water flow. The in-tower cooling water flow is now based on the level of cooling necessary for the condenser and the plants' cooling needs.

Since proposal, EPA has included costs from additional projects in the calculation of its costing estimates for recirculating wet cooling towers. EPA obtained further ''turn-key'' vendor project costs that have been incorporated into the specific costing equations used to calculate the capital and operation and maintenance (O&M) costs of the final rule. Turn-key project costs represents all costing elements necessary to estimate engineering costs, such as vendor overhead, equipment, wiring, foundations and contingencies. EPA included these project costs in the calculation of the costing equations in order to increase the number of real-world projects upon which the final cost estimates are based.

EPA has refined its estimates of O&M costs for recirculating wet cooling towers since proposal. At the time of proposal, EPA estimated economy of scale for O&M costs for recirculating, wet cooling towers as their size increases. EPA based this estimate primarily on the economy of scale savings for wastewater treatment systems as wastewater flow increases. The overall effect of this approach showed that for very large cooling towers, a savings of nearly two-thirds was achieved compared with smaller cooling towers. On the basis of comments received and further research, EPA has refined its estimates of O&M costs and economies of scale. The cost estimates presented for the final rule reflect this revision to the analysis.

In the final rule, EPA has included cost estimates for energy penalties due to operating power losses from recirculating cooling tower systems. Further information on this subject can be found in Section IV.A.3 of this preamble, below.

3. Energy Penalty Estimates for Recirculating Wet Cooling and Dry Cooling Towers

Since proposal, as discussed in the NODA (66 FR 28866), EPA has included in its estimates of O&M costs the performance penalties that may result in reductions of energy or capacity produced because of adoption of recirculating cooling tower systems. The cost estimates for the final rule include consideration of these penalties. The final rule cost estimates account for the energy penalty at facilities that are projected to install recirculating wet cooling tower systems in lieu of once-through cooling systems. EPA's cost estimates for dry cooling regulatory alternatives account for the appropriate energy penalty of this technology at each facility projected to install such a system.

For the final rule, EPA's costing methodology for performance penalties is based on the concept of lost operating revenue due to a mean annual performance penalty. EPA estimated the mean annual performance penalty for each tower technology as compared with once-through or recirculating wet cooling systems (where applicable for the dry cooling analysis). EPA then applied this mean annual penalty to the annual revenue estimates for each facility projected to install a recirculating cooling tower technology as a result of the rule or a regulatory option. EPA considers these revenue losses as representative of the cost to the facility for either replacing the power lost via the market or expanding the capacity of the new power plant.

Chapter 3 of the *Technical Development Document* discusses performance penalties in more detail.

4. Significant Changes to the Economic Analysis a. Revisions to Costing Analysis

EPA has made a methodological change for estimating the cost for today's rule. For the proposal, EPA directly estimated the incremental cost of the rule without estimating the baseline cost. This made it difficult to identify the magnitude of changes in relevant components of a system of a facility and their individual costs. For the final rule, EPA separately estimated the baseline costs and the cost after meeting the requirements of the rule.

Thus, the incremental cost attributed to the rule is derived from the difference between the baseline cost and the cost after compliance with the requirements of the rule.

For the proposal, EPA estimated the cost of the rule to be $12 million. This estimate was in part based on the assumption that 90 percent of the coal facilities would be within the scope of the rule. Since the publication of the proposal, EPA has analyzed additional information regarding coal facilities. This information shows that 40.5 percent of the coal facilities would be within the scope of the rule. EPA also revised the baseline characteristics for these facilities. For the final rule, EPA estimates that 71 percent of new in-scope coal facilities would have recirculating cooling towers independent of the rule. For combined-cycle facilities, EPA used the January 2000 version of the NEWGen database at proposal to estimate the proportion of the facilities that would be within the scope of the proposal. In view of the changes in the energy market, EPA is using a more current version (February 2001) of the NEWGen database for the final analysis. Consequently, EPA is revising the in-scope percentage for combined-cycle facilities to 28.6 percent for the final analysis, instead of 12.5 percent used for the proposal.

For the proposal, EPA used the average flow from the section 316(b) industry survey, screener questionnaire for existing manufacturing facilities to estimate the technology and O&M costs for new manufacturing facilities. EPA believes that the average flow would underestimate the costs because costs mostly depend on design of a facility. Therefore, EPA is using the design flow for estimating the cost for manufacturing facilities for the final rule. For the proposal, EPA assumed that 50 percent of the growth in product demand in the chemical industry would be met from new facilities. Commenters pointed out that this assumption leads to an overestimation of the number of new facilities and EPA agrees. Therefore, EPA has revised this assumption to 25 percent for the analysis supporting today's rule.

EPA has also examined the cost of the rule as a percentage of (annual) revenue for purposes of determining whether the options are economically practicable. The worst-case, or upper-limit, cost estimate for the rule is between 3.3 to 5.2 percent of estimated revenues (for three coal facilities), between 1 and 3 percent for an additional six facilities, and less than 1 percent for the rest of the facilities. EPA concludes that those costs are economically practicable and will not pose a barrier to entry for new facilities. The initial compliance cost of the rule (i.e., capital costs and permitting costs) as a percentage of construction cost of an electric generation facility is 3.4 percent for one coal facility, between 1.0 and 3.0 percent for an additional seven facilities, and less than 1.0 percent for the rest of the electric generation facilities. EPA finds that these are relatively low compliance costs. EPA does not consider that the cost of the rule would be a barrier to entry for new facilities and also finds that cost to be economically practicable.

5. Air Emissions Increases as a Result of Certain Regulatory Options

For the final rule, and as discussed in the NODA, EPA includes estimates of annual air emissions increases for certain pollutants from new power plants as a result of certain regulatory options considered. EPA developed estimates for air emissions increases for SO_2, NO_X, CO_2, and Hg for the regulatory options based on near-zero intake (dry cooling) and for those based on uniform national requirements of flow reduction commensurate with closed-cycle recirculating wet cooling systems (wet cooling towers) or with wet-cooling systems in Track I of a two-track rule. EPA anticipates, because of measurable performance penalties associated with cooling tower systems (see Section IV.A.3 of this preamble), that, depending on the regulatory option, air emissions nationally could increase from all or a small subset of new power plants as a result of the installation of cooling tower systems. EPA estimates the marginal air emissions increases by assuming that the energy lost by the facility cannot be replaced through additional fuel consumption at that facility, but rather, the energy will be replaced by the entire grid as a whole. Thus, the replacement energy necessary to compensate for the performance penalty is generated by the mix of fuels present in the entire grid. This is because, in EPA's view and on the basis of comments received, power plants are not always capable of compensating for an energy shortfall due to a performance penalty of a recirculating cooling tower by increasing their fuel consumption. Even though the estimated mean annual performance penalty for recirculating wet cooling towers is small, EPA estimates that facilities designed for once-through cooling would not always be designed with sufficient excess capacity to compensate for the performance penalties caused by recirculating wet cooling tower installations as a result of this rule. Therefore, EPA determines that marginal increases in air emissions due to performance penalties are best represented by estimating that the entire grid will replace the energy loss. EPA's estimates of marginal increases of air emissions are presented in Exhibit 3.

EXHIBIT 3.—ESTIMATES OF MARGINAL INCREASES OF AIR EMISSIONS FOR RECIRCULATING WET COOLING TOWERS [a]

	Capacity (MW)	Annual CO_2 (tons)	Annual SO_2 (tons)	Annual NO_X (tons)	Annual Hg (lbs)
National Emissions from Electricity Generation	828,631	2,575,814,488	13,581,673	6,437,710	86,722
Air Emission Increases if Plants Compensate With Increased Fuel Consumption					
National Electricity Generation Air Emissions Increases for Wet Cooling.		712,886 (.0028%)	1,543 (.0011%)	1,518 (.0024%)	23 (.0026%)
Air Emission Increases if Plants Purchase Replacement Power From Market					
National Electricity Generation Air Emissions Increases for Wet Cooling.		485,860 (.0019%)	2,561 (.0019%)	1,214 (.0019%)	16 (.0019%)

[a] This analysis assumes that annual emissions from energy generation are constant from 1998 to 2020, even though generation is projected to increase steadily over the next twenty years. Therefore, these estimates are slightly overstated.

B. Regulatory Approach

1. Proposed Rule

EPA proposed flow, velocity, and other design and construction technologies requirements based on the type of waterbody in which the intake structure is located and, for certain types of waters, the location of the intake in the water body. EPA proposed to group surface water into four categories: freshwater rivers and streams, lakes and reservoirs, estuaries and tidal rivers, and oceans. For each of these waterbody types, EPA divided the waterbody into sections based on the defined ''littoral zone.'' At proposal, littoral zone was defined as any nearshore area in a freshwater river or stream, lake or reservoir, or estuary or tidal river extending from the level of highest seasonal water to the deepest point at which submerged aquatic vegetation can be sustained (i.e., the photic zone extending from shore to the substrate receiving one (1) percent of incident light); where there is a significant change in slope that results in changes to habitat or community structure; and where there is a significant change in the composition of the substrate (e.g., cobble to sand, sand to mud). In oceans, the littoral zone encompassed the photic zone of the neritic region. The photic zone is that part of the water that receives sufficient sunlight for plants to be able to photosynthesize. The neritic region is the shallow water or nearshore zone over the continental shelf.

In general, the closer the intake structure was to the littoral zone, the more stringent the proposed best-technology-available requirements for minimizing adverse environmental impact became. For example, an intake structure located within the littoral zone would have required the most stringent capacity and velocity controls as well as the use of other design and construction technologies. EPA also proposed the most stringent requirements for best technology available for minimizing adverse environmental impact in all parts of tidal rivers and estuaries because of the potential for high biological productivity in these waters.

2. Notice of Data Availability

In the NODA, EPA sought comment on various versions of a two-track approach resulting from comments received on the proposal. Under this approach, a facility would choose to pursue one of two tracks. In general (based on size), Track I would establish national technology-based performance requirements, whereas Track II would allow the facility to conduct site-specific studies to demonstrate to the permit director that alternative technologies or approaches could reduce impingement and entrainment to the same or a greater degree than the Track I technology-based performance standards. See 66 *FR* 28868 to 28872.

3. Final Rule

In this rule, EPA is establishing a two-track technology-based approach that does not distinguish between waterbody types or the location of the intake structure within the waterbody type. Track I establishes capacity (for facilities with a design intake flow equal to or greater than 10 MGD), velocity, and capacity- and location-based proportional flow requirements to reduce impingement and entrainment of fish, shellfish, eggs, and larvae and requires the applicant to select and implement design and control technologies to minimize impingement and entrainment in certain areas. Track I applicants with intake flow between 2 and 10 MGD do not have to comply with a capacity limitation but then must use technologies to reduce entrainment at all locations. Track II allows a facility to conduct a comprehensive demonstration study to show that alternative controls will achieve comparable performance. The two-track approach balances the goal of providing regulatory certainty and fast permitting for new facilities with the goal of allowing flexibility by including a performance-based alternative. Track I streamlines the permitting process, providing a high degree of certainty that a facility will obtain a National Pollutant Discharge Elimination System (NPDES) permit without delays. In EPA's view, Track II provides an incentive for the development of innovative technologies that will represent best technology available for minimizing impingement and entrainment from cooling water intake structures.

V. Basis for the Final Regulation

A. Major Options Considered for the Final Rule

EPA considered and analyzed several technology-based regulatory options to determine the best technology available for minimizing adverse environmental impact for new facilities. All of these options were analyzed and compared with the current requirements applied to NPDES permits for existing facilities with cooling water intake structures. Although the Agency considered numerous regulatory options during rule development, the primary options considered in development of today's final rule include: (1) Technology-based performance requirements for different types of waters, with intake capacity limits based on closed-cycle recirculating wet cooling systems required only in estuaries, tidal rivers, the Great Lakes, and oceans; (2) national technology-based performance requirements for all waterbodies, with flow reduction commensurate with the level achieved with closed-cycle recirculating wet cooling; (3) national technology-based performance requirements for all waterbodies with a near-zero intake level (based on dry cooling);[29] and (4) a case-by-case, site-specific approached based on the 1977 draft guidance document.[30] In addition to these options, EPA also considered variations on each of the technology-based options using on a two-track permitting approach. The two-track options include one presented by industry for consideration. The two-track approach establishes a specific set of technology-based performance requirements that a permittee can implement that reflect best technology available for minimizing adverse environmental impact; this approach also provides permittees with flexibility to demonstrate that an alternative set of requirements achieves a comparable level of performance.

For all the options except for those based on dry cooling, EPA also considered requiring a design through-screen velocity of 0.5 ft/s, location- and capacity-based flow restrictions proportional to the size of the waterbody (such as a requirement for streams and rivers allowing no more than 5 percent withdrawal of the mean annual flow), and design and construction technologies to minimize impingement mortality and entrainment. In addition, EPA considered requiring post-operational monitoring of impinged and entrained organisms, monitoring of the through-screen velocity, and periodic visual inspections of the intake structures.

1. Technology-Based Performance Requirements for Different Types of Waterbodies

Under this option, EPA would establish requirements for minimizing adverse environmental impact from cooling water intake structures based on

[29] EPA also examined subcategorization strategies for the dry cooling based option, on the basis of regional distribution of facilities, size of facilities, and type of facility (i.e., steam electric power plants versus manufacturing facilities).

[30] U.S. Environmental Protection Agency. 1977. *Draft guidance for evaluating the adverse impact of cooling water intake structures on the aquatic environment: section 316(b) P.L. 92–500.*

the type of waterbody in which the intake structure is located, the location of the intake in the waterbody, the volume of water withdrawn, and the design intake velocity. EPA would also establish additional requirements or measures for location, design, construction, or capacity that might be necessary for minimizing adverse environmental impact. Under this option, the best technology available for minimizing adverse environmental impact would constitute a technology suite that would vary depending on the type of waterbody in which a cooling water intake structure is located and the location of the cooling water intake structure within the waterbody. EPA would set technology-based performance requirements; the Agency would not mandate the use of any specific technology.

Under this option, EPA considered only requiring intake flow reduction commensurate with the level that can be achieved using a closed-cycle recirculating wet cooling system for intakes located in estuaries, tidal rivers, oceans, and the Great Lakes. For all other waterbody types, the only capacity requirements would be proportional flow reduction requirements. In all waterbodies, velocity limits and a requirement to study, select, and install design and construction technologies would apply. EPA determined that the annual compliance cost to industry for this option would be $36.3 million. EPA found that the regulatory implementation burden would be of an acceptable level but that the delay in permitting of new facilities could be up to 6 months if all new facilities were required to complete a baseline biological characterization study prior to submitting an application for a permit. This study would detail the potential design and construction technologies that would apply to all new facilities and would be required beyond the flow reduction requirements for facilities located in estuaries, tidal rivers, oceans, and the Great Lakes. This option was, in part, rejected due to the potential of delays in permitting. More significantly, this option was rejected because closed-cycle recirculating cooling water systems are available and economically practicable across all waterbody types.

2. National Technology-Based Performance Requirements for All Waterbodies

a. Flow Reduction Commensurate With the Level Achieved by Closed-Cycle Recirculating Wet Cooling Systems

EPA also considered a regulatory option for new facilities based primarily on intake-flow reduction from all cooling water intake structures commensurate with the level that can be achieved using a closed-cycle recirculating cooling water system. This option does not distinguish between facilities on the basis of the waterbody from which they withdraw cooling water. In addition to reducing design intake velocity and complying with capacity- and location-based proportional flow requirements, all facilities need to complete a baseline biological characterization study prior to submitting the application for a permit. This study would detail the design and construction technologies necessary to maximize the survival of impinged adult and juvenile fish and to minimize the entrainment of eggs and larvae. The applicant would also need to comply with any additional requirements established by the Director as reasonably necessary to minimize impingement and entrainment as a result of the effects of multiple cooling water intake structures in the same waterbody, seasonal variations in the aquatic environment affected by the cooling water intake structures controlled by the permit, or the presence of regionally important species. EPA did not determine the annual compliance cost to industry for this option. EPA found that the permit writer's regulatory implementation burden would be of an acceptable level. EPA adopted this option, in part, as Track I of the two-track approach.

b. Intake Capacity Reduction Commensurate with the Level Achieved by Use of a Dry Cooling System

EPA considered a regulatory option for new facilities based primarily on intake flow reduction from all cooling water intake structures commensurate with zero or very low-level intake (dry cooling). This option does not distinguish between facilities on the basis of the waterbody from which they withdraw cooling water. Dry cooling systems use either a natural or a mechanical air draft to transfer heat from condenser tubes to air. EPA determined that the annual compliance cost to industry for this option would be at least $490 million. EPA also found that the permit writer's regulatory implementation burden would be of an acceptable level and there would be no delay in the permitting of new facilities. The option would require no baseline biological characterization study prior to submission of the application for a permit, due to the requirement of near-zero intake.

In addition, EPA analyzed three subcategorization strategies for the final rule based on the dry cooling technology. EPA considered establishing zero or very low-level intake requirements only for steam electric power plants locating in cold northern climates. See Section V.C.1. EPA also separately analyzed a zero or very low-level intake requirement for steam electric power plants of small capacity (those with total capacity less than 500 MW). See Section V.C.1. For both of these subcategorization strategies, all facilities not complying with dry cooling technology-based performance requirements would comply with the national requirement of capacity reduction based on closed-cycle recirculating wet cooling. The dry cooling subcategories would require no baseline biological characterization study prior to submission of the application for permit, because of the requirement of near-zero intake. EPA found that the permit writer's regulatory implementation burden would be of an acceptable level and there could be a delay of up to 6 months in the permitting of new facilities under the dry cooling based subcategories. EPA discusses why it is not adopting the dry cooling approach for subcategories based on size and/or climate in Section V.C. below.

3. Two-Track Options

For each of the regulatory options outlined above that requires reduction of flow commensurate with the level achieved with closed-cycle recirculating cooling systems, EPA also considered a number of two-track options. The two-track options provide flexibility to the permittee in that the facility may choose to comply by meeting the specific technology-based performance requirements defined in the ''fast track'' (Track I), or by demonstrating that a level of performance would be achieved comparable to the level that would be achieved under the Track I requirements under the ''demonstration track'' (Track II).

Under one of the two-track options (referred to as the ''preferred two-track'' option), EPA considered a fast-track based on a commitment by the facility to employ a suite of technologies that would represent best technology available for minimizing adverse environmental impact. The technologies

considered include reduction in capacity commensurate with that achievable by use of a closed-cycle recirculating cooling water system; a velocity limitation of less than or equal to 0.5 ft/s; and location where intake capacity would be no more than five (5) percent of the mean annual flow of a freshwater stream or river, no more than one (1) percent of the tidal excursion volume of a tidal river or estuary or where the intake capacity would not disrupt the natural stratification and turnover patterns of a lake or reservoir. Applicants also would be required to conduct baseline biological characterization monitoring; these data would be used to determine which design and construction technologies are needed on a case-by-case basis. EPA also considered allowing the permit applicant to specify design and construction technologies and to require monitoring so that the performance of these technologies could be evaluated in a subsequent NPDES permit. In order to speed up the issuance of the first permit at the new facility, EPA considered waiving any mandatory baseline biological characterization monitoring under Track I. In this case, the applicant would have the opportunity to rely on and present historical or literature information to support its selection of design and construction technologies. Under this approach, applicants would propose what design and construction requirements are most appropriate to reduce impingement and entrainment or to maximize impingement survival resulting from water withdrawn as make-up water at these facilities. The biological characterization information would support the design and construction technologies that the permittee chose to implement. The Director could revisit these design and construction technologies at the time of permit renewal. (Most design and construction technologies can be implemented without stopping operation at the facility.) As an alternative to the case-by-case designation of design and construction technologies, EPA also considered designating the following two design and construction technologies as part of a fast-track, best technology available suite of technologies: a fine mesh traveling screen with a fish return system, variable speed pumps, and a low pressure spray; or a submerged wedgewire fine mesh screen.

Under Track II, a facility would need to conduct a comprehensive demonstration study that documents that an alternative suite of technologies can be used by the facility to reduce impingement mortality and entrainment for all life stages of fish and shellfish to achieve a level of reduction comparable to the level that would be achieved under Track I. The estimated annual compliance cost to facilities for the preferred two-track option is $47.7 million.

EPA also considered a less stringent variation of the two-track option above, in which Track I would not require cooling water intake structures located in fresh rivers or streams and lakes or reservoirs to reduce capacity to a level commensurate with that achievable by use of a closed-cycle cooling system. EPA did not select this option because other available technologies that are economically practicable achieve greater reduction in impingement and entrainment.

EPA also considered a third two-track option as suggested by industry. Under this option, an applicant choosing Track I would install ''highly protective'' technologies in return for expedited permitting without the need for pre-operational or operational studies in the source waterbody. According to the commenters, these technologies would ''exceed the section 316(b) standards'' because they would ''avoid adverse environmental impact,'' defined as proven population or ecosystem impacts. Such fast-track technologies might include technologies that reduce intake flow to a level commensurate with a wet closed-cycle cooling at that site and that achieve an average approach velocity (measured in front of the cooling screens or the opening to the cooling water intake structure) of no more than 0.5 ft/s, or any technologies that achieve a level of protection from impingement and entrainment within the expected range for a closed-cycle cooling (with 0.5 ft/s approach velocity) given the waterbody type where the facility is to be located. This option was intended to allow facilities to use standard or new technologies that have been demonstrated to be effective for the species, type of waterbody, and flow volume of the cooling water intake structure proposed for their use. Examples of candidate technologies include (a) wedgewire screens, where there is constant flow, as in rivers; (b) traveling fine mesh screens with a fish return system designed to minimize impingement and entrainment; and (c) aquatic filter barrier systems, at sites where they would not be rendered ineffective by high flows or fouling. The operator of a proposed new facility would elect which set of technologies to install and validate its performance as necessary. In return, the permitting agency would not require additional section 316(b) protective measures for the life of the facility.

Under the industry approach, Track II would provide an applicant who does not want to commit to any of the above technology options with an opportunity to demonstrate that site-specific characteristics, including the local biology, would justify another cooling water intake structure technology, such as once-through cooling. For these situations, the applicant could demonstrate to the permitting agency, on the basis of site-specific studies, either that the proposed intake would not create an appreciable risk of adverse environmental impact or, if it would create an appreciable risk of adverse environmental impact, that the applicant would install technology to ''minimize'' adverse environmental impact. Such demonstrations would recognize that some entrainment and impingement mortality can occur without creating ''adverse environmental impact,'' but, where there is an appreciable risk of adverse environmental impact (e.g., population effects), the technology that would ''minimize'' it would be the technology that maximized net benefits. EPA determined that the annual compliance cost to industry for this option would be $24.9 million. EPA discusses why it is not accepting the industry's two-track approach in full in Section V.D below.

EPA also considered a waterbody-based two track option. Under this option, Track I would require, depending on the waterbody type, screens, fish return systems, or reduction in capacity to a level commensurate with that achievable by use of a closed-cycle cooling system. The delineation of waterbody types would correlate with greater or lesser potential for impingement and entrainment. Under Track II , a permit applicant would be able to demonstrate how alternative technology performance measures would reduce impingement mortality and entrainment for all life stages of fish and shellfish to a level of reduction comparable to the level that would be achieved under Track I.

EPA did consider a two-track option based on dry cooling. EPA did not promulgate this option for reasons discussed at Section V.C. of this preamble for not adopting dry cooling as best technology available for minimizing adverse environmental impact. In addition, there are very limited alternatives for achieving a dry cooling-level reduction in impingement and entrainment in a second track. EPA did not select this option because other available technologies that are economically practicable achieve

significant reduction in impingement and entrainment at far lower cost.

B. Why EPA Is Establishing EPA's Preferred Two-Track Option as the Best Technology Available for Minimizing Adverse Environmental Impact?

For new facilities subject to this rule, EPA finds that the preferred two-track option represents the best technology available for minimizing adverse environmental impact. With respect to new facilities, the technologies used as the basis for this option are commercially available and economically practicable for the industries affected as a whole, and have acceptable energy impacts. EPA estimates that only nine electric generators who were planning to install a once-through cooling system will have to install recirculating wet cooling towers as a result of this rule. The energy impacts associated with these nine facilities is estimated to comprise only 0.026 percent of total new electric generating capacity. Similarly, the technologies used as the basis for this option also have acceptable non-aquatic environmental impacts. The non-aquatic environmental impacts associated with increased air emissions (SO_2, NO_2, CO_2, and Hg) is very small. The increased SO_2, NO_X, CO_2, and Hg attributed to the nine facilities that would be required to install recirculating wet cooling towers in lieu of once-through cooling systems is negligible in comparison to the total annual air emissions from new power plants. EPA finds that the requirements contained in the preferred two-track approach meet the requirement of section 316(b) of the CWA that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact. The components of the two-track approach are illustrated in Appendix 1 to this preamble.

1. What Are the Performance Requirements for the Location, Design, Construction, and Capacity for Cooling Water Intake Structures?

Under the final rule, EPA has adopted a two-track approach. Under Track I, for facilities with a design intake flow equal to or greater than 10 MGD, the capacity of the cooling water intake structure is restricted, at a minimum, to a level commensurate with that which could be attained by use of a closed-cycle recirculating system. Then for facilities with a design intake flow equal to or greater than 2 MGD, the design through-screen intake velocity is restricted to 0.5 ft/s and the total quantity of intake is restricted to a proportion of the mean annual flow of a freshwater river or stream, or to maintain the natural thermal stratification or turnover patterns (where present) of a lake or reservoir except in cases where the disruption is determined to be beneficial to the management of fisheries for fish and shellfish by any fishery management agency(ies), or to a percentage of the tidal excursions of a tidal river or estuary. In addition, an applicant with intake capacity greater than 10 MGD must select and implement an appropriate design and construction technology for minimizing impingement mortality and entrainment if certain conditions exist. (Applicants with 2–10 MGD flows are not required to reduce capacity but must install technologies for reducing entrainment at all locations.) Under Track II, the applicant has the opportunity to demonstrate that impacts to fish and shellfish, including important forage and predator species, within the watershed will be comparable to these which you would achieve were you to implement the Track I requirements for capacity and design velocity. See § 125.84(b)(1) and (2). Proportional flow requirements also apply under Track II.

a. Capacity

In Track I, all new facilities with cooling water intake structures having a design intake flow equal to or greater than 10 MGD must:

Reduce the total design intake flow to a level, at a minimum, commensurate with that which can be attained by a closed-cycle recirculating cooling water system using minimized make-up and blowdown flows.

Reducing the cooling water intake structure's capacity is one of the most effective means of reducing entrainment (and impingement). Capacity includes the volume of water that can be withdrawn through a cooling water intake structure over a period of time. Limiting the volume of the water withdrawn from a waterbody typically reduces the number of aquatic organisms in that waterbody that otherwise would be entrained. Under Track I, EPA requires that all new facilities, with intake flows equal to or greater than 10 MGD, limit their flow to a level commensurate with that which could be attained by use of a closed-cycle recirculating cooling water system using minimized make-up and blowdown flows. *See* § 125.84 (b)(1).

Closed-cycle, recirculating cooling water systems are known to reduce the amount of cooling water needed and in turn to directly reduce the number of aquatic organisms entrained in the cooling water intake structure. For the traditional steam electric utility industry, facilities located in freshwater areas that have closed-cycle recirculating cooling water systems can, depending on the quality of the make-up water, reduce water use by 96 to 98 percent from the amount they would use if they had once-through cooling water systems. Steam electric generating facilities that have closed-cycle recirculating cooling water systems using salt water can reduce water usage by 70 to 96 percent when make-up and blowdown flows are minimized. [31]

Manufacturing facilities that reuse and recycle water withdrawn from a water of the U.S. in a manner that reduces intake flow to a level commensurate with that which can be attained by a closed-cycle, recirculating cooling water system that has minimized make-up and blow down flows will be in accordance with the rule. *See* § 125.86(b)(1). For purposes of this regulation, EPA considers reuse and recycling at manufacturing facilities to be equivalent to closed-cycle, recirculating cooling water systems at steam-electric power plants.

Although EPA has not projected that any once-through electric generating facilities with an intake capacity of less than 10 MGD will be built in the next 20 years, EPA acknowledges that projecting the numbers and characteristics of facilities over long timeframes may lead to uncertainties in EPA's analysis. (*See* Sections 5.1.4 and 5.2.4 of the Economic Analysis for a discussion of uncertainties and limitations in EPA's baseline projections of new facilities.) In the event that such facilities might be built in the future (for example, as a stand-alone, combined-cycle, cogeneration facility associated with a manufacturer), EPA has concluded that the application of the intake capacity requirements in the selected option is not economically practicable for facilities with the smallest cooling water intake structures, those that withdraw less than 10 MGD. Based on EPA's estimate, the compliance cost-to-revenue ratio for combined-cycle facilities with these flows is 4.9 to 8.8 percent or higher. Even if these facilities installed a closed-cycle recirculating cooling system to reduce dynamic flow below the regulatory threshold for this rule and avoided all other costs of the rule, their cost-to-revenue ratio still would be from 2 to 3.2 percent or more (and they

[31] The lower range would be appropriate where State water quality standards limit chloride to a maximum increase of 10 percent over background and therefore require a 1.1 cycle of concentration. The higher range may be attained where cycles of concentration up to 2.0 are used for the design.

still might have to bear additional cost to comply with requirements the Director establishes on a case-by-case basis). EPA's analysis shows that the costs for all such facilities generally would be far above the range of impacts for facilities above 10 MGD, which have, compliance cost to-revenue ratios at or below 0.5 percent for more than 70 facilities, between 2 and 3 percent for only six facilities, and above 3 percent for only 3 facilities. EPA believes that the economic impact of complying with the rule would be disproportionate for electric generating facilities with flows below 10 MGD. Thus, the Agency is exercising its discretion under section 316(b) of the CWA to determine what is economically practicable and is creating specific requirements in Track I available to facilities with flows between 2 and 10 MGD. *See* § 125.84(c). These facilities are required to meet the same velocity, proportional flow, and the design and construction technology requirements for impingement that apply in § 125.84(b). *See* § 125.84(c)(1), (2) and (3). However, they are not required to reduce intake flow commensurate with use of a closed-cycle recirculating cooling system. Instead, they are required use design and construction technologies for minimizing entrainment at all locations. *See* 125.84(c)(4). EPA believes that the requirements of § 125.84(c) are an economically practicable way for these facilities to reduce impingement mortality and entrainment. EPA has made similar decisions in establishing technology-based effluent limitations guidelines and standards under 301 and 306, see e.g., Texas Oil & Gas Ass'n v. U.S. EPA, 161 F.3d 923, 940 (5th Cir. 1998) (Court upheld EPA's subcategorization for Cook Inlet based upon disproportionate economic impact).

b. Design and Construction Technologies

i. Velocity

Intake velocity is one of the key factors that can affect the impingement of fish and other aquatic biota. In the immediate area of the intake structure, the velocity of water entering a cooling water intake structure exerts a direct physical force against which fish and other organisms must act to avoid impingement or entrainment. EPA considers velocity to be an important factor that can be controlled for minimizing adverse environmental impact at cooling water intake structures. Because velocity can be minimized through appropriate design of the intake structure relative to intake flow, it is most easily addressed during the design and construction phase of a cooling water intake structure. Alternatively, the facility can install certain hard technologies (e.g., wedgewire screens and velocity caps) to change the configuration of the structure so that the effects of velocity on aquatic organisms are minimized.

Under Track I, for a facility with a design intake flows equal to or greater than 2 MGD, the final regulation requires that the maximum design through-screen velocity at each cooling water intake structure, be no more than 0.5 ft/s. See § 125.84(b)(2). The design through-screen velocity is defined as the value assigned during the design phase of a cooling water intake structure to the average speed at which intake water passes through the open area of the intake screen (taking fouling into account) or other device against which organisms might be impinged or through which they might be entrained.

To develop an appropriate minimum velocity requirement at cooling water intake structures that will be effective in contributing to the overall reduction in impingement, EPA reviewed available literature, State and Federal guidance, and regulatory requirement. EPA found that an approach velocity of 0.5 ft/s has been used as guidance in at least three Federal documents.[32 33 34] The 0.5 ft/s approach velocity threshold recommended in the Federal documents is based on a study of fish swimming speeds and endurance performed by Sonnichsen et al. (1973).[35] This study was based on an unknown number of individuals from about 30 different species of fish and eels, with many of the data for adult fish. The three Federal documents recommending a 0.5 ft/s intake velocity often referred to one another or had no references. The lack of abundant and diverse data led EPA to adopt a safety factor to ensure an appropriate level of protection for aquatic organisms. This study concluded that appropriate velocity thresholds should be based on the fishes' swimming speeds (which are related to the length of the fish) and endurance (which varies seasonally and is related to water quality). The data presented showed that the species and life stages evaluated could endure a velocity of 1.0 ft/s. To develop a threshold that could be applied nationally and is effective at preventing impingement of most species of fish at their different life stages, EPA applied a safety factor of two to the 1.0 ft/s threshold to derive a threshold of 0.5 ft/s. This safety factor, in part, is meant to ensure protection when screens become partly occluded by debris during operation and velocity increases through portions of the screen that remain open. EPA compiled the data from three studies on fish swim speeds (University of Washington study, Turnpenny, and EPRI) into a graph. The data suggest that a 0.5 ft/s velocity would protect 96 percent of the tested fish. EPA recognizes that there may be specific circumstances and species for which the 0.5 ft/s requirement might not be sufficiently effective. When issuing NPDES permits, the permit directors will need to comply with any applicable requirements under the Endangered Species Act (ESA). Both the National Marine Fisheries Service and the California Department of Fish and Game have developed fish screen velocity criteria.[36 37 38] Under section 510 of the Clean Water Act (CWA) States may impose additional requirements pursuant to State law. When EPA issues an NPDES permit, States may condition the permit pursuant to their certification authority under section 401 of the CWA.

Two velocities are of importance in the assessment and design of cooling water intake structures: the approach velocity and the through-screen or through-technology velocity. The approach velocity is the velocity measured just in front of the screen face or at the opening of the cooling water intake structure in the surface water source, and is biologically the most important velocity. The design through-screen or through-technology velocity is the velocity measured through the screen face or just as the organisms are

[32] Boreman, J. 1977. Impacts of power plant intake velocities on fish. Power Plant Team, U.S. Fish and Wildlife Service.

[33] Christianson, A. G., F. H. Rainwater, M.A. Shirazi, and B.A. Tichenor. 1973. Reviewing environmental impact statements: power plant cooling systems, engineering aspects, U.S. Environmental Protection Agency (EPA), Pacific Northwest Environmental Research Laboratory, Corvallis, Oregon, Technical Series Report EPA–660/2–73–016.

[34] King, W. Instructional Memorandum RB–44: Review of NPDES (National Pollutant Discharge Elimination System) permit applications processed by the EPA (Environmental Protection Agency) or by the State with EPA oversight.'' In: U.S. Fish and Wildlife Service Navigable Waters Handbook.

[35] Sonnichsen, J.C., Bentley, G.F. Bailey, and R.E. Nakatani. 1973. A review of thermal power plant intake structure designs and related environmental considerations. Hanford Engineering Development Laboratory, Richland, Washington, HEDL–TME 73–24, UC–12.

[36] National Marine Fisheries Service Northwest Region. 1995. Juvenile Fish Screen Criteria.

[37] National Marine Fisheries Service, Southwest Region. 1997. Fish Screening Criteria for Anadromous Salmonids. Published on the Internet at *http://swr.ucsd.edu/hcd/fishscrn.htm* (access date).

[38] California Department of Fish and Game. 1997. Fish screening criteria.

passing through the opening into another device (e.g., entering the opening of a velocity cap). The through-screen velocity is always greater than the approach velocity because the net open area is smaller.

For this final rule, EPA uses the design through-screen velocity as a component of best technology for minimizing adverse environmental impact. EPA anticipates that design through-screen velocity will be simpler to calculate, and monitor (via measurement of head loss) and be more accurate than measuring approach velocity. The approach velocity is a point function. When the cross-section of an intake structure is large, the approach velocity will not be the same at all points across all points in a single cross-section. The approach velocity varies depending on where it is measured: how far from the surface, how far in front of the screen, or the location across the screen. Approach velocity also varies with the number of measurements taken; is 1 taken, or 10? Furthermore, it is much easier to design the intake structure to achieve a specific through-screen velocity. EPA notes that design through-screen velocity will be easier to implement because a number of technologies use it as the standard measure for intake design. In conjunction with the design intake velocity requirement, EPA requires new facilities to monitor the head loss across the screens or other technology on a quarterly basis. See § 125.87(b). EPA requires that head loss across the screens (or other appropriate measurements for technologies other than intake screens) be monitored and correlated with intake velocity once the facility is operating.

ii. Other Design and Construction Technologies

The final rule requires facilities withdrawing more than 10 MGD that choose Track I to select and install design and construction technologies for minimizing impingement mortality and/or entrainment if they locate in certain areas where fish or shellfish resources need additional protection. *See* § 125.84(b)(4) and (5). Facilities withdrawing between 2 and 10 MGD may meet a different set of Track I requirements. *See* § 125.84(c). If they choose to do so, the rule specifies that they must meet the same design and construction requirements to reduce impingement as applies to facilities withdrawing greater than 10 MGD. However, to reduce entrainment, instead of requiring a reduction in intake flow commensurate with use of a closed-cycle recirculating cooling water system, the rule requires these facilities to select and install design and construction technologies at all locations. *See* § 125.84(c)(3) and (4).

EPA is requiring these technologies in Track I because they are technically available, economically practicable and they effectively further reduce impingement mortality and entrainment at new facilities that choose to locate in areas where fish and shellfish resources need additional protection. EPA notes that facilities with closed-cycle recirculating cooling systems can still withdraw large volumes of cooling water, particularly if they operate in brackish or other waters where high rates of recirculation cannot be achieved, and may still impinge or entrain large numbers of aquatic organisms. Thus, EPA believes that facilities that choose to locate in areas where fish and shellfish need additional protection should install these technologies to further reduce impingement mortality and entrainment.

In the Track I requirements at § 125.84(c), which apply to facilities with cooling water intakes between 2 and 10 MGD that choose not to meet the capacity reduction requirements in § 125.84(b), the rule requires these facilities to meet the same design and construction requirements for minimizing impingement mortality as are required for facilities withdrawing greater than 10 MGD, *See* § 125.84(c)(3). These impingement requirements apply if the facility locates where fish and shellfish resources need additional protection. Facilities between 2 and 10 MGD that choose not to meet the capacity reduction requirements in § 125.84(b), however, must install design and construction technologies for reducing entrainment at all locations. *See* § 125.84(c)(4). EPA makes this distinction because, for economic practicality reasons, today's rule does not require smaller new facilities to reduce intake flow commensurate with a closed-cycle recirculating cooling system. In this case, EPA believes that use of design and construction technologies is an alternative, economically practicable and technically available means for reducing entrainment.

Today's rule does not require facilities choosing Track II to install design and construction technologies as specified under 125.84(b)(4) and (5) or 125.84(c)(3) and (4). EPA believes that such facilities will use these technologies, at least in part, to meet the Track II comparability requirements at 125.84(c)(1) and thus achieve comparable performance.

As used in these provisions, ''minimize'' means to reduce to the smallest amount, extent, or degree reasonably possible. *See* § 125.83. Technologies that minimize impingement mortality and entrainment of all life stages of fish and shellfish at a location might include, but are not limited to, intake screens, such as fine mesh screens and aquatic filter barrier systems, that exclude smaller organisms from entering the cooling water intake structure; passive intake systems such as wedgewire screens, perforated pipes, porous dikes, and artificial filter beds; and diversion and/or avoidance systems that guide fish away from the intake before they are impinged or entrained. In some cases, technologies that might be used to achieve the 0.5 ft/s velocity standard at § 125.85(b)(2) and § 125.85(c)(1), such as passive intake systems, might also minimize impingement mortality and entrainment.

Some technologies minimize impingement mortality by maximizing the survival of impinged organisms. These technologies include, but are not limited to, fish-handling systems such as bypass systems, fish buckets, fish baskets, fish troughs, fish elevators, fish pumps, spray wash systems, and fish sills. These technologies either divert organisms away from impingement at the intake structure, or collect impinged organisms and protect them from further damage so that they can be transferred back to the source water at a point removed from the facility intake and discharge points.

Some additional design and construction technologies have feasibility issues limiting their use to certain types of locations. Some have not been used on a widespread basis above certain intake flow rates. The effectiveness of these technologies also may vary depending on factors such as the speed and variability in direction of currents in a waterbody, the degree of debris loading at a location, etc. Because of these issues, EPA has not established a national performance standard for these technologies more specific than to require the applicant to study literature and available physical and biological data on their proposed location, and then to select and install technology(ies) that minimize impingement mortality and entrainment. (As stated above, ''minimize'' is defined as a reduction ''to the smallest amount, extent or degree reasonably possible.'')

In Track I of the final rule, EPA does not require an applicant that installs design and construction technology(ies) to seek the approval of the Director regarding which design and

construction technology(ies) it selects, nor does EPA require the applicant to conduct biological monitoring prior to submitting its application. Rather, to avoid permitting delays Track I only requires the applicant to gather and present historical information and/or literature to support its decision on which design and construction technology(ies) to implement at the new facility. *See* § 125.86(b)(4).

Because an applicant does not need the Director's approval of its design and construction technology(ies) prior to the first permit, EPA has included a provision that requires the Director to determine, at each permit reissuance, whether design and construction technologies at the facility are minimizing impingement mortality and/or entrainment, *See* § 125.89(a)(2). This provision is intended to ensure that the applicant selects and installs appropriate technology(ies).

The framework of these provisions balances a number of factors. One is EPA's interest in ensuring that applicants seeking their first permit under Track I can quickly obtain one without delay and, if they wish, without engaging in a dialogue with the Director about whether additional design and construction technologies are needed at their site, or which technologies will reasonably reduce impingement mortality and entrainment at the location. In this case, an applicant may wish to install some of the more highly protective additional design and construction technologies, to minimize any opportunity for disagreement with the Director at permit reissuance about whether the applicant chose technologies that ''minimize'' impingement mortality and entrainment at their location.

Alternatively, an applicant under § 125.84(b) who is willing to take the time to engage in a dialogue with the Director prior to the first permit under Track I may be able to obtain the Director's concurrence on a finding that the proposed intake will not be located in an area where fish or shellfish resources need additional protection. *See* § 125.84(b)(4) and (5) for a list of such areas. In this case, the applicant may not need to install any additional design and construction technologies. In the event that the location of the intake structure is such that additional technologies are required, an applicant who is willing to take the time to consult with the Director prior to the first permit under Track I may be able to obtain the Director's concurrence that technologies that are less costly than the most highly-protective ones available are sufficient for its location. (EPA again notes that ''minimize'' is defined as a reduction ''to the smallest amount, extent or degree reasonably possible.'')

EPA believes the above framework reasonably balances its interest in minimizing permit delays with its interest in ensuring that applicants willing to take more time and engage in a dialogue with the Director may have an opportunity to reduce their costs. As a general matter, EPA strongly encourages permit applicants to consult with the Director prior to selecting and installing design and construction technology(ies). Today's rule, however, requires no such consultation, and, as discussed elsewhere in this preamble, EPA's costing analysis conservatively assumes that permittees will install additional design and construction technologies at all locations.

EPA recognizes that the condition of biological resources at a location may change over time. The requirement for the Director to review the applicant's design and construction technologies at permit reissuance provides an opportunity for any appropriate changes in the design and construction technologies used at the location. *See* § 125.89(a)(2).

c. Location

Although EPA recognizes that the location of a cooling water intake structure can be a factor that affects the environmental impact caused by the intake structure, today's final rule, apart from the proportional flow requirements, does not include specific national requirements for new facilities based on location of the cooling water intake structure. In EPA's view, the optimal design requirement for location is to place the inlet of the cooling water intake structure in an area of the source waterbody where impingement and entrainment of organisms are minimized by locating intakes away from areas with the potential for high productivity (taking into account the location of the shoreline, the depth of the waterbody, and the presence and quantity of aquatic organisms or sensitive habitat). EPA received significant and convincing comments arguing against the specific proposed requirements and feasibility for locations based on waterbody type and location within the waterbody. Among other things, commenters argued that EPA's proposed requirements would be difficult to implement and relied on generalizations about types of waterbodies that were too simplistic. See section VI.C for further discussion of comments and EPA's responses regarding location. This topic is discussed further in Chapter 5 of the *Technical Development Document.*

Although today's rule does not specifically establish location requirements, several components of the two-track approach inherently consider location as a factor. Under Track I, location is a consideration when the applicant selects and implements the design and construction technologies for minimizing impingement and entrainment and maximizing impingement survival. In addition, EPA estimated that in order to meet the proportional flow requirements in Track I and Track II, facilities may need to site in locations that can support their water withdrawals or find other alternatives, such as, obtaining water from ground water, grey water, or a public water supply system. Under Track II, the new facility may choose location as a key component for minimizing impingement and entrainment. Under Track II, an applicant has the opportunity to conduct site-specific studies to demonstrate that alternative technologies or configurations, including the relocation of an intake to areas of less sensitivity, will reduce impingement mortality and entrainment for all life stages of fish and shellfish to a level of reduction comparable to the level that would be achieved were the applicant to implement the technology-based performance requirements in Track I.

In addition, this new facility rule also regulates location as a performance characteristic of new facilities to minimize entrainment and other adverse environmental impacts that are likely to occur as a result of the withdrawal of makeup water even where a facility uses recirculating systems. Historically, some previous CWA section 316(b) studies conducted for permits proceedings have considered potential impacts from facilities whose cooling water intake flow is large in proportion to the source water flow or tidal volume. [39] [40] [41] Under this rule, §§ 125.84(b)(3), 125.84(c)(2), and 125.84(d)(2), EPA establishes proportional flow requirements for new facility cooling water intake structures located in freshwater rivers and streams, lakes and reservoirs, and estuaries and

[39] Lewis, Randall B. and Greg Seegert. Entrainment and Impingement Studies at two Power Plants on the Wabash River in Indiana. Power Plants & Aquatic Resources: Issues and Assessment. *Environmental Science & Policy.* Volume 3, Supplement 1. September 2000.

[40] Public Service Indiana. 316(b) Demonstration for the Cayuga and Wabash River Generating Stations. Prepared by Dames and Moore, Cincinnati, Ohio. August 30, 1997.

[41] Public Service Company of Indiana. A 316(b) Study and Impact Assessment for the Cayuga Generating Station. Prepared by EA Science and Technology, Northbrook, IL. April 1988.

tidal rivers, requiring that the total design intake flow from all cooling water intake structures at a facility withdrawing:

- From a freshwater river or stream must be no greater than five (5) percent of the source waterbody mean annual flow;
- From a lake or reservoir must not disrupt the natural thermal stratification or turnover pattern (where present) of the source water except in cases where the disruption is determined to be beneficial to the management of fisheries for fish and shellfish by any fishery management agency(ies);
- From estuaries or tidal rivers must be no greater than one (1) percent of the volume of the water column in the area centered about the opening of the intake with a diameter defined by the distance of one tidal excursion at the mean low water level.

EPA finds these proportional flow limitations to represent limitations on capacity and location that are technically available and economically practicable for the industry as a whole. EPA examined the performance of existing facilities based on section 308 questionnaire data in terms of proportional flow in order to determine what additional value could be used as a safeguard to protect source waters against entrainment, especially in smaller waterbodies or in waterbodies where the intake is disproportionately large as compared to the source water body. (In practice, EPA expects that these requirements would require a facility to relocate or obtain water from another source, e.g., a public water supply or groundwater, only in smaller waterbodies, because no new facilities in larger waterbodies that use wet recirculating cooling systems would ever run afoul of these requirements.) In order to assess the performance of new facilities in meeting these requirements, EPA examined the performance of existing facilities and determined that 90 percent of existing facilities in freshwater rivers and streams and 92 percent of existing facilities in estuaries or tidal rivers meet these requirements. Based on documents included in the record, EPA also believes that most existing facilities meet the proportional flow requirement for lakes and reservoirs. EPA expects that new facilities would have even more potential to plan ahead to select locations and design intake capacity that meet these requirements. EPA recognizes that these requirements are conservative in order to account for the cumulative impact of multiple facilities' intakes. The 1 percent value for estuaries reflects that the area under influence of the intake will move back and forth near the intake and that withdrawing 1 percent of the volume of water surrounding the intake twice a day over time would diminish the aquatic life surrounding the intake. The 5 percent value for rivers and streams reflects an estimate that this would entrain approximately 5 percent of the river or stream's entrainable organisms and a policy judgment that a greater degree of entrainment reflects an inappropriately located facility. Because they are overwhelmingly achievable for new facilities, EPA believes they are appropriate to this new facility rule.

Proportional flow limitations are one way to provide protection for aquatic life and enhancement of commercial and recreational uses of source waters. Larger proportionate withdrawals of water may result in commensurately greater levels of entrainment. Entrainment impacts of cooling water intake structures are closely linked to the amount of water passing through the intake structure, because the eggs and larvae of some aquatic species are free-floating and may be drawn with the flow of cooling water into an intake structure. Sizable proportional withdrawals from a stream or river might also change the physical character of the affected reach of the river and availability of suitable habitat, potentially affecting the environmental or ecological value to the aquatic organisms. In lakes or reservoirs, the proportional flow requirement limits the total design intake flow to a threshold below which it will not disrupt the natural thermal (and dissolved oxygen) stratification and turnover pattern (where present) of the source water except in cases where the disruption is determined to be beneficial to the management of fisheries for fish and shellfish by any fishery management agency(ies). See § 125.84(b)(3)(ii). The proportional flow requirement for lakes and reservoirs would primarily protect aquatic organisms in small to medium-sized lakes and reservoirs by limiting the intake flow to a capacity appropriate for the size of the waterbody. In estuaries and tidal rivers, EPA's proportional flow requirement uses a volume that relates specifically to the cooling water intake structure and the area it influences (see § 125.83). Organisms in this area of influence travel back and forth with the tides and so may be exposed to the intake multiple times. The proportional flow requirement for estuaries and tidal rivers will limit the withdrawal of a sizable proportion of the organisms within the area of influence, commensurately reducing the entrainment of aquatic organisms.

d. Additional and Alternative Best Technology Available Requirements

At § 125.84(e), the final rule recognizes that a State may, under sections 401 or 510 of the CWA, ensure the inclusion of any more stringent requirements relating to the location, design, construction, and capacity of a cooling water intake structure at a new facility that are necessary to ensure attainment of water quality standards, including designated uses, criteria, and antidegradation requirements.

EPA interprets the CWA to authorize State and Tribal permit authorities to require more stringent limitations on intake where necessary to protect any provision of State law, including State water quality standards. Commenters have asserted that EPA does not have such authority under CWA section 301(b)(1)(C), arguing that authority is limited to controls on discharges of pollutants. Leaving that question open, there is ample authority under CWA sections 510 and 401, as is consistent with the goals of the CWA articulated in section 101 of the CWA, to provide EPA ample authority for such a provision. Section 510 of the CWA provides, in relevant part:

> Except as provided in this Chapter, nothing in this chapter shall (1) preclude or deny the right of any State or political subdivision therefore * * * to adopt or enforce * * * (B) any requirement respecting control or abatement of pollution * * * except that if an * * * other limitation * * * or standard of performance is in effect under this chapter, such State * * * may not adopt or enforce any * * * other limitation * * * or standard of performance which is less stringent than the * * * other limitation * * * or standard of performance under this chapter.

EPA interprets this to reserve for the States the authority to implement requirements that are more stringent than the Federal requirements under state law. PUD No. I of Jefferson *County* v. *Washington Dep't of Ecology,* 511 U.S. 700, 705 (1994). (As recognized by section 510 of the Clean Water Act, 33 U.S.C. 1370, States may develop water quality standards more stringent than required by this regulation.). Further, section 401(d) of the CWA provides, in relevant part,

> Any certification provided under this section shall set forth any effluent limitations and other limitations, and monitoring requirements necessary to assure that any applicant for a Federal license or permit will comply with any applicable effluent limitations and other limitations, under section 1311 or 1312 of this title, standard of performance under 1316 of this title, or prohibition, effluent standard, or

pretreatment standard under section 1317 of this title, and with any other appropriate requirement of state law set forth in such certification, and shall become a condition on any Federal license or permit subject to the provisions of this section.''

In *PUD No. I of Jefferson County* v. *Dep't of Ecology,* 511 U.S. 700, 711 (1994), the Supreme Court held that this provision is not ''specifically tied to a 'discharge'.'' (''The text refers to the compliance of the applicant, not the discharge. Section 401(d) thus allows the State to impose 'other limitations' on the project in general to assure compliance with various provisions of the Clean Water Act and with ''any other appropriate requirement of State law.'') Thus, section 401(d) provides states with ample authority in their 401 certifications to require EPA to include any more stringent limitations in order to meet the requirements of state law. These two sections of the CWA further the objectives of the act to ''restore and maintain the chemical, physical, and biological integrity of the nation's waters,'' the interim goal to protect water quality and are consistent with the CWA policy to ''recognize, preserve, and protect the primary responsibility and rights of States to prevent, reduce, and eliminate pollution'' and ''to plan the development and use * * * of water resources.'' CWA sections 101(a) and (b).

2. What Technologies Are Available To Meet the Regulatory Requirements

a. Track I: Capacity

The technical availability of the two-track option is demonstrated by information in EPA's record showing that each component of Track I, the ''fast-track'' option, can be achieved through the use of demonstrated technologies. Intake capacity reduction commensurate with use of a wet closed-cycle recirculating cooling system as required by § 125.84(b)(1) can be achieved using a recirculating wet cooling tower or cooling pond. Such a closed-cycle recirculating cooling system is a commonly practiced technology among the new facilities controlled by this rule. The Technical Development Document shows that 67 percent of new in-scope facilities (10 new coal-fired power plants, 64 new combined-cycle power plants, and 7 manufacturing facilities) would install a closed-cycle recirculating cooling system independently of this rule.

While manufacturers use closed-cycle recirculating cooling systems to a lesser extent than do electric power generators, manufacturers also have opportunities to recycle or reuse their cooling water to reduce their water intake capacity. To examine the extent to which new manufacturing facilities are likely to reuse and recycle cooling water, the Agency reviewed the engineering databases that support the effluent limitations guidelines for several categories of industrial point sources. In general, this review identified extensive use of recycling or reuse of cooling water in documents summarizing industrial practices in the late 1970s and early 1980s, as well as increased recycling and reuse of cooling water in the 1990s. For example, the reuse of cooling water in the manufacturing processes was identified in the pulp and paper and chemicals industries, in some cases as part of the basis for an overall zero discharge requirement (inorganic chemicals). Other facilities reported reuse of a portion of the cooling water that was eventually discharged as process wastewater, with some noncontact cooling water discharged through a separate outfall or after mixing with treated process water.

For manufacturing facilities, flow reduction techniques differ between facilities and industry sectors. Facilities use unheated noncontact cooling water for condensing of excess steam produced via cogeneration; they use unheated contact and noncontact cooling water for in-process needs; and they frequently reuse process waters and wastewaters for contact and noncontact cooling.

The chemical and allied products sector and the petroleum refining sector demonstrate similar cooling water practices. Both sectors utilize cooling water for condensing of excess steam from cogeneration and for critical process needs. Most process cooling water is noncontact cooling water and generally is not reused as process water (though it may be recirculated). Paper and allied products facilities generally reuse cooling water and cogenerated steam throughout their processes (though the level to which this occurs differs among facilities). Primary metals industries utilize cooling water for contact and noncontact cooling and for condensation of steam from onsite electric power generation. Contrary to the other sectors, the primary metals industries have no general purpose for cogenerated steam in their processes.

In general, the cooling requirement for cogeneration in these manufacturing sectors is less than for the same power generated by utility and nonutility power plants. Regardless of this fact, this rule requires that the intake of water used for this purpose (and not reused as process water) must be minimized according to the same technology-based performance requirements as for other steam electric generating facilities. The condensing of excess steam from cogeneration is the same process at manufacturers as at utility and nonutility power plants. Therefore, EPA does not distinguish between requirements for this activity.

For the purposes of this regulation, EPA considers the withdrawal of water for use and reuse as both process and cooling water analogous to the reduction of cooling water intake flows achieved through the use of a recirculating cooling water system. For example, some facilities transfer excess process heat to a water stream and subsequently reuse the heated stream for other process purposes. In this case there is considerable conservation of water and energy by the reuse of cooling water. Alternatively, some facilities often withdraw water first for a process application and subsequently reuse it as cooling water. EPA encourages such practices and, in turn, considers these techniques analogous to flow reduction for the purposes of meeting the capacity reduction requirements of this rule. To meet the intake capacity requirements at § 125.84(b)(1) a new manufacturing facility must, to the maximum extent practicable, reuse and recycle cooling water withdrawn for purposes other than steam electric condensing. Cooling water intake used for the purposes of condensing of exhaust steam from electricity generation must be reduced to a level commensurate with that which can be attained by a closed-cycle recirculating cooling water system using minimized make-up and blowdown flows. EPA concludes that for manufacturers the capacity requirement meets the criterion of best technology available commercially at an economically practicable cost.

b. Track I: Velocity

EPA examined the technical feasibility of the required through-screen velocity of 0.5 ft/s. This requirement relies on the appropriate design of the intake structure relative to intake flow to reduce velocity or installation of certain hard technologies (e.g., wedgewire screens and velocity caps) to change the configuration of the structure so that the effects of velocity on aquatic organisms are minimized. EPA's record demonstrates that these designs and technologies are widely used in the industries subject to this rule. Since there are a number of intake technologies currently in use that are designed to meet a 0.5 ft/s through-screen velocity, the technologies that can achieve the Track I velocity technology-based performance

requirement meet the criterion of best technology available commercially at an economically practicable cost.

The Agency also reviewed the data from the section 316(b) industry survey with respect to the velocity requirement § 125.84(b)(2). The preliminary results suggest that more than two-thirds of combined cycle and coal-fired electric generating facilities built within the past 15 years would meet the velocity requirement. These currently operating facilities demonstrate that a design intake velocity of 0.5 ft/s is achievable and provides for sufficient cooling water withdrawal.

c. Track I: Other Design and Construction Technologies

EPA also examined the technology availability of the design and construction requirements at § 125.84(b)(4) and (5) in the final rule. While EPA costed this requirement based on the assumption that a facility would install cylindrical wedgewire screen, or fish return systems on traveling screens, EPA's record demonstrates that there are a number of potentially effective design and construction intake technologies available for installation at cooling water intake structures for minimizing adverse environmental impact. The intake technologies that new facilities may consider are in one of four categories that include, but are not limited to,

- Intake screen systems: single-entry, single-exit vertical traveling screens; modified traveling screens (Ristroph screens); single-entry, single-exit inclined traveling screens; single-entry, double-exit vertical traveling screens; double-entry, single-exit vertical traveling screens (dual-flow screens); horizontal traveling screens; fine mesh screens mounted on traveling screens; horizontal drum screens; vertical drum screens; rotating disk screens; and fixed screens.
- Passive intake systems: wedgewire screens, perforated pipes, perforated plates, porous dikes, artificial filter beds, and leaky dams.
- Diversion or avoidance systems: louvers, velocity caps, barrier nets, air bubble barriers, electrical barriers, light barriers, sound barriers, cable and chain barriers, aquatic filter barrier systems, and water jet curtains.
- Fish handling systems: fish pumps, lift baskets, fish bypasses, fish baskets, fish returns, fish troughs, and screen washes.

d. Track II: Alternative Technologies

EPA also notes that certain facilities following Track II may be able to demonstrate reduction of impingement mortality and entrainment for all life stages of fish and shellfish to a level of reduction comparable to the level that would be achieved under Track I using lower-cost alternative technologies. Under 125.84(d), new facilities that choose to comply under Track II must reduce impacts to fish and shellfish, including important forage and predator species, within the watershed to a level comparable to that which would be achieved were they to implement the requirements of § 125.84(b)(1), and (2) under Track I.[42] EPA does not consider this requirement to mandate exactly the same level of reduction in impingement and entrainment as would be achieved under Track I. Rather, given the numerous factors that must be considered to determine the required level of reduction in impingement and entrainment for Track II and the complexity inherent in assessing the level of performance of different control technologies, EPA believes it is appropriate for a new facility following Track II to achieve reductions in impingement and entrainment that are 90 percent or greater of the levels achieved under Track I. EPA believes this approach is reasonable for the several reasons.

New facility determinations regarding flow or impingement and entrainment under Track I or Track II are, by necessity, estimates based on available data as well as certain assumptions. Such estimates have substantial value but cannot reasonably be expected to achieve a high level of precision. This is particularly true where, as here, impingement and entrainment rates must be correlated with reductions in flow (which are themselves estimated), reductions in intake velocity, and other design and construction requirements. It also is important to recognize that the efficacies of different design and construction technologies also are based on estimates that are inexact due to data limitations, variations in ambient conditions, and the presence or absence of different species, among other factors.

Available data suggests that alternative design and construction technologies for cooling water intake structures can achieve the level of reduction in impingement and entrainment required under Track II. For example, technologies such as fine and wide-mesh wedgewire screens, as well as aquatic filter barrier systems, have been shown to reduce mortality from impingement by up to 99 percent or greater compared with conventional once-through systems. In addition, other types of barrier nets may achieve reductions in impingement of 80 to 90 percent, and modified screens and fish return systems, fish diversion systems, and fine mesh traveling screens and fish return systems have achieved reductions in impingement mortality ranging from 60 to 90 percent greater than conventional once-through systems. Similarly, although there is less available full scale performance data regarding entrainment, aquatic filter barrier systems, fine mesh wedgewire screens, and fine mesh traveling screens with fish return systems have in certain places been shown to achieve 80 to 90 percent greater reduction in mortality from entrainment compared with conventional once-through systems. Examples of effective use of technologies that reduce impingement and/or entrainment include:

- Studies from 1996 to 2001 at Lovett Station (New York) show no obvious impingement/contact mortality using aquatic filter barrier systems;
- Fine mesh (0.5 mm) screen performance to reduce entrainment has consistently improved at Big Bend Units 3 and 4 (Florida) with better surveillance and maintenance, including biweekly cleaning of screens to prevent biofouling. The operator's 1988 monitoring data show an efficiency in screening fish eggs (primarily drum and bay anchovy) exceeding 95 percent. For fish larvae (primarily drum, bay anchovies, blennies, and gobies), it was about 86 percent. Latent survival of fish eggs has improved to 65 to 80 percent for drum, and 66 to 93 percent for bay anchovy;
- At the Brunswick Station (North Carolina), 1 mm fine mesh screens have been used on two of four traveling screens (only when temperatures are less than 18 degrees C). Total reduction of fish entrained by the fine mesh versus conventional screens has been found to be 84 percent;
- Wedgewire screens with slot sizes of one, two, and three millimeter were studied by the State of Maryland at the Chalk Point Station. One millimeter screens led to 80 percent exclusion of all species, including larvae. For fish

[42] These Track I provisions require that the new facility reduce its intake flow, at a minimum, to a level commensurate with that which can be attained by a closed-cycle recirculating cooling water system; desgin and construct each cooling water intake structure to a maximum through-screen design intake velocity of 0.5 ft/s; and select and implement design and construction technologies (e.g., wedgewire screens, fine mesh screens, fish handling and return systems, barriers nets, acquatic filter barrier systems) to minimize impingement and entrainment of all life stages of fish and shellfish and to maximize survival of impinged life stages of fish and shellfish.

with greater than 10 mm length, entrainment was eliminated.[43]

Several additional factors suggest that these performance levels can be improved upon. First, some of the cooling water intake structure technology performance data reviewed is from the 1970's and 1980's and does not reflect recent developments and innovation (e.g., aquatic filter barrier systems, sound barriers). Second, the conventional barrier and return system technologies characterized above have not been optimized on a widespread level to date, as would be encouraged by this rule. Such optimization can be best achieved by new facilities, which can match site conditions to available technologies. Third, EPA believes that many facilities could achieve further reductions (estimated 15–30 percent) in impingement and entrainment by providing for seasonal flow restrictions, variable speed pumps, and other innovative flow reduction alternatives.

e. Track II: Location

New facilities seeking to comply under Track II can use the location of their cooling water intake structures to achieve further reductions in impingement and entrainment. Location of the cooling water intake structure can be addressed during the planning and design phases of new facility construction. At that time, it may be possible to choose a particular waterbody type and a specific location on that waterbody where (considering the proposed capacity of the cooling water intake structure) the potential for impingement and entrainment is relatively low. The optimal design requirement for cooling water intake structure location is to place the inlet in an area of the source waterbody where impingement and entrainment of organisms are minimized, i.e., taking into account: the physical and chemical characteristics of the waterbody; the presence and location of sensitive habitats; and the composition, abundance, and spatial/temporal presence of aquatic organisms. It is well known that there are certain areas within every waterbody with increased biological productivity, and therefore where the potential for impingement and entrainment of organisms is greater (e.g., littoral zone in lakes, shore zone in rivers, nearshore coastal waters in oceans). Examples include the following.

- Near the Fort Calhoun Station on the Missouri River, transect studies in 1974 to 1977 indicated higher densities of fish larvae along the cutting bank of the river adjacent to the Station's intake structure and lower densities at the mid-channel location. While densities of fish larvae changed throughout the three month data collection period, the densities collected from the mid channel remained substantially less than those in the cutting bank location.[44]
- Catches of young striped bass from Suisun Bay near the Pittsburg Power Plant (May to July 1976) ranged from $0.062/m^3$ to $0.496/m^3$ in the center channel, and from $0.082/m^3$ to $0.648/m^3$ along the north shore. Weekly mean densities for striped bass were $0.215/m^3$ in the center channel, and $0.320/m^3$ along the north shore.[45]
- A study of densities in the Connecticut River in 1972 showed that fish tended to be more abundant in the more shallow areas near the east shore. Distributions of fish also changed depending upon the time of day and the depth in the water column.[46]

Biologically productive and/or sensitive areas that should be avoided during the intake siting process are those that serve to promote: the congregation and growth of aquatic organisms; the propagation of the early life stages of aquatic organisms (e.g., planktonic stages); and any life stage of a threatened or endangered species. Examples of these sensitive areas would include (but are not limited to) critical nursery areas, spawning grounds, important migratory pathways, refuge areas, and essential fish habitats. Other factors to consider in the intake siting process include the proximity to: aquatic sanctuaries/refuges; national parks, seashores and monuments; wilderness areas; areas of environmental concern or outstanding natural resource waters; and coral reefs. Conversely, potential examples of less-sensitive areas may include: areas outside of the limnetic zone (i.e., no light penetration); areas of significant oxygen depletion; and areas proven to have low densities of organisms.

f. Track II: Restoration

The purpose of section 316(b) is to minimize adverse environmental impact from cooling water intake structures. Restoration measures that result in the performance comparable to that achieved in Track I further this objective while offering a significant degree of flexibility to both permitting authorities and facilities.

EPA recognizes that restoration measures have been used at existing facilities implementing section 316(b) on a case-by-case, best professional judgment basis as an innovative tool or as a tool to conserve fish or aquatic organisms, compensate for the fish or aquatic organisms killed, or enhance the aquatic habitat harmed or destroyed by the operation of cooling water intake structures. Under Track II, this flexibility will be available to new facilities to the extent that they can demonstrate performance comparable to that achieved in Track I. For example, if a new facility that chooses Track II is on an impaired waterbody, that facility may choose to demonstrate that velocity controls in concert with measures to improve the productivity of the waterbody will result in performance comparable to that achieved in Track I. The additional measures may include such things as reclamation of abandoned mine lands to eliminate or reduce acid mine drainage along a stretch of the waterbody, establishment of riparian buffers or other barriers to reduce runoff of solids and nutrients from agricultural or silvicultural lands, removal of barriers to fish migration, or creation of new habitats to serve as spawning or nursery areas. Another example might be a facility that chooses to demonstrate that flow reductions and

[43] EPA acknowledge that there are a limited number of large facilities where alternative technologies have been used. However, the use of fine mesh screens at Brunswick and big Bend have shown performance levels exceeding 70–80 percent. Similarly, fine mesh wedgewire screens at Logan have used to reduce entrainment by 90 percent. While these sites draw water from tidally influenced rivers, they should be equally transferable to large, fresh water rivers in the midwest. In fact, reliability and likely performance should be better than a site such as Big Bend where the bifouling would be a greats issue. The ''actual'' examples are supported by laboratory testing showing the viability of fine mesh screens that was performed at Delmara Research, TVA, and the proposed Seminole Plant in Florida. These tests found entrainment reductions using fine mesh screens of greater than 90 percent. the use of an aquatic filter barrier system (i.e. gunderboom) at the Lovett Station in New York is entirely transferable to a large, Midwestern river system. This system is now providing consistently greater than 80 percent reductions in entrainment and has the potential to exceed 90 percent. The areas where aquatic filter barrier systems might not be effective/feasible include ocean locations with high waves, limited access areas, and places where navigation could be effected. Note that feasibility should be similar to other barrier net systems, which have been installed at a number of Great Lake sites, e.g., Ludington.

[44] King, R.G. 1977. Entrainment of Missouri River fish larvae Fort Calhoun Station. In: Jensen, L.D. (Ed.), *Fourth National Workshop on Entrainment and Impringement* EA Communications, Melville, NY, pp.45–56.

[45] Stevens, D.E. and B.J. Finlayson. 1977. Mortality of young striped bass entrained at two power plants in the Sacramento-San Joaquin Delta, California, In: Jensen, L.D. (Ed.), *Fourth National Workshop on Entrainment and Impingement.* EA Communications, Melville, NY, pp. 57–69.

[46] Marcy, B.C. 1974. Vulnerability and survival of young Connecticut River entrained at a nuclear power plant. In: Jensen, L.D. (Ed.), *Entrainment and Intake Screening: Proceedings of the Second Entrainment and Intake Screening Workshop.* Electric Power Research Institute Publication No. 74–049–00–5, Palo Alto, CA, pp. 281–288.

less protective velocity controls, in concert with a fish hatchery to restock fish being impinged and entrained with fish that perform a similar function in the community structure, will result in performance comparable to that achieved in Track I.

EPA recognizes that it may not always be possible to establish quantitatively that the reduction in impact on fish and shellfish is comparable using the types of measures discussed above as would be achieved in Track I, due to data and modeling limitations. Despite such limitations, EPA believes that there are situations where a qualitative demonstration of comparable performance can reasonably assure substantially similar performance. EPA is thus providing, in § 125.86, that the Track II Comprehensive Demonstration Study should show that either: (1) The Track II technologies would result in reduction in both impingement mortality and entrainment of all life stages of fish and shellfish of 90 percent or greater of the reduction that would be achieved through Track I (quantitative demonstration) or, (2) if consideration of impacts other than impingement mortality and entrainment is included, the Track II technologies will maintain fish and shellfish in the waterbody at a substantially similar level to that which would be achieved under Track I (quantitative or qualitative demonstration).

g. Track I and II: Proportional Flow

Finally, EPA examined the technical feasibility of the proportional flow reduction requirements at §§ 125.84(b)(3), 125.84(c)(2), and 125.84(d)(2) of the rule. EPA based this requirement, in addition to the closed-cycle recirculating cooling water technologies discussed above, on the use of groundwater, municipal sources of water, treated wastewater (grey water), and on locating facilities on waterbodies that can meet the proportional flow requirements.

EPA analyzed the potential siting implications of the proportional flow requirements and determined that within the United States approximately 131,147 river miles have sufficient flow to support the water usage needs of large manufacturing facilities withdrawing up to 18 MGD of water without exceeding the proportional flow limitations in this rule. Approximately 53,964 river miles could support a large non-utility power-producing facility withdrawing 85 MGD, and approximately 14,542 river miles could support a large utility plant requiring 700 MGD without exceeding of the proportional flow limitations in this rule. Under today's final rule, new facilities needing additional cooling water in other areas would need to supplement withdrawals from waters of the U.S. with other sources of cooling water or redesign their cooling systems to use less water.

As another gauge of the siting impacts of the flow requirement for new facilities, the Agency determined, from a 1997 database of the Energy Information Agency and a 1994 Edison Electric Institute database, that 89 percent of existing non-nuclear utility facilities could be sited at their current location under today's final requirements if they also operated in compliance with the capacity reduction requirements at § 125.84(b)(1). (Please note that the Agency does not intend to prejudge or signal in any way whether its final rule for existing facilities will or will not include capacity limitations commensurate with a level that could be attained by a recirculating cooling water system. EPA conducted this analysis to determine whether today's proportional flow requirements would unreasonably limit siting alternatives for new facilities only.)

Finally, to further examine the potential siting implications of today's rule for new facilities, the Agency reviewed data on water use by existing facilities in arid regions of the country. The Agency found that 80 percent of the existing facilities in Arizona, California, Nevada, New Mexico, Oklahoma, and Texas do not use waters of the U.S. in their operations, indicating that new facilities in these areas would similarly use waters other than waters of the U.S. in their operations. Therefore, today's final rule would not affect these facilities if they were being constructed as new facilities subject to the rule.

3. Why Is the Two-Track Option Economically Practicable?

EPA has determined that the two-track option is economically practicable for the industries affected by the rule. For the two-track option that does not distinguish between waterbody types, the cost of compliance to the industry is expected to be no more than $47.7 million annually. Because the Agency cannot predict precisely which track the projected facilities would choose and what the compliance response for Track II facilities would be, EPA estimated the costs based on the assumption that each new facility that does not plan to install a recirculating system in the baseline would choose to conduct the studies required of Track II but then implement the requirements of Track I. This is the most conservative cost estimate because it assumes the highest cost a facility could potentially incur. Presumably, the facilities will choose the most economically favorable track, which would imply that the lowest cost is most representative. For example, at Section VIII.B.3. below, EPA describes how a permit applicant locating a facility with a once-through cooling system in certain waters such as large rivers and reservoirs may be able to demonstrate reduction of impingement mortality and entrainment to a level of reduction comparable to the level that would be achieved if they complied with the Track I requirements. However, the expediency of permitting through Track I may result in reductions in financing costs and market advantages that may outweigh the potential technology cost savings of Track II. The cost estimates above do not incorporate any savings occurring from the increased certainty of Track I faster permitting and reduction in finance costs. As stated above, for new in-scope power plants, EPA's record shows that 64 new combined-cycle facilities and 10 new coal-fired facilities would install a closed-cycle recirculating cooling water system independently of the rule. As discussed in the *Economic Analysis,* for those that would not otherwise install a recirculating cooling system, EPA has determined that the capital costs of such an installation would be economically practicable and would not create a barrier to entry. By barrier to entry, EPA means the requirements would not present costs that would prevent a new facility from being built. For those facilities that would not otherwise install a recirculating cooling system, EPA estimates that the annualized cost of such an installation is $19.1 million for a large coal-fired plant (3,564 MW), $3.8 million for a medium coal-fired plant (515 MW), and $0.7 million for a small coal-fired plant (63 MW). For a large combined-cycle facility (1,031 MW), installation of a recirculating cooling water system would cost approximately $3.2 million annually.

EPA finds that the final rule is economically practicable and achievable nationally for the industries affected because a very small percentage of facilities within the industries are expected to be affected by the regulation and the impact on those that would be affected would be small. For today's final rule, EPA used the compliance cost/revenue test as a basis for determining that the requirements on a national level are economically practicable. EPA used the compliance cost/revenue test to assess economic achievability by comparing the magnitude of annualized compliance

costs with the revenues the facility is expected to generate. Under this test, EPA has determined that on average, the rule will constitute 0.3, 1.2, and 0.14 percent of projected annual revenue for new combined-cycle power plants, coal-fired power plants, and manufacturing facilities, respectively. The cost to-revenue ratio is estimated to range from 0.7 percent to 5.2 percent of revenues for steam electric generating facilities and less than 0.1 percent to 0.5 percent of annual revenues for manufacturing facilities. None of the 38 projected new manufacturing facilities was estimated to incur annualized compliance costs greater than 1 percent of annual revenues. Based on EPA's analysis, the steam electric generating facilities projected to be in scope of this rule are able to afford these economic impacts. In general, the Agency concludes that economic impacts on the electric generating industry from this final rule would be economically practicable, because the facilities required to comply with the requirements would be able to afford the technologies necessary to meet the regulations.

Finally, since the analysis for new facilities entails some uncertainty because it reflects a projection into the future, EPA is maintaining in the final rule a provision in the regulation authorizing alternative requirements where data specific to the facility indicate that compliance with the requirement at issue would result in costs wholly out of proportion to the costs EPA considered in this analysis. See § 125.85 of this rule.

Considering the economic impacts on the electric generating industry as a whole, today's final rule only applies to those electric generating facilities that generate electricity with a steam prime mover and that meet certain requirements (e.g., have or need to have an NPDES permit, withdraw equal to or greater than 2 MGD from waters of the U.S.). As summarized in Exhibit 1 and Exhibit 2 above, an analysis of the NEWGen database shows that only 69 out of the 241 new combined-cycle facilities (28.6 percent) would be subject to this rule, and only 14 out of 35 new coal-fired facilities (40.5 percent).

For the manufacturer industry sectors with at least one new facility that is subject to this final rule, an analysis of the data collected using the Agency's section 316(b) Industry Detailed Questionnaire for existing facilities indicates that only 472 of the 1,976 nationally estimated existing facilities have an NPDES permit and directly withdraw cooling water from waters of the U.S. Of these 472 facilities, only 406 facilities are estimated to withdraw more than two (2) MGD. Of these 406 facilities, only 296 facilities are estimated to use more than 25 percent of their total intake water for cooling water purposes. Thus, this finding of economic practicability is further supported because only 15 percent of the manufacturing industry sectors will incur costs under this rule. According to EPA's analysis, economic impacts on the manufacturing facilities from this final rule would be economically practicable because the facilities projected to be in scope of this rule would be able to afford the technologies necessary to meet the regulations.

C. Why EPA Is Not Adopting Dry Cooling as the Best Technology Available for Minimizing Adverse Environmental Impact?

In establishing best technology available for minimizing adverse environmental impact the final rule, EPA considered an alternative based on a zero-intake flow (or nearly zero, extremely low flow) requirement commensurate with levels achievable through the use of dry cooling systems. Dry cooling systems (towers) use either a natural or a mechanical air draft to transfer heat from condenser tubes to air. In conventional closed-cycle recirculating wet cooling towers, cooling water that has been used to cool the condensers is pumped to the top of a recirculating cooling tower; as the heated water falls, it cools through an evaporative process and warm, moist air rises out of the tower, often creating a vapor plume. Hybrid wet-dry cooling towers employ both a wet section and dry section and reduce or eliminate the visible plumes associated with wet cooling towers.

In evaluating dry cooling-based regulatory alternatives, EPA analyzed a zero or nearly zero intake flow requirement based on the use of dry cooling systems as the primary regulatory requirement in either (1) all waters of the U.S. or (2) tidal rivers, estuaries, the Great Lakes, and oceans. The Agency also considered subcategorization strategies for the new facility regulation based on size and types of new facilities and location within regions of the country, since these factors may affect the viability of dry cooling technologies.

EPA rejects dry cooling as best technology available for a national requirement and under the subcategorization strategies described above, because the technology of dry cooling carries costs that are sufficient to pose a barrier to entry to the marketplace for some projected new facilities. Dry cooling technology also has some detrimental effect on electricity production by reducing energy efficiency of steam turbines and is not technically feasible for all manufacturing applications. Finally, dry cooling technology may pose unfair competitive disadvantages by region and climate. Further, the two-track option selected is extremely effective at reducing impingement and entrainment, and while the dry cooling option is slightly more effective at reducing impingement and entrainment, it does so at a cost that is more than three times the cost of wet cooling. Therefore, EPA does not find it to represent the ''best technology available'' for minimizing adverse environmental impact. EPA recognizes that dry cooling technology uses extremely low-level or no cooling water intake, thereby reducing impingement and entrainment of organisms to dramatically low levels. However, EPA interprets the use of the word ''minimize'' in CWA section 316(b) to give EPA discretion to consider technologies that very effectively reduce, but do not completely eliminate, impingement and entrainment as meeting the requirements of section 316(b) the CWA.

Although EPA has rejected dry cooling technology as a national minimum requirement, EPA does not intend to restrict the use of dry cooling or to dispute that dry cooling may be the appropriate cooling technology for some facilities. This could be the case in areas with limited water available for cooling or waterbodies with extremely sensitive biological resources (e.g., endangered species, specially protected areas). An application of dry cooling will virtually eliminate use of cooling water and impingement and entrainment, in almost all foreseeable circumstances, would reduce a facility's use of cooling water below the levels that make a facility subject to these national minimum requirements.

1. Barrier to Entry

EPA has determined that higher capital and operating costs associated with dry cooling may pose barrier to entry for some new sources in certain circumstances. (In general, barrier to entry means that it is too costly for a new facility to enter into the marketplace). A minimum national requirement based on dry cooling systems would result in annualized compliance cost of greater than 4 percent of revenues for all of 83 projected electric generators within the scope of the rule. For 12 generators, costs would exceed 10% of revenues. EPA's economic analysis demonstrates that a regulatory alternative based on a

national minimum dry cooling-based requirement would result in annualized compliance costs to facilities of over $490 million, exceeding the annual costs of a regulation based on recirculating wet cooling towers by more than 900 percent ($443 million annually).

Because the technology can cause inefficiencies in operation under certain high ambient temperature conditions and because of the greater capital and operating costs of the dry cooling system compared with the industry standard of using recirculating closed-cycle wet cooling systems, requiring dry cooling as a minimum national requirement could, in some cases, also result in unfair competitive advantages for some facilities. Thus, while at least one state has required dry cooling, EPA does not believe it is appropriate to mandate this requirement on a national basis. In EPA's view the disparity in costs and operating efficiency of the dry cooling systems compared with wet cooling systems is considerable when viewed on a nationwide or regional basis. For example, under a uniform national requirement based on dry cooling, facilities in the southern regions of the U.S. would be at an unfair competitive disadvantage to those in cooler northern climates, far more than if the rule were not based on such a requirement. Even under the regional subcategorization strategy for facilities in cool climatic regions of the U.S., adoption of a minimum requirement based on dry cooling could impose unfair competitive restrictions for new facilities. This relates primarily to the elevated capital and operating costs associated with dry cooling. Adoption of requirements based on dry cooling for a subcategory of facilities under a particular capacity would pose similar competitive disadvantages for those facilities. Furthermore, EPA is concerned that requiring dry cooling for a subcategory of new facilities would create a disincentive to building a new combined-cycle facility (with associated lower flows) in lieu of modifying existing facilities, which may have greater environmental impacts. Dry cooling systems can cost as much as three times more to install than a comparable wet cooling system. For example, the Astoria Energy LLC Queens application filed with the State of New York indicated that a dry cooling system would cost $32 million more to install than a hybrid wet-dry cooling system for a proposed 1,000-MW plant. Operating costs would be $30 million more for the dry cooling system than the hybrid wet-dry system.[47] The State of New York estimates that use of a dry cooling system at the 1,080-MW Athens Generating Company facility would cost approximately $1.9 million more per year, over 20 years, than a hybrid wet-dry cooling system. The total dry cooled projected cost would be approximately $500 million. Because dry cooling systems are so much larger than wet cooling systems, these systems' operation and maintenance require more parts, labor, etc. Costs of this magnitude, when imposed upon one subcategory of facilities but not another, provide a disparate competitive environment, especially for deregulated energy markets. New facilities are competing against the many combined-cycle and coal-fired facilities already in the marketplace or slated for substantial expansion that use wet, closed-cycle cooling systems or even once-through cooling systems. The potential economic impact should EPA not similarly require dry cooling for some or all existing facilities might cause some firms to, at the least, delay their entry into the marketplace until they better understand the regulatory environmental costs faced by their competitors.

2. Energy Penalty and Other Non-Aquatic Impacts

Given the performance penalty of dry cooling versus wet cooling, the incremental air emissions of dry cooling as compared with wet cooling, provide additional support for why EPA is rejecting dry cooling. Dry cooling technology results in a performance penalty for electricity generation that is likely to be significant under certain climatic conditions. By ''performance penalty'' EPA means that dry cooling technology requires the power producer to utilize more energy than would be required with recirculating wet cooling to produce the same amount of power. EPA concludes that performance penalties associated with dry cooling tower systems pose a significant feasibility problem in some climates. As discussed in Chapter 3 of the *Technical Development Document*, EPA estimates the mean annual performance penalty of a dry cooling system relative to recirculating wet cooling towers at 1.7 and 6.9 percent for combined-cycle and coal-fired facilities, respectively. Peak-summer energy shortfalls for dry cooling towers as compared to wet towers can exceed 2.7 and 9.3 percent for combined cycle and coal-fired facilities, respectively. These performance penalties could have significant technical feasibility implications. For example, dry cooling facilities have as a design feature turbine back pressure limits that often trigger a plant shut down if the back pressure reaches a certain level. Peak summer effects of inefficiency of dry cooling can and do cause turbine back pressure limits to be exceeded at some demonstrated plants which in turn experience shutdown conditions when the back pressure limits are reached. In addition, these performance penalties could pose potential power supply and reliability issues if dry cooling were required on a nationwide or regional basis. For example, EPA estimates that in hot climates dry cooling equipped power plants experience peak summer energy penalties of 3.4 to 4.3 percent for combined cycle plants and 14.8 to 19.4 percent for coal fired plants, as compared to once-through cooling systems. These peak summer penalties represent significant reductions in production at power plants in periods when demand is greatest. Compared to the selected option which a large majority of new facilities were planning to install independent of this rule, all 83 electric generators would be required to install dry cooling technology. The energy impacts (power losses) associated with these 83 facilities is estimated to comprise 0.51 percent of total new electric generating capacity (i.e., a reduction in new design generating capacity of 1,904 MW). These energy impacts raise the concern that on a large scale, dry cooling technology may affect electricity supply reliability. This significant reduction in electricity production is another reason EPA has not selected dry cooling as the best technology available for minimizing adverse environmental impacts on a nationwide or regional basis.

Because of the performance penalty, power producers using dry cooling produce more air emissions per kilowatt-hour of energy produced. Nationally, EPA estimates that a minimum requirement based on dry cooling would cause significant air emissions increases over wet cooling systems. EPA projects for the dry cooling alternative that CO_2, NO_X, SO_2, and Hg emissions would increase by 8.9 million, 22,300, 47,000, and 300 pounds per year, respectively. See Chapter 3 of the *Technical Development Document* for more information on EPA's air emissions analysis, including a discussion of the coincidence between maximum air emissions and the periods of the most severe air pollution problems. These additional non-aquatic

[47] Astoria Energy LLC Queens Facility Application.

environmental impacts (in the form of air emissions) further support EPA's determination that dry cooling does not represent best technology available for minimizing adverse environmental impact on a national or region-specific basis.

3. Cost-Effectiveness

EPA also considered the incremental costs and impingement and entrainment reduction between the selected option and dry cooling. Dry cooling, while very effective in reducing impingement and entrainment, is very expensive to implement. EPA understands that dry cooling can virtually eliminate the need for cooling water and therefore dramatically reduces impingement and entrainment. However, EPA has determined that the costs associated with implementing dry cooling are ten times as expensive as wet cooling. EPA has shown that the selected option, requiring facilities to reduce their intake flows to a level commensurate with that which can be attained by a closed-cycle, recirculating cooling water system, would reduce the amount of water withdrawn for cooling purposes by 70 to 98 percent. In addition, EPA has shown that this would result in corresponding reductions in impingement and entrainment. Further, the record shows that other requirements in the rule, such as velocity and proportional flow limits and the requirement to implement design and construction technologies, would result in additional reductions in impingement and entrainment. Based on the information available in the record, EPA estimates that the selected option may result in reduction of impingement to levels that could possibly exceed 99 percent. Estimated reductions in entrainment could also be substantial on a case-by-case basis (70 to 95 percent). Because EPA's selected option is very effective in reducing impingement and entrainment and is one-tenth the cost, EPA believes that it is reasonable to reject dry cooling as a nationally applicable minimum in all cases.

4. Technical Feasibility of Dry Cooling for Manufacturers

EPA considers that dry cooling technologies for manufacturing cooling water intake structures, as a whole, pose significant engineering feasibility problems. The primary feasibility issue is that dry cooling requires nearly zero water intake and many manufacturers reuse cooling water in their process. This dual use for process and cooling water prevents the application of dry cooling. In addition, many manufacturers require cooling water at an available temperature that is not reliably met by utilizing dry cooling. However, in some specific circumstances, EPA is aware of several demonstrated cases of dry cooling for cogeneration plants that are associated with manufacturers.

D. Why EPA Is Not Accepting the Industry Two-Track Approach in Full

While EPA is adopting the general two-track framework suggested by a trade association representing the electric generating industry, EPA is not accepting all aspects of this approach. The primary differences between the approach that EPA is promulgating and the approach industry suggested are: (1) The final two-track approach defines a different level of environmental performance as ''best available technology for minimizing adverse environmental impact'' for the ''fast track'' and (2) the final two-track approach contains a different way of measuring equivalence with the environmental performance of the ''fast track'' in the second track. In short, EPA prefers a more concrete and objective measure of best technology available for minimizing adverse environmental impact for the new facility rule than does the measure suggested by the industry proposal.

Under EPA's approach, best technology available for minimizing adverse environmental impact for new facilities would be the level of impingement and entrainment reduction achievable by (1) technology that reduces intake capacity in a manner comparable to that of a recirculating wet cooling tower; (2) technologies that reduce design through-screen velocity to reduce impingement, as explained in Section V.B.1.c of this preamble; (3) the applicant's selected design and construction technologies for minimizing impingement and entrainment and maximizing impingement survival; and (4) capacity and location-based technology requirements for limiting flow withdrawal to a certain proportion of a waterbody. By contrast, the industry proposal asserts that ''closed cycle cooling and low intake velocity reduces entrainment and impingement to such low levels that adverse environmental impact is avoided, thereby not just meeting, but exceeding, the section 316(b) standard of protection.''

Further, the industry proposal states that wedgewire screens, traveling fine mesh screens, and aquatic filter barrier systems, either alone or in combination, are sufficient, at least in certain types of waterbodies, in that they ''may provide a level of protection within the same range'' and thus should be determined to ''in almost every case avoid adverse environmental impact, thereby exceeding the requirements of section 316(b).'' While EPA's approach does not preclude the use of these alternative technologies if they demonstrate impingement and entrainment reductions equivalent to those of the suite of technologies it has described as ''best technology available for minimizing adverse environmental impact,'' in EPA's view the record does not show that using just one of the technologies listed above in order to qualify for expedited fast-track permitting is equivalent in reducing impingement and entrainment in a manner that reflects best technology available for minimizing adverse environmental impact. While barrier methods are effective at reducing impingement, EPA's record shows that they are currently not as effective at reducing entrainment as EPA's preferred option. This is because larvae and very small organisms can still pass through the barrier and may be entrained. While industry asserts that entrainment does not lead to mortality, there is conflicting evidence in the record on this topic, some of which indicates that in fact a large percentage of organisms can perish or be severely harmed when entrained. For these reasons, EPA does not find that the record supports the notion that the technologies listed by industry in its two-track proposal as ''exceeding the requirements of section 316(b)'' are as effective at reducing impingement and entrainment as the suite of technologies EPA has found to be technically available and economically practicable to the industries affected as a whole. For further discussion of entrainment and the performance of a variety of cooling water intake structure technologies, see Section III of this preamble and Chapter 5 of the *Technical Development Document*.

The industry two-track approach is based on industry's argument that the CWA compels EPA to determine section 316(b) limits on a case-by-case basis examining first whether the cooling water intake structure causes population or ecosystem effects before requiring any technology, because, industry asserts, this is the only plausible interpretation of the phrase ''adverse environmental impact.'' EPA does not believe that the language of the statute compels this interpretation. Instead, EPA believes it is reasonable to interpret section 316(b)'s requirement to establish ''best technology available for minimizing adverse environmental impact'' to authorize EPA to promulgate

technology-based performance requirements analogous to those derived for point sources under sections 301 (existing sources) and 306 (new sources) for minimizing a suite of adverse environmental impacts, including impingement and entrainment, diminishment of compensatory reserve, and stresses to populations, communities of organisms, and ecosystems. The controls required today appropriately reflect technologies that for new facilities are available and economically practicable, that do not have unacceptable non-aquatic environmental impacts (including impacts on the energy supply across the United States), and that reduce impingement and entrainment of aquatic organisms in a manner that will help support, maintain, and protect aquatic ecosystems. EPA wants to be very clear that this decision relates only to new facilities. In making the upcoming decisions regarding existing facilities in Phases II and III, EPA will carefully weigh all of the relevant factors, many of which are different for existing facilities than for new facilities.

In addition, while EPA agrees that a two-track approach is an effective way to implement CWA section 316(b) for new facilities, EPA does not believe that a population-based approach for defining both the fast track and equivalent performance in the second track is a workable solution for new facilities.

With respect to the ''fast track'' suggested by industry, EPA does not have a record indicating that the technologies cited by industry (such as a fish return system alone) are the best technologies available for reducing impingement and entrainment. Moreover, even if population were the only endpoint, the record does not support the assertion that the technology cited by industry would qualify for the fast track because it can be uniformly predicted across the nation not to have population impacts (assuming one can agree upon what are the relevant species of concern) for all new facilities nationally in any location. At the same time, EPA has identified technologies that for new facilities (which, unlike existing facilities, do not have retrofitting costs) that are technically available and economically practicable. Therefore for new facilities, EPA believes it is reasonable to require such technologies on a national basis to reduce impingement and entrainment.

With respect to the second track, EPA does not prefer the population approach for new facilities, because the time and complexity of conducting population studies properly is generally inconsistent with making fast and reliable permitting decisions, an issue of particular importance for permitting new facilities. EPA's record shows that in order to study and demonstrate proper population studies, the permitting approval process would be adversely delayed for some new facilities. Specifically, because of the complexity of biological studies, it is very difficult to assess the cause and effect of cooling water intake structures on ecosystems or on important species within an ecosystem. An overwhelming majority of scientists have stated that biological studies can take multiple years because of the complex nature of biological systems. Moreover, unlike in the laboratory, where conditions are controlled, a multitude of confounding factors make biological studies very difficult to perform and make causation, in particular, difficult to determine. All of these issues take time to assess. EPA estimates that a credible job of studying these issues could take up to 3 years to complete. While some of this study can be conducted prior to start-up of the plant, this could cause delays in many situations. For these reasons, EPA does not believe that a population approach makes sense for new facilities.

VI. Summary of Major Comments on the Proposed Rule and Notice of Data Availability (NODA)

A. Scope/Applicability

Comments on the scope and applicability of the new facility rule address several issues, including the definition of a new facility, the definition of a cooling water intake structure (including the twenty-five (25) percent cooling water use threshold), the proposed threshold for cooling water withdrawals (i.e., 2 MGD), and the requirement for a facility to hold a NPDES permit.

1. New Facility Definition

EPA proposed to define a ''new facility'' as any building, structure, facility, or installation that meets the definition of a ''new source'' or ''new discharger'' in 40 CFR 122.2 and 122.29(b)(1), (2), and (4); commences construction after the effective date of the final rule; and has a new or modified cooling water intake structure. See proposed 40 CFR 125.83; 65 *FR* 49116.

Numerous commenters supported EPA's determination that the new facility rule should apply only to greenfield and stand-alone facilities but questioned whether EPA had clearly and effectively limited applicability of the proposed rule to such facilities. Some commenters indicated that the proposed regulatory definition of new facility, which references the existing NPDES new source and new discharger definitions, is confusing. For example, some commenters asserted that defining the total replacement of an existing process as a new facility is not consistent with application of the rule only to greenfield or stand-alone facilities. Commenters indicated that the regulation should make it very clear that the new facility rule applies only to greenfield and stand-alone facilities. To clarify the definition of new facility, some commenters encouraged EPA to include language or examples from the proposed preamble in the final regulatory language. Several commenters requested that EPA more explicitly clarify that a new cogeneration plant installed to serve an existing facility would not be considered a new facility under this rule.

The Agency believes that most new facilities subject to this rule will be considered new sources as defined in 40 CFR 122.2 and 122.29(b)(1), (2), and (4) and subject to new source performance standards for effluent discharges.[48] Under 122.29(b), a source is a new source if it meets the definition of new source in 122.2 (effectively, it discharges or may discharge pollutants, and its construction commenced after promulgation—or proposal in specified circumstances—of a new source performance standard) and it meets any of three conditions. The first is that the source is constructed at a site at which no other source is located (40 CFR 122.29(b)(1)(i)). The second is that the source totally replaces the process or production equipment that causes a discharge at an existing facility (40 CFR 122.29(b)(1)(ii)). The third is that the new source's processes are substantially independent of any existing source at the same site (40 CFR 122.29(b)(1)(iii)). EPA stated in the proposed rule that the new facility rule applies to greenfield facilities, described as facilities that meet the first and second conditions above, and stand-alone facilities, which are those that meet the third condition, provided these facilities meet other applicable conditions (*i.e.,* commencement of construction after the effective date of the final rule, new or

[48] Although the Agency believes that most new facilities subject to this rule will be considered new sources, EPA has included the reference to the definition of new discharger at 122.2 to address any new facility that may commence construction prior to the promulgation of a new source performance standard. The Agency notes that the definition of new discharger in 122.2 only applies to facilities not defined as a new source.

modified CWIS). Thus, the Agency believes the language of the regulation does make it clear that the rule applies to greenfield and stand-alone facilities or those whose processes are substantially independent of an existing facility at the same site. As commenters requested, EPA has added some examples to the regulatory section of the rule to serve as guidance regarding the definition of new facility under this final rule.

Several commenters also questioned whether repowering an existing facility would trigger applicability of the new facility requirements. These commenters pointed out that repowering is a common practice that often results in a gain in efficiency (*i.e.,* both increased power output and a reduced need for cooling water withdrawals). Commenters expressed concern that, although repowering an existing facility is distinct from building a greenfield or stand-alone facility, repowering could be interpreted as subject to the new source definition and thereby subject to the new facility rule. Some also asserted that the proposed rule included an arbitrary distinction between completely replacing an existing facility and repowering that facility. By defining the complete replacement of a facility as a new facility but allowing repowering to be defined as an existing facility, these commenters argued, the proposed rule creates an incentive to use less efficient technology for the redevelopment of older sites. Commenters also noted that the proposed rule would regulate a new, greenfield facility and the complete replacement of an existing facility (*i.e.,* a brownfield site) in a similar manner, which creates a disincentive to redevelop or modernize brownfield sites.

The definition of a new facility in the final rule applies to a facility that is repowered only if the existing facility has been demolished and another facility is constructed in its place, and modifies the existing cooling water intake structure to increase the design intake capacity. To the extent commenters assert some inequity of treatment between new facilities and certain existing facilities, EPA will address this comment when it addresses what substantive requirements apply to existing facilities. Further, changes to an existing facility that do not totally replace the process or production equipment that causes a discharge at an existing facility (*e.g.,* partial repowering), and those that do not result in a new separate facility whose processes are substantially independent of any existing source at the same site, do not result in the facility being defined as a new facility, regardless of whether these changes result in the use of a new or modified cooling water intake structure that increases existing design capacity. EPA does not agree that by not addressing most repowering under this rule the Agency is creating an incentive to use less efficient technology. Both the power-generating and manufacturing industries routinely seek greater efficiency when repowering. This is illustrated by the increased use over the past 10 years of combined-cycle technology, which requires significantly less cooling water for a given level of power generation and is a more efficient process than older technologies.

Several commenters supported EPA's definition of new facility as proposed. In contrast to concerns discussed above, some commenters expressed apprehension that the new facility definition would not capture all appropriate facilities. These commenters observed that an existing facility could rebuild its whole facility behind the cooling water intake structure and not be subject to the requirements applicable to a new facility. These commenters asserted that if an operator completely rebuilds an existing facility that facility should be subject to the new facility requirements.

EPA can foresee one instance in which the concern raised by this commenter may be well founded. In this rule EPA has defined a new facility in a manner consistent with existing NPDES regulations, with a limited exception. EPA generally deferred regulation of new sources constructed on a site at which an existing source is located (see 40 CFR 122.29(b)(3)) until the Agency completes analysis of its survey data on existing facilities. However, in addition to meeting the definition of a new source, today's rule requires that a new facility have a new cooling water intake structure or use an existing intake structure that has been modified to increase the design capacity. Thus, it might be possible to completely demolish an existing source, replace it with a smaller-capacity new source, and not be regulated under today's rule as a new facility. This facility would then be an existing facility an as such the requirements applicable to such a facility will be addressed in Phase II and III.

Several commenters requested that EPA define facilities deemed to be substantially independent for purposes of applying the new source criteria under 40 CFR 122.29 as those that could be practicably located at a separate site. Commenters maintained that such an approach is justified because EPA has based the proposed new facility requirements on the assumption that each owner or operator has the option to choose the location of his or her new facility and that such location would be selected to allow the owner or operator to best comply with the intake structure location and operation requirements.

With regard to defining when a facility is substantially independent under 40 CFR 122.29, EPA does not believe it is feasible to project under what circumstances owners and operators are free to select any location they desire for a new facility. For this reason, EPA takes the facility as it is planned for purposes of determining whether it is a new facility. In today's rule EPA does not believe it is appropriate to define the phrase ''substantially independent'' as used in 122.29(b)(1)(iii) as facilities that could be practicably located at a separate site. Section 122.29(b)(1)(iii) in the existing NPDES regulations already provides that ''[i]n determining whether . . . processes are substantially independent, the Director shall consider such factors as the extent to which the new facility is integrated with the existing plant; and the extent to which the new facility is engaged in the same general type of activity as the existing source.'' EPA does not think it is feasible for the permit authority to judge whether the facility could have been elsewhere for the purpose of determining whether the facility is subject to the new facility rules. Commenters also requested that EPA define what actions constitute routine maintenance to an existing cooling water intake, so that the distinction between changes that constitute maintenance and those that constitute a modification to an existing intake is made clearer.

EPA has not defined ''routine maintenance'' in the final rule because clarifying what constitutes routine maintenance is not vital to the definition of new facility. Under the new facility rule, to be considered a new facility a facility must be a new source or new discharger and use a newly constructed cooling water intake structure or a modified existing cooling water intake structure whose design intake has been increased. Thus, changes to a cooling water intake structure at an existing facility that is not a new source or new discharger are not subject to this rule. In addition, at facilities that are new sources or new dischargers but may use an existing cooling water intake structure, EPA has clarified in the final rule that the facility is subject to this rule only where changes to the intake result in an

increase in design capacity. At facilities that are new sources or new dischargers, changes to an intake structure that do not result in an increase in design capacity do not result in that facility being subject to this rule.

Finally, some commenters expressed concern about the status of facilities that are under construction or have recently been constructed. These commenters suggested that such facilities should not be defined as new facilities. Others asserted that it is unfair to define a facility that has submitted a permit application but has not started construction as a new facility.

The Agency chose the commencement of construction date because it was generally consistent with the term ''new source'' in the existing NPDES permitting regulations and it should provide adequate notice and time for facilities to implement the technological changes required under the rule. The date a facility commences construction is clarified at 40 CFR 122.29(b)(4). This provision describes certain installation and site preparation activities that are part of a continuous onsite construction program; it includes entering into specified binding contractual obligations. Thus, under today's rule facilities that are constructed or commence construction within the meaning of 40 CFR 122.29(b)(4) prior to or on the effective date of the final rule are not new facilities. Those that commence construction after the effective date of this rule and meet the other regulatory thresholds defined in § 125.81 are subject to the requirements of this rule.

2. Definition of Cooling Water Intake Structure

EPA proposed that the term ''cooling water intake structure'' means the total physical structure and any associated constructed waterways used to withdraw cooling water from waters of the U.S., provided that at least twenty-five (25) percent of the water withdrawn is used for cooling purposes. See, proposed 40 CFR 125.83; 65 *FR* 49116. In the NODA the Agency requested comments on two additional alternatives. See, 66 *FR* 28854.

Most of the comments addressing the definition of cooling water intake structure focused on the 25 percent threshold for cooling water use. These comments are summarized and addressed under Section VI.A.3, below. EPA has placed the 25 percent threshold in the applicability requirements of the final rule to clarify the definition of cooling water intake structure. Intakes below this threshold are not subject to today's national rule; however, permit writers should determine any appropriate section 316(b) requirements for structures withdrawing less than 25% of intake flow for cooling purposes on a case-by-case basis.

Some commenters suggested that cooling water intake structures should not be defined in a way that would include the pumps in the cooling water system. Commenters maintained that pumps are part of the cooling water system, not part of the intake, and they assert that the Agency has authority under section 316(b) only over cooling water intake structures. Commenters noted that changing pumps is part of the normal routine of maintenance and repair performed at facilities that use water for cooling and that such activity should not trigger applicability of the new facility rule.

In the final rule EPA has clarified the definition of cooling water intake structure to explicitly include the first intake pump or series of pumps. The explicit inclusion of the intake pumps in the cooling water intake structure definition reflects the key role pumps play in determining the capacity (i.e., dynamic capacity) of the intake. These pumps, which bring in water, are an essential component of the cooling water intake structure since without them the intake could not work as designed. Section 316(b) authorizes EPA to impose limitations on the volume of the flow of water withdrawn through a cooling water intake structure as a means of addressing ''capacity.'' *In re Brunswick Steam Electric Plant*, Decision of the General Counsel No. 41 (June 1, 1976). Such limitations on the volume of flow are consistent with the dictionary definition of ''capacity,''[49] the legislative history of the Clean Water Act,[50] and the 1976 regulations.[51] *Id.* Indeed, as Decision of the General Counsel No. 41 points out, the major environmental impacts of cooling water intake structures are those affecting aquatic organisms living in the volumes of water withdrawn through the intake structure. (Statement of Mr. Buckley, Senate consideration of the Report of the Conference Committee [discusses intake from once-through systems]. A Legislative History of the WPCA Amendments of 1972, 93rd Cong., 1st Sess., Committee Print at 196, 197). Therefore, regulation of the volume of the flow of water withdrawn also advances the objectives of section 316(b).

3. Applicability Criteria: Requirement to Withdraw Water From a Water of the U.S., the Twenty-Five (25) Percent Cooling Water Use Threshold, and the Two (2) MGD Intake Flow Threshold

As was proposed, the final new facility rule applies to any new facility that (1) has or is required to have an NPDES permit; (2) proposes to use a cooling water intake structure to withdraw water from waters of the U.S.; (3) uses at least twenty-five (25) percent of the water withdrawn for cooling purposes; and (4) has a design intake flow of greater than two (2) million gallons per day (MGD). See proposed 40 CFR 125.81 and 125.83; 65 *FR* 49116.

Commenters raised several concerns regarding the proposed 25 percent threshold. A number of commenters asserted that EPA did not provide a rational basis in its record for proposing that use of 25 percent of intake flow for cooling purposes should determine whether an intake structure is a cooling water intake structure. Commenters asserted that it is inappropriate to base the 25 percent cooling water use threshold on the number of cooling water intake structures or amount of cooling water flow this threshold would make subject to this rule. Several commenters observed that no single threshold can be applied to all intakes to accurately distinguish cooling water intakes from other intakes. If EPA is determined to use a single threshold in this definition, numerous commenters favored a threshold of 50 percent cooling water use, which commenters stated is the de facto threshold used under the existing definition of a cooling water intake structure found in 1977 draft guidance. However, some commenters maintained that for an intake to be defined as a cooling water intake structure the vast majority (i.e., 75–100 percent) of water withdrawn must be used for cooling.

As discussed above, in the final rule EPA has placed the 25 percent threshold in the applicability section to clarify the applicability of the rule. Permit writers may determine that an intake structure that withdraws less than 25% of the intake flow for cooling purposes should be subject to section 316(b) requirements, and set appropriate requirements on a case-by-case basis, using Best Professional Judgment. Although cooling water intake structures that fall below the 25% threshold are not subject to today's national rule, today's rule does not inhibit permit writers, including those

[49] ''Cubic contents; volume; that which can be contained.'' *Random House Dictionary of the English Language,* cited in Decision of the General Counsel No. 41.

[50] Legislative History of the Water Pollution Control Act Amendments of 1972, 93d Cong., 1st Sess., at 196–7 (1973).

[51] 40 CFR 402.11(c)(definition of ''capacity''), 41 *FR* 17390 (April 26, 1976).

at the Federal, State, or Tribal level, from addressing such cooling water intake structures as deemed necessary.

EPA chose 25 percent as a reasonable threshold for the percent of flow used for cooling purposes in conjunction with the two MGD total flow threshold discussed below to ensure that almost all cooling water withdrawn from waters of the U.S. is addressed by the requirements in this rule for minimizing adverse environmental impact. EPA estimates that approximately 68 percent of manufacturing facilities that meet other thresholds for the rule and 93 percent of power-generating facilities that meet other thresholds for the rule use more than 25 percent of intake water for cooling. In contrast, approximately 49 percent of new manufacturing facilities use more than 50 percent of intake water for cooling. EPA does not believe it is reasonable to exclude from regulation nearly half of those manufacturing facilities that use large volumes of cooling water and, as a result, impinge and entrain aquatic organisms. EPA also considered it important to cover as many of the facilities as possible in order to create regulatory certainty for new facilities and for States and Tribes that must permit these new facilities. EPA predicts this will leave four (4) percent of the electric power generating facilities and thirty-two (32) percent of manufacturing facilities to the discretion of the permit writer. EPA believes that new facilities that use less than 25 percent of water withdrawn for cooling are most effectively addressed by States and Tribes on a best professional judgement (BPJ) basis, rather than under a national rule, since BPJ provides a certain degree of flexibility for a permit writer to consider available technologies and unique factors posed by new facilities that are below the threshold.

Several manufacturers commented that the rule as proposed may create a disincentive to manufacturing operations increasing efficiency through reducing process water use, since such reductions increase the percentage of cooling water used. These commenters observed that since process water is reused for cooling and cooling water may be heated and reused as process water, flexibility is needed in the rule so these practices are not discouraged or penalized. They also stated that process water cannot be reused in a manner consistent with closed-loop cooling. Some commenters also stated that the final rule should address situations in which the percentages of water used for cooling and as process water are not constant, or where the withdrawal of cooling water is intermittent.

In the final rule EPA has amended the definition of cooling water intake structure to ensure that the rule does not discourage the reuse of cooling water as process water. EPA has amended the proposed definition of cooling water intake structure to specify that cooling water that is used in a manufacturing process, either before or after it is used for cooling, is considered process water for purposes of calculating the percentage of a new facility's intake flow that is used for cooling and whether that percentage exceeds 25 percent. In addition, EPA also has added guidance to the regulation that clarifies how the 25 percent threshold should be applied to new facilities that do not maintain a constant ratio of cooling water to process water. See § 125.81(c) of this rule. This guidance provides that the threshold requirement that at least 25 percent of water withdrawn be used for cooling purposes is to be measured, on the basis of facility design, on an average monthly basis over a period of 1 year (any 12-month period). It further clarifies that a new facility meets the 25 percent cooling water threshold if any monthly average, over a year, for the percentage of cooling water withdrawn equals or exceeds 25 percent of the total water withdrawn.

Numerous commenters asserted that the two MGD threshold is too low and is not supported by a credible justification. Some commenters stated that the two MGD cutoff is overly conservative given that many facilities determined to be causing no adverse impact have considerably greater flows. For example, these commenters note that the State of Maryland uses a 10 MGD threshold, which commenters state would capture 99.67 percent of all existing cooling water flows if applied on a national basis. Several commenters supported the use of Maryland's approach. Others stated that the proposed rule contained insufficient data to be science-based (i.e., based on the level of withdrawal above which adverse environmental impact occurs). Commenters also observed that many of the environmental impact data EPA presented in the proposed rule focused on major power plants with flows much greater than two MGD, which does not support the proposition that adverse impacts occur at small facilities with lower flows. Rather, the commenters suggest, the threshold appears to be designed merely to capture a certain percentage of flow. If so, commenters assert this threshold is arbitrary and not based on sound science. Some of these commenters asserted that cooling water intake structure impact data support thresholds exceeding 500 MGD. A few commenters maintained that it is not appropriate to apply a single threshold to all waterbody sizes. Several supported the two MGD threshold. Several commenters also supported higher thresholds, including 5, 10, 25, and 100 MGD. Some commenters maintained that section 316(b) requirements should apply to all cooling water intake structures and that therefore no flow threshold is necessary.

EPA chose the two MGD threshold because this threshold addresses the majority of new facilities and therefore provides the States and Tribes with a national rule that can be easily applied to a majority of permitting decisions they face in order to implement the legal requirements of CWA section 316(b). All cooling water intake flow results in the potential for impingement and entrainment. Thus, all facilities must address section 316(b) requirements in the same fashion. Therefore, where EPA's record demonstrates that the requirements are technically available, economically practicable, and not have unacceptable non-water quality environmental impacts, including energy impacts, the Agency believes that it is appropriate for the new facility rule to address the majority of cooling water intake structure facilities. In doing so, EPA resolves for permit writers what the requirements are for new facilities.

On the basis of data for facilities with cooling water intake structures built in the past 10 years, EPA estimates that 58 percent of the manufacturers, 70 percent of the nonutilities, and 100 percent of the utilities will be regulated under the two MGD threshold. At the two MGD threshold, 62 percent of all in-scope facilities using surface water and 99.7 percent of the total flow will be covered. Estimated total flow is approximately 9 billion gallons per day. EPA did not select a significantly higher threshold, such as 15 or 25 MGD, because these thresholds would exclude most utility, nonutility and manufacturing facilities from regulation. At a threshold of 15 MGD, 32 percent of the manufacturers, 29 percent of the nonutilities, and 50 percent of the utilities would be covered, as would 97.3 percent of the total flow. The total flow covered remains relatively high, because the large flows from a small number of utility facilities dominate the total flow. While at a threshold of 25 MGD, 94.9 percent of the total flow would still be covered, many more facilities would not be covered. Only 18 percent of manufacturers, 17 percent of nonutilities, and 50 percent of utilities would be covered. Thus, 72 percent of

manufacturers, 83 percent of nonutilities, and 50 percent of utilities, withdrawing up to 25 MGD would need to be addressed on a Best Professional Judgement basis. The Agency is concerned about the regulatory uncertainty for regulated new facilities and the burden on State and tribal permit writers to ensure appropriate requirements for these facilities. EPA also believes that the two MGD threshold reduces the burden on States and Tribes responsible for implementing section 316(b) requirements because, as a national threshold, it reduces the burden associated with site-specific determination of appropriate 316(b) limits. The lower threshold may also reduce delays for permit applicants by providing certain national standards.

EPA did not select a 5 or 10 MGD threshold because of the percentage of projected new nonutility and manufacturing facilities that would be excluded from regulation under these thresholds and concern that future trends in intake flow levels would, under these regulatory options, leave most new facilities using cooling water exempt from national regulation and subject to case-by-case determinations by permit agencies. At a threshold of 5 MGD, only 40 percent of nonutility facilities would be covered under this rule. Under a threshold of 10 MGD, 38 percent of manufacturing and 28 percent of nonutility facilities would be covered. EPA did examine the State of Maryland's 10 MGD standard but did not find information that would support the use of this standard on a national basis. In addition, the trend in power generation is toward, on a per facility/per unit of output basis, a general reduction in cooling water intake flow levels over time. Combined-cycle gas turbines require less water per unit of electricity generated than coal-fired or nuclear facilities. For example, a 750 MW combined-cycle facility with evaporative cooling towers is estimated to require approximately 7 to 8 MGD and under a 10 MGD threshold would not be subject to this national rule. The Agency believes that, given the objective of section 316(b), it is undesirable to exclude such a large plant from this rule. As reductions in cooling water intake flow levels occur, the two MGD threshold also ensures that this rule can serve the State, Tribes, and permit applicants by assuring that permits for new facilities comply with 316(b).

EPA does not agree that the intake flow threshold in the applicability portion of this rule must be based on prior determinations of the degree of environmental impact caused by a specific facility or specific cooling water intake structure. Section 316(b) applies to any facility that uses a cooling water intake structure and is a point source subject to standards imposed under CWA section 301 or 306. EPA has included a flow threshold to provide some reasonable limit on the scope of the national requirements imposed under today's rule. The Agency believes those new facilities with withdrawals that are at or below a two MGD threshold will generally be smaller operations that may face issues of economic affordability and are therefore more appropriately addressed on a case-by-case basis using BPJ. Moreover, as discussed in Section III, EPA does not agree that adverse environmental impact associated with cooling water intake structures is solely a population-based phenomenon. Rather, there can be numerous measures of such impacts, including assessments of fish and aquatic organism population impacts. Given the language of section 316(b) and the issues associated with determining adverse impacts, EPA does not view the examples of cooling water impacts discussed in the proposed rule and NODA as limiting the applicability of this rule to new facilities that have the opportunity to employ widely used, economically practicable measures that will, at a minimum, reduce injury to large numbers of fish and aquatic life and may result in benefits at higher levels of ecological structures.

Finally, commenters stated that large facilities that use closed cooling water systems may still require withdrawals of more than 2 MGD. These commenters asserted that it is unfair to subject these facilities to additional regulation after they have reduced their intake flow by 90 percent or more.

EPA agrees that very large facilities that use closed cooling water systems may still require withdrawals of more than two (2) MGD. As discussed elsewhere in this preamble, EPA determined that reducing intake capacity commensurate with use of a closed-cycle recirculating cooling system is not economically practicable for facilities withdrawing between 2 and 10 MGD. However, EPA does not agree that it is unfair to subject these facilities to further requirements necessary to reduce impingement and entrainment. Section 316(b) requires that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact. While reductions in total intake flow may represent the single most significant improvement for new facilities with cooling water intake structures, large flows withdrawn for make-up (i.e., to replace evaporative loss and blow down) can still cause significant impingement and entrainment. Additional controls on intake velocity, flow relative to the source waterbody, and design and construction technologies proposed by the facility also represent important aspects of a cooling water intake structure that must, under section 316(b), be addressed. As discussed elsewhere in this preamble and in the *Technical Development Document and Economic Analysis,* these additional measures are both widely employed and affordable. EPA does not believe that a determination of ''best technology available for minimizing adverse environmental impact'' for new facilities can omit these low-cost, effective technologies. Also see Section VIII of this preamble for a discussion that explains the percentage of new facilities already meeting the final rule requirements and the low cost of these requirements.

4. NPDES Permit

The proposed rule would apply only to new facilities that are or will be subject to an NPDES permit. See, proposed 40 CFR 125.81; 65 *FR* 49116. Comments received on this proposed requirement generally focus on the new facilities that withdraw cooling water from waters of the U.S. but do not hold an NPDES permit.

Some commenters asserted that EPA should not use the 316(b) rulemaking to regulate cooling water intake structures that are not owned by the NPDES-permitted facility. Commenters indicated that such an approach was beyond the authority provided by 316(b) and would make the rule unnecessarily complex.

The final rule applies only to new facilities that hold an NPDES permit or are required to obtain a permit. The Agency continues to believe that most new facilities that will be subject to this rule will control the intake structure that supplies them with cooling water and will discharge some combination of their cooling water, wastewater, and stormwater to a water of the U.S. through a point source regulated by an NPDES permit. Under this scenario, the requirements for the cooling water intake structure will be applied in the facility's NPDES permit.

In the event that a new facility's only NPDES permit is a general permit for storm water, EPA anticipates that the Director will write an individual NPDES permit containing requirements for the facility's cooling water intake structure.

Such 316(b) requirements could also be included in the general permit.

B. Environmental Impact Associated With Cooling Water Intake Structures

The proposed rule requested comment on the scope and nature of environmental impacts associated with cooling water intakes. Many comments were directed generally toward entrainment and impingement impacts, with some discussion of impacts caused by intake construction activities. The majority of comments, however, concentrated on defining adverse environmental impact and the approaches that were most relevant for characterizing adverse environmental impact, including assessments of population modeling and bioassessment approaches.

1. Entrainment, Impingement, and Construction Impacts

In the proposed rule, EPA requested comment on the types of impacts attributable to cooling water intake structures (65 *FR* 49072). Most of the comments focused on discussion of entrainment and impingement impacts and the impacts associated with construction of new cooling water intake structures.

One commenter suggested that the EPA should have scientific analyses to support the statement that entrainment mortality is high. The commenter also stated that, on the basis of recently conducted entrainment studies, through-plant change in temperature was the controlling factor for entrainment mortality and that entrainment impacts could be minimized through use of a cooling water system designed for high volume, low-velocity flow, which would minimize temperature differential. The commenter also noted that high-volume, low-velocity-flow cooling water systems would be specifically eliminated by the proposed 316(b) regulation.

EPA notes that entrainment studies indicate that through-plant mortality rates of young fish are determined by numerous factors. Different species have different tolerance to passage through a cooling system, and mortality rates may differ among life stages of the same species. A summary of mortality data from five Hudson River power plants found that mortality rates could be substantial.[52] The report cited species-specific mortality rates that varied by life stage for bay anchovy (93 to 100 percent), Atlantic tomcod (0 to 64 percent), herrings (57 to 92 percent), white perch (41 to 55 percent), and striped bass (18 to 55 percent). The study emphasized that the reliability of these estimates was questionable and that various sources of potential bias may have caused the estimated rates to be lower than the actual mortality rates. The Electric Power Research Institute (EPRI) sponsored a recent review of 36 entrainment survival studies, the majority of which were conducted in the 1970s.[53] [54] The summarized mortality rates described by EPRI were in substantial agreement with patterns reported in the Hudson River summary, specifically that anchovies and herrings had the highest mortality rates (greater than 75 percent), and that temperature change seemed to be an important determining factor. Thus, EPA believes scientific studies document that entrainment mortality for some species can be quite high.

EPA recognizes that Track I of the final rule precludes the use of high-volume, flow cooling water systems. However, in today's rule, under Track II, an intake with the capacity needed to support a high-volume, once-through cooling system that is shown through studies to reduce impingement mortality and entrainment for all life stages of fish and shellfish to achieve a level of reduction comparable to the level that would be achieved by applying Track I technology-based performance requirements at a site would meet the requirements of the rule.

Another commenter suggested that many of the more significant impingement episodes occur in conjunction with environmental phenomena such as low dissolved oxygen and rapid temperature declines. According to the commenter, these phenomena cause the death of many fish that are then ultimately collected on intake screens. EPA acknowledges that episodes of low dissolved oxygen and rapid temperature declines can result in fish losses, but does not concur that this is consistently documented as a significant or sole cause of fish impingement mortalities.

Another commenter recommended that EPA require antifouling measures at the construction and operational stages to minimize intake attractiveness to local fish, diving birds, and marine mammals. As stated previously, EPA defers controls for minimizing adverse impacts due to construction of new cooling water intake structures to the authority of existing Federal, State, and Tribal programs established for this purpose. EPA believes it is incumbent upon the individual facilities to implement antifouling measures during operations that are appropriate for the specific characteristics of their waterbody. As an example, antifouling measures for freshwater systems will be different from measures used for ocean intakes. (See Section VI.E.3.a. below for more information on fouling controls).

Finally, one commenter suggested that cooling water intake structures affect many components of an ecosystem, not just individual species. Thus, the regulation should consider indirect effects on predators resulting from losses of prey species and overall ecosystem effects when evaluating environmental impacts. EPA has taken primarily a technology-based approach to this national rule. EPA believes that this rule will reduce impacts to predators by dramatically reducing entrainment and impingement of prey species and will therefore protect ecosystems as a whole. In addition, this rule recognizes that States and Tribes can be more stringent as is consistent with section 510 of the CWA.

EPA also received comments on the documented examples of impingement and entrainment impacts discussed in the proposed rule. Several commenters argued that it was inaccurate for EPA to equate the taking of aquatic organisms with environmental impact because there was little evidence that intakes, new or existing, would cause or were causing adverse impacts. In contrast, other commenters asserted that, given the tremendous quantity of water that utilities withdraw and the large number of organisms impinged and entrained by intakes, it was clear that the cooling process had an adverse impact on aquatic ecosystems. EPA believes that the examples of environmental impact provided in the proposed rule are illustrative of the types of effects associated with cooling water intakes.

Several commenters objected to the use of specific facilities as representative examples of environmental impact. They argued that EPA focused on a few high-profile, high-intake facilities and in some cases used outdated information or misinterpreted results. EPA believes it used the best

[52] Boreman, J., L.W. Barnthouse, D.S. Vaughan, C.P. Goodyear, S.W. Christensen, K.D. Kuman, B.L. Kirk, and W. Van Winkle. 1982. the Impact of Entrainment and Impingement on Fish Populations in the Hudson River Estuary: Volume I, Entrainment Impact Estimates for Six Fish Populations Inhabiting the Hudson River Estuary. Prepared for the U.S. Nuclear Regulatory Commission, Office of Nuclear Regulatory Research by the Oak Ridge National Laboratory. ORNL/NUREG/TM–385/V1.

[53] EPRI. 2000. Review of entrainment survival studies: 1970–2000. Report No. 1000757. Prepared by EA Engineering Science & Technology.

[54] Some of the studies summarized in EPRI (2000) are the same ones considered by Boreman et al. (1982). See EPRI (2000) for complete citations of 36 original studies.

information available for the proposed rule and the final rule. There are few, if any, recent data documenting entrainment or impingement rates at the majority of existing facilities. Many of the available reports are for larger facilities (for which environmental impact concerns were greatest) and contain analyses conducted 20 to 25 years ago. Several of the examples cited in the proposed rule were based on historical data and EPA acknowledges that the data may not reflect current impingement or entrainment rates at the facility, particularly if technologies and other operational measures for reducing entrainment and impingement have been implemented since the original study. However, in most cases updated information was not available. To the extent possible, EPA has supplemented the facility information in the record for this final rule to include smaller facilities and updated information.

Finally, several commenters suggested that there was no need to address construction impacts in the 316(b) rule because there were existing Federal, State, and local provisions designed to minimize the impacts caused by construction activities. Another commenter stated that it was likely that the majority of new generation, once-through cooling facilities will be using existing cooling water intake structures and that it was doubtful that a new once-through facility would be constructed in an area where significant habitat could be disrupted. In contrast, another commenter stated that the regulation should address impacts associated with new cooling water intake structure construction, even if impacts were not recurring.

Under today's rule, EPA will minimize construction impacts by requiring appropriate intake design and construction technologies. EPA recognizes that other Agencies have a prominent role in evaluating and minimizing impacts related to construction activities and acknowledges that existing Federal, State, and Tribal programs include requirements that address many of the environmental impact concerns associated with the construction of new intakes. EPA believes that implementation of appropriate design and construction technologies and existing program requirements will minimize the environmental impacts of construction.

2. Adverse Environmental Impact

The proposed rule discussed six potential definitions for adverse environmental impact: (1) A level of impingement and entrainment that is recurring and nontrivial, perhaps defined as the impingement or entrainment of 1 percent or more of the aquatic organisms in the near-field area as determined in a 1-year study; (2) entrainment or impingement damage as a result of the operation of a specific cooling water intake structure, including a determination of the magnitude of any short-term and long-term adverse impacts; (3) any impingement or entrainment of aquatic organisms; (4) a biocriteria approach based on a comparison of the abundance, diversity, and other important characteristics of the aquatic community at the proposed intake site with similar biological metrics at defined reference sites; (5) evaluation of impacts to protected species, socially, recreationally, or commercially important species, and community integrity (including community structure and function); and (6) impacts likely to interfere with the protection and propagation of a balanced indigenous population of fish, shellfish, and wildlife. The proposed rule also invited comment on whether adverse environmental impact should be defined more broadly to include non-aquatic environmental impacts (e.g., air emissions, noise, introductions of non-indigenous species) associated with technology-based requirements (see Section VI.B.2.e. below). In the NODA, EPA presented another population-based approach proposed by industry for defining adverse environmental impact—''Adverse environmental impact is a reduction in one or more representative indicator species that (1) creates an unacceptable risk to the population's ability to sustain itself, to support reasonably anticipated commercial or recreational harvests, or to perform its normal ecological function, and (2) is attributable to the operation of the cooling water intake''—and invited comment on this definition as well as refinements to three of the definitions discussed in the proposed rule. See, 66 *FR* 28859–28863.

Numerous commenters stated that defining adverse environmental impact was critical to the 316(b) regulation because the program is fundamentally based on minimizing environmental impact. Further, commenters suggested that, without a solid definition of adverse environmental impact, the Agency's ability to interpret, implement, and enforce 316(b)-related actions would be seriously hampered.

EPA recognizes that since enactment of 316(b), scientists, environmentalists, lawmakers, and regulators have disagreed on an exact definition for adverse environmental impact. Further, the many studies conducted to date and arguments put forward on this issue have done little to resolve the current lack of consensus among the concerned parties. Given this background, EPA has determined to address adverse environmental impacts as discussed below.

a. What Constitutes Adverse Environmental Impact Under This Final Rule?

EPA acknowledges that there are multiple types of adverse environmental impact including impingement and entrainment; reductions of threatened, endangered, or other protected species; damage to ecologically critical aquatic organisms, including important elements of the food chain; diminishment of a population's potential compensatory reserve; losses to populations, including reductions of indigenous species populations, commercial fishery stocks, and recreational fisheries; and stresses to overall communities or ecosystems as evidenced by reductions in diversity or other changes in system structure or function.

In the preamble to the proposed rule, EPA discussed several other options for interpreting adverse environmental impact. One option would be to look to section 316(a) of the Clean Water Act for guidance. Section 316(a) addresses requirements for thermal discharge and provides that effluent limitations associated with such discharge should generally not be more stringent than necessary to ''assure the protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife in and on that body of water.'' The same language is repeated in section 303(d) with reference to total maximum daily load (TMDL) listing requirements for waters impaired by thermal discharge. These statutory provisions indicate that Congress intended this requirement to be used in evaluating the environmental impacts of thermal discharges. Some have suggested that, since thermal discharges are usually paired with cooling water intake, it may be reasonable to interpret the Clean Water Act to apply this requirement in evaluating adverse environmental impact from cooling water intake structures as well.

Commenters have argued that the CWA compels EPA to determine that the objective of section 316(b) must be linked to the 316(a) goal to ensure protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife. EPA does not agree that the CWA compels EPA to interpret adverse environmental impact

as that term is used in section 316(b) in the Act by reference to the phrase ''balanced indigenous population'' under section 316(a). Because Congress used different terms in section 316(b) than in section 316(a), EPA does not believe the Agency is required to adopt such an interpretation. When Congress includes particular language in one section of a statute but omits it in another section of the same act, it is generally presumed that Congress acted intentionally and purposely in the disparate inclusion or exclusion. *Bates* v. *U.S.*, 522 U.S. 23 (1997). The usual canon of statutory interpretation is that when Congress uses different language in different sections of a statute, it does so intentionally. *Florida Public Telecommunications Ass'n, Inc.* v. *F.C.C.*, 54 F.3d 857 (D.C. Cir. 1995). Instead, EPA believes, consistent with EPA's ecological risk assessment guidelines, that it is reasonable to interpret adverse environmental impact as including impingement and entrainment, diminishment of compensatory reserve, stresses to the population or ecosystem, harm to threatened or endangered species, and impairment of State or authorized Tribal water quality standards. The Agency has long maintained that adverse environmental impact from cooling water intake structures must be minimized to the fullest extent practicable,[55] even in cases where it can be demonstrated that the requirement applicable under section 316(a) is being met.[56] [57] Thus, the objective of section 316(b) includes population effects but is not limited to those effects. EPA's interpretation of ''adverse environmental impact'' is discussed in more detail below.

b. Approach to Defining Adverse Environmental Impact

EPA received numerous comments on its proposed rule asserting that the proper endpoint for assessing adverse environmental impact is at the population level, that some of EPA's proposed alternative definitions of adverse environmental impact would essentially protect ''one fish,'' and that EPA's alternative for defining adverse environmental impact as recurring and nontrivial impingement and entrainment was vague or would lead to excessive and costly efforts to protect a very few fish that would not result in ecologically relevant benefits. EPA's record at proposal demonstrated that cooling water intake structures do not kill, impinge, or entrain just ''one fish,'' or even a few aquatic organisms. The NODA published by EPA provides further examples of cooling water intake structures that kill or injure large numbers of aquatic organisms. For example, EPA provided information on aquatic organism conditional mortality rates for the Hudson and Delaware rivers that demonstrated significant mortality due to cooling water intake structures. EPA considered this information, as well as information in Section III on impingement and entrainment survival and impact, as it deliberated options for the final rule and how adverse environmental impact should be defined. Further, EPA considered documents that discussed potential consequences associated with the loss of large numbers of aquatic organisms. These potential consequences included impacts on the stocks of various species, including any loss of compensatory reserve due to the deaths of these organisms, and the overall health of ecosystems. Given all of these considerations, EPA determined that there are multiple types of undesirable and unacceptable adverse environmental impacts, including entrainment and impingement; reductions of threatened, endangered, or other protected species; damage to critical aquatic organisms, including important elements of the food chain; diminishment of a population's compensatory reserve; losses to populations, including reductions of indigenous species populations, commercial fishery stocks, and recreational fisheries; and stresses to overall communities or ecosystems as evidenced by reductions in diversity or other changes in system structure or function.

EPA also invited commenters to submit for consideration additional studies that documented either significant impacts or lack of significant impacts from cooling water intake structures. Several commenters submitted reports on manufacturing and power plant facilities that purported to demonstrate minimal impact from cooling water intake. One commenter submitted three documents for EPA's review. Another commenter submitted information on the Neal Complex facility located on the Missouri River near Sioux City, Iowa. The commenter described a 10-year (1972–82) study that focused on evaluating the operational impacts of the Neal facility, sited on a heavily channelized segment of the Missouri River. The commenter asserted that study results indicated little if any detrimental impact to the Missouri River ecosystem caused by facility operations. EPA reviewed the information summarized by the commenter and finds fault with several of the statements and conclusions cited in the comment. This is discussed further in EPA's response to comments document.

c. Assessment of Population Modeling Approach

Some commenters asserted that impacts on individual organisms or subpopulations are not ecologically relevant and recommended that EPA define adverse environmental impact as follows: ''Adverse environmental impact is a reduction in one or more representative indicator species that (1) creates an unacceptable risk to the population's ability to sustain itself, to support reasonably anticipated commercial or recreational harvests, or to perform its normal ecological function, and (2) is attributable to the operation of the cooling water intake structure.'' Under this approach, EPA would define unacceptable risk by using a variety of methods that fisheries scientists have developed for estimating (1) the level of mortality that can be imposed on a fish population without threatening its capacity to provide ''maximum sustainable yield'' (MSY) on a long-term basis, as developed under the Magnuson-Stevens Fishery Conservation and Management Act, and (2) the optimum population size for maintaining maximum sustainable yield.

In evaluating such comments, EPA considered the premises underlying MSY and the models used by National Marine Fisheries Service (NMFS) to derive MSY. Because the concept of MSY is based on harvesting adult fish, EPA generally questions whether this approach is directly relevant to egg, larvae, and juvenile losses associated with intakes. EPA also notes that the models used to estimate MSY do not directly incorporate any additional stressors (such as losses from entrainment and impingement) to managed stocks other than fishing pressure. Further, it is important to note that NMFS does not always manage stocks to their calculated MSY. In many cases, particularly if there is a concern over protecting habitat or critical ecosystems, NMFS regulates fisheries based on their ''optimum yield,'' which is less than the MSY. According to the Magnuson-Stevens Fisheries Conservation and Management Act, ''the

[55] *In re Brunswick Steam Electric Plant*, Decision of the General Counsel No. 41, June 1, 1976.

[56] *In re Public Service Co. of New Hampshire*, (Seabrook Station Units 1 and 2) (Decision of the Administrator) 10 ERC 1257, 1262 (June 17, 1977).

[57] *In re Central Hudson Gas and Elec. Corp.*, Decision of the General Counsel No. 63, July 29, 1977.

term 'optimum' with respect to the yield from a fishery, means the amount of fish which * * * is prescribed as such on the basis of the MSY from the fishery, as reduced by any relevant economic, social, or ecological function * * *''

EPA also considered the relative long-term success of ongoing fishery management practices implemented by the National Marine Fisheries Service and others. Despite the availability of state-of-the-art fish population models and considerable experience managing fisheries, NMFS recently classified 34 percent of their managed fishery stocks as over-utilized.[58] EPA agrees with fisheries experts and resource managers that there is unavoidable uncertainty associated with managing fish populations.[59 60 61 62] As a recent NMFS advisory panel expressed it, ''Uncertainty and indeterminancy are fundamental characteristics of the dynamics of complex adaptive systems. Predicting the behaviors of these systems cannot be done with absolute certainty, regardless of the amount of scientific effort invested.'' [63] Consistent with its own Guidelines for Ecological Risk Assessment, EPA agrees with the conclusions of the NMFS panel that ''Given the high variability associated with ecosystems, managers should be cognizant of the high likelihood for unanticipated outcomes. Management should acknowledge and account for this uncertainty by developing risk-averse management strategies that are flexible and adaptive.'' As the panel concluded, ''The modus operandi for fisheries management should change from the traditional mode of restricting fishing activity only after it has demonstrated an unacceptable impact, to a future mode of only allowing fishing activity that can be reasonably expected to operate without unacceptable impacts.'' EPA and other fishery scientist support the concept of a precautionary approach,[64] particularly when dealing with complex systems, as described below.

EPA recognizes that the limitations of existing population models, including models used to manage fisheries, may be related to our overall limited understanding of the complexity of aquatic ecosystems and the long-term effects of anthropogenic activities [65 66]. As proposed in a recent journal article, many of the adverse impacts identified for coastal ecosystems, such as estuarine eutrophication, loss of kelp beds, coral reef die-offs, and introductions of invasive species, were initiated by historical overfishing.[67] Losses or extinctions of large vertebrate predators and filter-feeding bivalves such as oysters caused by overfishing have, over time, resulted in species replacements and significantly limited or ceased interactions between the overfished populations and other coastal community species. Historical overfishing and ecological extinctions precede both modern ecological investigations and the collapse of several marine ecosystems in recent times, ''raising the possibility that many more marine ecosystems may be vulnerable to collapse in the near future.'' [68] Further, because modern ecological studies do not typically consider the long-term historical record, existing fishery resource baselines may be inaccurate, and ''Even seemingly gloomy estimates of the global percentage of fish stocks that are overfished are almost certainly far too low.'' [69] Thus, EPA is concerned that historical overfishing increased the sensitivity of coastal ecosystems to subsequent disturbance, making them more vulnerable to human impact and potential collapse. Based on the long-term record of anthropogenic impacts to coastal ecosystems, their documented degradation, and their potential sensitivity to additional anthropogenic disturbance, as well as the admitted uncertainty associated with managing coastal fishery populations, EPA firmly believes that protective, risk-averse measures are warranted to prevent further declines or collapses of coastal and other aquatic ecosystems. EPA views impingement and entrainment losses to be one of many potential forms of disturbance that should be minimized to avoid further degradation.

Further, it remains unclear whether it is possible or sufficient to use single species population assessment models to assess impacts on multiple species, as is often necessary in evaluating impingement and entrainment by cooling water intake structures. NMFS now recognizes that improvement in fisheries management will require a comprehensive, ecosystem-based approach and recently convened an advisory panel to develop principles and approaches for ecosystem-based fishery management. In its report to Congress, the advisory panel noted that such an approach will ''require managers to consider all interactions that a target fish stock has with predators, competitors and prey species; the effects of weather and climate on fisheries biology and ecology; the complex interactions between fishes and their habitat; and the effects of fishing on fish stocks and their habitat.'' [70] EPA supports the ecosystem-based approach to fisheries management advanced by NMFS and recognizes that this approach will require an in-depth understanding of species interactions. Because the ecosystem-based approach is currently evolving, EPA believes it is unlikely that most existing single species population models can accurately account for multiple-species interactions.

EPA also considered information addressing the issue of compensation—an increase that may potentially occur in survival, growth, or reproduction of a species triggered by reductions in population size [71 72]—and its application to the section 316(b) rulemaking. In particular, EPA sought comment on a memorandum discussing compensation and the quantity of data required to calculate compensation factors (DCN #2–020C). This document states that the use of compensation factors is typically

[58] National Marine Fisheries Service. 1999. Our living oceans. Report on the status of U.S. living marine resources. U.S. Department of Commerce, NOAA tech. memo. NMFS–F/SO–41.

[59] Hilborn, R., and C.J. Walters. 1992. *Quantitative fisheries stock assessment: choice, dynamics, and uncertainty.* Chapman and Hall.

[60] Hilborn, R., E.K. Pikitch, and R.C. Francis. 1993. Current trends in including risk and uncertainty in stock assessment and harvest decisions. *Canadian Journal of Fisheries and Aquatic Sciences* 50:874–880.

[61] Hutchings, J.A., and R.A. Meyers. 1994. What can be learned from the collapse of a renewable resource? Atlantic cod, Gadus morhus, of Newfoundland and Labrador. *Canadian Journal of Fisheries and Aquatic Sciences* 51:2126–2146

[62] National Research Council. 1998. *Improving fish stock assessments.* National Academy Press, Washington, D.C.

[63] National Marine Fisheries Service Ecosystem Principles Advisory Panel. 1998. *Ecosystem-based fishery management. A report to Congress.*

[64] Dayton, P.K. 1998. Reversal of the burden of proof in fisheries management. *Science* 279:821–822.

[65] Fogarty, M.J., A.A. Rosenberg, and M.P. Sissenwine. 1992. Fisheries risk assessment: sources of uncertainty. A case study of Georges Bank haddock. *Environ. Sci. Technol.* 26:440–446.

[66] Ludwig, D., R. Hilborn, and C. Walters. 1993. Uncertainty, resource exploitation, and conservation: lessons from history. *Science* 260:17 and 36.

[67] Jackson, J.B.C., M.X. Kirby, W.H. Berger, K.A. Bjorndal, L.W. Botsford, B.J. Bourque, R.H. Bradbury, R. Cooke, J. Erlandson, J.A. Estes, T.P. Hughes, S. Kidwell, C.B. Lange, H.S. Lenihan, J.M. Pandolfi, C.H. Peterson, R.S. Steneck, M.J. Tegner, and R.R. Warner. 2001. *Science* 293(5530):629–638.

[68] Ibid.

[69] Ibid.

[70] NMFS Ecosystem Principles Advisory Panel. 1998. *Ecosystem-based fishery management. A report to Congress.*

[71] Rose, K.A., J.H. Cowan, Jr., K.O. Winemiller, R.A. Myers, and R. Hilborn 2001. In press. Compensatory density-dependence in fish populations: importance, controversy, understanding, and prognosis. In press, *Fish and Fisheries.*

[72] Goodyear, C.P. 1980. Compensation in fish populations. In *Biological monitoring of fish*, ed. C.H. Hocutt and J.R. Stauffer, pp. 253–280. Lexington Books, Lexington, MA.

limited to cases in which fishery managers have extensive data on a fish population and that specific, numerical compensation values generally are not used in the absence of robust data sets (i.e., a minimum of 15–20 years of data suggested). Moreover, fish stocks for which these robust data sets exist are generally the highly exploited commercial and recreational stocks, [73] and few data exist for most nonharvested species. This memorandum also noted that in the absence of sufficient data various proxies are typically used to avoid quantitatively determining compensation.

In general, commenters asserted that compensation is a well-documented property of population regulation and that, despite 30 years of studies, there was no evidence that power plant impacts alone could reduce a population's compensatory reserve. Other comments specific to the memorandum concurred that, in the absence of sufficient data, compensation may be indirectly assessed using spawner-recruit models and that more than 100 marine and estuarine shellfish populations are currently managed by NMFS and other fisheries commissions using these proxies. One commenter provided information pertaining to new scientific studies of compensatory reserve and large databases containing fisheries information that are currently under development. The commenter asserted that use of meta-analysis—defined as the process of combining and assessing findings from several separate research studies that bear upon a common scientific problem—in conjunction with expanded fishery data sets will greatly increase the number of species for which scientists can estimate compensatory reserves. The commenter maintained that more and better estimates of compensatory reserve will be developed by the end of the decade, and requested that EPA take this trend into consideration. In contrast, another commenter asserted that industry abuses compensation theories and density-dependent models to support their contention that killing millions of fish is not ecologically relevant nor does it equate to an adverse environmental impact. The commenter further contended that there was a lack of scientific support for density-dependent models and provided references from peer-reviewed journals that critique and challenge the scientific underpinnings of these models.

EPA believes that a population's potential compensatory ability is affected by all stressors encountered within the population's natural range, including takes attributed to individual or multiple cooling water intake structures. Thus, even if there is little evidence that cooling water intakes *alone* reduce a population's compensatory reserve, EPA is concerned that the multitude of stressors experienced by a species can potentially adversely affect its ability to recover. [74] Moreover, EPA notes that the opposite effect may occur when populations are low, a phenomenon known as ''depensation.'' Depensation refers to decreases in recruitment as stock size declines. [75] Because depensation can lead to further decreases in the abundance of populations that are already seriously depleted, recovery may not be possible even if stressors are removed. In fact, there is some evidence that depensation may be a factor in some recent fisheries collapses.[76] [77] [78]

Because EPA's mission includes ensuring the sustainability of communities and ecosystems, EPA must comprehensively evaluate all potential threats to resources, and work towards eliminating or reducing identified threats. EPA believes that cooling water intakes do pose a threat to some fishery stocks and through this rule is seeking to minimize that threat. EPA also acknowledges that spawner-recruit proxies are currently used by several agencies to manage fishery stocks. However, as indicated in the record, these proxies are used in the absence of robust data sets. EPA does not believe that simply because an approach is currently in place, it constitutes the best approach. Given the uncertainty associated with managing fish stocks and the degree of stock overutilization despite long-term management efforts (see earlier discussion in Section VI.B.2.c.), EPA is concerned about the relative accuracy of these proxies and their overall ability to protect fishery stocks. EPA does not discourage development of new data sets, population models, or other scientific investigations that will improve estimates of compensatory reserve or other parameters that are needed to understand fishery dynamics. In fact, it is EPA's belief that these developments are ongoing due to the acknowledgment—direct or otherwise—that existing data and models are inadequate. Under the consent decree schedule, EPA is required to promulgate today's rule based on its interpretation of current science and EPA agrees with all comments discussed above that there are some weaknesses and potential inaccuracies inherent to existing estimations of compensation. EPA strongly supports additional research efforts and the development of expanded fisheries data sets that can be used to fill information gaps and improve our understanding of the complex relationships associated with aquatic ecosystems, fishery populations, and anthropogenic activities and, ultimately, assist NMFS and other agencies in wisely managing fishery resources. Because fishery resources are so precious, EPA further contends that compensation studies and models currently under development—including the data on which they are based—should be subject to peer review and other measures that will ensure their scientific rigor.

EPA also evaluated information submitted by the Utility Water Act Group (UWAG) and the Electric Power Research Institute (EPRI), both in their comments and in studies provided to the Agency after the comment period. In summary, these comments and documents asserted that entrainment of very large numbers of eggs, larvae, and early juvenile-stage fish does not necessarily meaningfully affect populations of the entrained species and that substantial percentages of the organisms of many species may survive entrainment. Further, these comments and documents asserted or were intended to support the assertion that impingement survival was high for many species and that impingement often impacts low-value, forage species when they are naturally prone to seasonal die-off regardless of cooling water intake structures. One of these comments asserted that EPRI and some

[73] Myers, R.A., J. Bridson, and N.J. Barrowman. 1995. Summary of worldwide stock and recruitment data. *Canadian Technical Reports in Fisheries and Aquatic Science* 2024:1–327.

[74] Hutchings, J.A. and R.A. Myers. 1994. What can be learned from the collapse of a renewable resource? Atlantic cod, *Gadus morhus*, of New Foundland and Labrador. *Canadian Journal of Fisheries and Aquatic Sciences* 51:2126–2146.

[75] Goodyear, C.P. 1977. Assessing the impact of power plant mortality on the compensatory reserve of fish populations. Pages 186–195 in W. Van Winkle, ed., *Proceedings of the Conference on Assessing the Effects of Power-Plant Induced Mortality on Fish Populations.* Pergamon Press, New York, NY.

[76] Myers, R.A., N.J. Barrowman, J.A. Hutchings, and A.A. Rosenberg. 1995. Populations dynamics of exploited fish stocks at low population levels. *Science* 26:1106–1108.

[77] Hutchings, J.A. and R.A. Myers. 1994. What can be learned from the collapse of a renewable resource? Atlantic cod, *Gadus morhus*, of New Foundland and Labrador. *Canadian Journal of Fisheries and Aquatic Sciences* 51:2126–2146.

[78] Liermann, M. and R. Hilborn. 1997. Depensation in fish stocks: A hierarchic Bayesian meta-analysis. *Can J. Fish. Aquat. Sci.* 54:1976–1985.

of the best fishery scientists in the world have never identified a site where definitive or conclusive aquatic population or community level impacts have occurred from operation of cooling water intake structures as described by EPA in the proposed rule.

In response to comments that entrainment of very large numbers of eggs, larvae, and other life stages of fish do not meaningfully affect populations of entrained species, EPA believes that there is evidence that some fish stocks have been adversely affected by cooling water intakes. For example, Atlantic Coast States have expressed concern over declines in winter flounder populations and have requested that the Atlantic States Marine Fisheries Commission conduct a study of the cumulative effects of cooling water intakes on winter flounder abundance. In addition, NMFS documented in several fishery management plans that cooling water intake structures are one of the threats that may adversely affect fish stocks and their habitats (DCN# 2–024M, 2–024N, and 2–024O). EPA also is concerned that an extensive data set, encompassing 20 or more years of monitoring data, is usually required to adequately assess whether or not populations are being affected by intakes. These long-term data sets are not currently available for many species, and thus it is very difficult to confidently state that entrainment has a negligible impact on *any* fish population. EPA also notes that the potential compensatory reserve of some fishery stocks can be depleted beyond the point of recovery [79] and that the compensatory reserve of many species entrained or impinged by intakes is unknown. For all of these reasons, EPA believes that the potential for entrainment impacts exists, and that additional scientific data are needed to evaluate entrainment impacts on all affected fish and shellfish populations.

In response to assertions that many organisms survive entrainment, EPA maintains that studies show that through-plant mortality rates of young fishes vary depending on numerous factors. [80] Different species have different tolerance to passage through a cooling system, and mortality rates may differ among life stages of the same species. A summary of mortality data from five Hudson River power plants showed that mortality rates could be substantial.[81] The report cited species-specific mortality rates that varied by life stage for bay anchovy (93 to 100 percent), Atlantic tomcod (0 to 64 percent), herrings (57 to 92 percent), white perch (41 to 55 percent), and striped bass (18 to 55 percent). The study further emphasized that the reliability of these estimates was questionable and that various sources of potential bias may have caused the estimated rates to be *lower* than the actual mortality rates. EPRI sponsored a recent review of 36 entrainment survival studies, the majority of which were conducted in the 1970s. [82] [83] The summarized mortality rates described by EPRI were in substantial agreement with patterns reported in the Hudson river summary, namely that anchovies and herrings had the highest mortality rates (greater than 75 percent), and that thermal regimes seemed to be important determining factors.

Similar to entrainment survival, EPA notes that studies show impingement survival is dependent on species characteristics such as and life history stage, swimming ability, etc.[84] Impingement survival is also dependent on the type of technology in place and the operational aspects of the intake. EPA is aware that in some cases, with appropriate technologies in place, impingement survival may be substantial for some species.[85] EPA is also aware that impingement survival studies suggest that impingement survival is low for some species such as small bay anchovy and Atlantic menhaden during summers in Atlantic Coast estuaries.[86] EPA does not believe that loss of such forage species should be viewed as having limited importance simply because they have minimal or no commercial or recreational value. From a more holistic, ecological perspective, forage species can have great importance in their role as prey for higher trophic levels, including many commercially and recreationally important fish species. In today's rule, EPA seeks to minimize impingement losses for *all* affected species.

d. Biological Assessment Approach

Biological assessments and criteria are recognized as important methods for gathering relevant ecological data for addressing attainment of biological integrity and designated aquatic life uses.[87] EPA invited comment on the following discussion and documents that identified potential constraints on using these methods to determine adverse environmental impact from the operation of cooling water intake structures. First, biological assessment and criteria methods are still being developed for large rivers and the Great Lakes, two large waterbody types where many cooling water intake structures are located. Second, although biological assessment and criteria guidance has been published by EPA for small streams and wadeable rivers, lakes and reservoirs, and estuaries and coastal marine waters, many States and authorized Tribes have yet to apply these criteria in large waterbodies where cooling water intake structures will be located. Most work to date by the States to use these methods was applied to small streams and wadeable rivers where relatively few cooling water intake structures are located. In addition, although bioassessments and criteria are valuable for evaluating the biological condition of a waterbody, in complex situations where multiple stressors are present (e.g., point source discharges, non-point source discharges, harvesting, runoff, hydromodifications, habitat loss, cooling water intake structures, etc.), it is not well understood how to identify all the different stressors affecting the biology in a waterbody and how best to apportion the relative contribution to the biological impairment of the stressors from each source within a watershed. Thus, it is the opinion of EPA that the existing guidance for conducting biological assessments (particularly within large river systems and the Great Lakes) and the quantity of biocriteria data compiled at the State/Tribal level are insufficient at this time to apply a biocriteria approach to

[79] Hutchings, J.S. and R.A. Myers. 1994. What can be learned from the collapse of a renewable resource? Atlantic cod, *Gadus morhus,* of New Foundland and Labrador. *Canadian Journal of Fisheries and Aquatic Sciences* 51:2126–2146.

[80] EPRI. 2000. Review of entrainment survival studies: 1970–2000. Report No. 1000757. Prepared by EA Engineering Science & Technology.

[81] Boreman, J., L.W. Barnthouse, D.S. Vaughan, C.P. Goodyear, S.W. Christensen, K.D. Kumar, B.L. Kirk, and W. Van Winkle. 1982. The impact of entrainment and impingement on fish populations in the Hudson River Estuary: volume I, Entrainment impact estimates for six fish populations inhabiting the Hudson River Estuary. Prepared for the U.S. Nuclear Regulatory Commission, Office of Nuclear Regulatory Research by the Oak Ridge National Laboratory. ORNL/NUREG/TM–385/V1.

[82] Electric Power Research Institute. 2000. *Review of entrainment survival studies: 1970–2000.* No 1000757. Prepared by EA Engineering Science & Technology.

[83] Some of the studies summarized in EPRI (2000) are the same ones considered by Boreman *et al.* (1982). See EPRI (2000) for complete citations of 36 original studies.

[84] EPRI. 2000. Technical evaluation of the utility of intake approach velocity as an indicator of potential adverse environmental impact under Clean Water Act section 316(b). Report No. 100731, EPRI, Palo Alto, CA.

[85] Ibid.

[86] Ibid.

[87] Davis, W.S. and T.P. Simon, eds. 1995. *Biological assessment and criteria: tools for water resource planning & decision making.* Lewis Publishers, Boca Raton, FL.

evaluation of cooling water intakes nationally.

EPRI also questioned the applicability of bioassessments for 316(b) analyses. Specifically, EPRI developed a document that examined the suitability of multimetric bioassessment for regulating cooling water intake structures under section 316(b) of the CWA.[88] In its conclusion, EPRI stated that biocriteria are well suited for assessing community-level effects, but are not designed as indices for measuring population-level effects without additional analyses; that assumptions about the structure and function of ecosystems embedded in the biocriteria approach appear to conflict with current understanding of ecosystems as dynamic, nonequilibrium systems structured on multiple time and space scales; and that issues such as significant uncertainty related to identification of reference conditions remain unresolved, particularly for large, open systems such as estuaries and coastal marine waters.

e. Non-Aquatic Environmental Impacts

EPA invited comment in the proposal on whether adverse environmental impact should be defined broadly to consider non-aquatic adverse environmental impacts in addition to aquatic impacts (65 *FR* 49075). EPA also discussed the water quality and non-water quality impacts of cooling towers (both wet and dry) in the proposal (see 65 *FR* 49075 and 65 *FR* 49081). In the NODA, EPA outlined its methodology for estimating marginal increases in air emissions from electric generating facilities due to the adoption of wet or dry cooling towers (66 *FR* 28867).

Some commenters asserted that EPA failed to consider potential adverse environmental impacts associated with evaporative cooling towers. One commenter stated that evaporative cooling towers carry some potential for localized impact apart from their extraction of cooling water, because they may discharge bacterial slimes, fungi, and a variety of organisms which colonize the tower but are not otherwise native to the local ecosystem. The commenter added that such organisms can be suppressed by the use of biocides that may be discharged with the effluent. In addition, the commenter claimed that evaporative towers may concentrate nutrients such as phosphates and, when brackish or marine water is used, discharge salt spray drift. Additionally, one commenter stated that although there is no express statutory support in section 316(b) for limiting consideration to aquatic impacts (see 33 U.S.C. 1326(b)) they believe that the analysis of such impacts can be appropriate. Further, the commenter encouraged EPA to consider non-aquatic impacts which relate to cooling towers. Other commenters stated that Congress' mandate for environmental impact is broader than the entrainment and impingement impacts upon which EPA has focused in the proposed regulation. The commenters urged EPA to consider the following effects of the cooling tower technology: (1) Increased air emission due to the ''energy penalty'' exacted by closed-cycle cooling, or dry cooling; (2) noise; (3) visible plumes that (a) are unaesthetic, and (b) contribute to increased fogging and icing on nearby roadways; and (4) salt drift. The commenters added further that of all the technologies associated with cooling condenser water, once-through cooling is the only technology that is not associated with increased air emissions. According to the comments, the other cooling water technologies either directly emit contaminants into the air and/or indirectly result in an increase of fuel use and air emissions due to the loss of electrical generation capacity by the power used to operate these technologies. The comments stated that, in essence, the proposed regulations pre-determine that air and noise impacts are more acceptable than impacts to aquatic resources and water quality. The comments added that the locations least likely to be able to comply with the requirements, like those in urban areas, are also the most likely to have impaired air quality. One commenter maintained that for recirculated systems, cooling tower blowdown must be stored in evaporation ponds or treated prior to discharge, resulting in potential for groundwater impacts and disturbance of terrestrial habitats. Additional commenters stated that there could be unintended air pollution consequences for manufacturers from the 316(b) rule due to adoption of cooling towers. The forest products industry projects an increase in SO_2, NO_X, PM, and CO_2 emissions due to increased energy demand to run their mills. Other commenters stated that EPA must ensure that new cooling water technologies do not increase fossil fuel use by manufacturers.

Conversely, some commenters stated that the primary environmental concern with intake structures should be those focused on the aquatic environment. They added that while non-aquatic concerns are valid and should be considered secondarily, the main effect of these facilities is to the aquatic communities and the decision-making process should reflect this priority. Further, one commenter recommended that the regulation, (and probably more specifically the guidance), allow States, authorized Tribes, permitting authorities, and facility operators to have sufficient flexibility to consider non-aquatic impacts that may result from activities related to the design, construction, location, and operation of an intake structure and other alternative technologies identified as having a harmful effect on air, lands, and other natural resources when making section 316(b) decisions. One commenter claimed that a large array of environmental laws and regulations already exist to address non-water environmental impacts. Some commenters asserted that the potential for localized impact from wet cooling towers is relatively minor given the substantial improvements in entrainment and impingement and the elimination of thermal impacts associated with wet cooling as compared to once-through cooling.

For the final rule, EPA presented estimates of marginal annual increases in air emissions associated with installing recirculating wet cooling towers in lieu of once-through cooling systems. The Agency compared projected emissions under the rule to projected emissions absent the rule. Because EPA projects that, regardless of the outcome of the rule (that is, absent the regulations) a majority of power plants would have recirculating wet cooling towers and a minority would have once-through or dry cooling systems, the number of in-scope facilities contributing to increased air emissions is small. Regardless, EPA estimates that the following annual air emissions increases will occur as consequence of the rule: 2,560 tons of SO_2, 1,200 tons of NO_X, 485,900 tons of CO_2, and 16 pounds of Hg. These increases represent a change of less than 0.02 percent of annual emissions from power plants in the United States. Air emissions for manufacturing facilities projected within the scope of the rule are projected to not increase. This is due to the fact that EPA projects manufacturers to utilize reuse and recycling of cooling water to meet the flow reduction requirements in lieu of recirculating wet cooling towers. For the other regulatory options analyzed for the final rule, EPA presented annual air

[88] EPRI. 2000. Evaluation of biocriteria as a concept, approach, and tool for assessing impacts of impingement and entrainment under ;§ 316(b) of the Clean Water Act. Report No. TR–114007, EPRI, Palo Alto, CA.

emissions estimates in Chapter 3 of the *Technical Development Document.*

To a large degree, issues brought forth by commenters regarding non-aquatic impacts of cooling towers were highly site-specific. For instance, in the cases where visible plumes from evaporative cooling towers was a significant issue for the public and other stakeholders on the local level, alternative or additional technologies have been adopted in response to stakeholder sentiment. The two-track regulatory framework adopted by EPA in the final rule allows for this local, site-specific decision-making process. In the case where facilities, or public stakeholders, determine that an alternative technology to a traditional flow reducing type (such as recirculating wet cooling towers or cooling ponds) is necessary, the two-track methodology provides the flexibility for an equivalent aquatic environmental impact minimization to occur without producing a non-aquatic impact.

In general, EPA has concluded that at a national level the primary impacts of this rule will be aquatic in nature, and focus on impingement and entrainment affects. Nevertheless, at a local level, it is possible that air quality impacts, non-impingement and entrainment aquatic effects, or energy impacts could be significant and potentially justify a different approach to regulating cooling water intake structures. Moreover, the cost impact of the rule, under certain local conditions, could be wholly disproportionate to costs anticipated by EPA on a national level. EPA believes that it is prudent to make an alternative regulatory mechanism available to the permitting authority to address such situations, and to be used at the permitting authority's discretion. EPA is sensitive to the large resource burden which such flexibility could place on the permitting authority, if this mechanism were abused by permit applicants. Therefore, EPA is placing the burden of demonstration of the need to pursue such alternative regulatory limits entirely on the permit applicant.

In this final rule for new facilities, where EPA is concerned about certainty and speed of permitting, EPA has selected impingement and entrainment as the metric for performance. EPA has considered the non-impingement and entrainment environmental impacts of the new facility rule and has found them to be acceptable on a national level. EPA is currently developing proposed regulations to establish the best technology available for minimizing adverse environmental impact from intake structures associated with existing facilities. The studies EPA has done of non-impingement and entrainment impacts in the case of new facilities would not govern in that context. Accordingly, the standard and procedures EPA develops for assessing adverse environmental impact from intake structures at existing facilities may well be quite different, and nothing in this rulemaking should preclude EPA from coming to the conclusion that a different approach for regulating cooling water intake structures at existing facilities is warranted.

3. Additional Information Indicating that Impingement and Entrainment May Be a Non-Trivial Stress on a Waterbody

In addition to reviewing the merits of a population approach to assessing adverse environmental impact, EPA considered information suggesting that impingement and entrainment, in combination with other factors, may be a nontrivial stress on a waterbody. EPA recognizes that cooling water intake structures are not the only source of human-induced stress on aquatic communities. These stresses include, but are not limited to, nutrient loadings, toxics loadings, low dissolved oxygen content of waters, sediment loadings, stormwater runoff, and habitat loss. While recognizing that a nexus between a particular stressor and adverse environmental impact may be difficult to establish with certainty, the Agency identified methods for evaluating more generally the stresses on aquatic communities from human-induced perturbations other than fishing. Of particular importance is the recognition that stressors that cause or contribute to the loss of aquatic organisms and habitat may incrementally impact the viability of aquatic resources. EPA examined whether waters meet their designated uses, whether fisheries are in stress, and whether waters would have higher water quality or better support their designated uses if EPA established additional requirements for new cooling water intake structures. EPA considered use of this type of information as one approach for evaluating adverse environmental impact.

EPA prepared a memorandum (Dabolt, T. EPA. April 18, 2001, revised July 2001. Memo to file Re: 316(b) analysis-relationship of location to cooling water intake structures to impaired waters) documenting that 99 percent of existing cooling water intake structures at facilities that completed EPA's section 316(b) industry survey are located within two miles of locations within waterbodies identified as impaired and listed by a State as needing development of a total maximum daily load (TMDL) to restore the waterbody to its designated use. All of the leading sources of waterbody impairment—nutrients, siltation, metals, and pathogens—can affect aquatic life. In the 1998 National Water Quality Inventory, inability to support aquatic life uses was one of the most frequently cited water quality concerns.

EPA recognizes, however, that these data do not establish that cooling water intake structures are the cause of adverse environmental impact in any particular case and that there may be other reasons for the presence of impaired waters near cooling water intake structures, such as the frequent location of facilities with cooling water intake structures near other potential sources of impairment (*e.g.,* industrial point sources, urban stormwater). Nonetheless, this analysis suggests that many cooling water intake structures are sited within or adjacent to impaired waters, and that intakes potentially contribute to existing stress on waterbodies and their resident biota.

EPA also summarized information from a number of sources indicating overutilization of about 34 percent of the fishery stocks whose known status is tracked by and under National Oceanic and Atmospheric Administration's (NOAA) purview (54 out of 160 stock groups) and which rely on tidal rivers, estuaries, and oceans for spawning, nursery, or adult habitat. An additional 45 stocks under NOAA purview are of unknown status (about 22 percent of the fisheries managed by NOAA) because of incomplete assessments. In addition, NOAA documents in a number of their fishery management plans that cooling water intake structures, particularly once-through cooling water systems that withdraw large volumes of water, cause adverse environmental impacts due to significant impingement of juveniles and entrainment of eggs and larvae. EPA believes that stress due to overutilization may be relevant to assessing cumulative impacts of multiple stressors, including cooling water intake structures.

C. Location

The proposed rule outlined a framework in which intakes located in certain sections of a waterbody would be subject to varying levels of restrictions. Specifically, intakes located within the broadly defined littoral zone or in especially sensitive waterbodies (estuaries and tidal rivers) would face additional restrictions on intake flows and intake velocity. Intakes located outside these higher priority waters would be subject to decreased levels of regulation. See the proposed rule for a

detailed discussion of the framework set forth. (Section VIII.A.2., pages 49083 to 49085.)

Numerous comments were received on the proposed requirements for location, nearly all of which opposed the proposal. In the most general sense, many commenters agreed with the concept of protecting waters that are more productive. However, most commenters also argued that the proposed approach was scientifically and technically flawed and would be extremely difficult to implement. The comments can be divided into several generic categories: importance of location for an intake, general comments on the use of the littoral zone as a regulatory concept, and specific comments regarding the littoral zone definitions for each waterbody type.

In the NODA, EPA further explored the issue of intake location by soliciting comments on a revised definition of littoral zone and revised requirements for several waterbody types including the Great Lakes, and for waters not designated to support aquatic life use.

Comments on the NODA generally reiterated issues raised in the comments on the proposed rule. Commenters agreed that location is an important factor in assessing the impacts of cooling water intake structure, but that creating a regulatory framework to specifically address locational issues would be extremely difficult.

After reviewing the available data and comments regarding intake location, EPA has elected not to vary requirements for new facilities on the basis of whether a cooling water intake structure is located in one or another broad category of waterbody type or in a broadly defined zone of higher productivity or sensitivity within certain types of waterbody. Instead, EPA has promulgated technology-based performance requirements for new facilities that defines best technology available for minimizing adverse environmental impact in all waterbody types. This prescription for best technology available for minimizing adverse environmental impact recognizes the site-specific nature of biology and other locational factors by allowing the permit applicant in Track I to select and implement certain design and construction technologies after a review of available information on the site. Facilities that choose not to follow the specific technology-based performance requirements in Track I may opt for Track II and, after site-specific study, seek to demonstrate equivalent protection of the aquatic resources in a given waterbody from impingement and entrainment by using alternative technologies or approaches.

While EPA continues to believe that it could have established different requirements based on general information about the productivity of water bodies, EPA decided for the new facility rule that introducing separate requirements for different water bodies was unnecessary in light of the strong record support that the track I requirements are technically available and economically practicable for new facilities and in light of the flexibility provided by Track II where the applicant demonstrates that it can use different technologies to reduce impacts to fish and shellfish to a level comparable to the level that would be achieved if they implemented Track I requirements at their site.

EPA did not vary the performance requirements based on waterbody type because it found problems in defining and implementing a littoral zone approach (as discussed below) and found that reducing impingement mortality and entrainment on fresh water bodies to a comparable level as in estuaries and oceans to be technically feasible and economically practicable.

1. Importance of Intake Location

Several commenters agreed with EPA that location is an important factor in assessing the impact of a cooling water intake structure. One commenter added that location is also critical to the technical feasibility of the facility, because the site characteristics with respect to hydrology, land area available, and other factors can greatly influence the viability of a facility. Other commenters supported the waterbody-specific approach, but in the context that adverse environmental impact is a site-specific or even species-specific phenomenon. Another commenter disagreed with the proposed delineation of waterbody types, stating that adverse impacts can be found at all waterbody types and both in and outside the littoral zone. Therefore, equal protection should be afforded to all waters under the regulation. One commenter opposed the approach involving waterbody types, since defining distinct types is difficult, and noted that a site-specific approach would be more appropriate. Another commenter argued that the effectiveness of intake technologies varies by location, thereby supporting a site-specific approach.

EPA agrees that location is an important factor in addressing cooling water intake structure impacts, and, in Track I, permit applicants must select and implement certain design and construction technologies after considering site-specific conditions. In Track II, permit applicants have complete flexibility to address site-specific conditions, provided they can reduce impacts to fish and shellfish to a level comparable to the level that would be achieved if they implemented Track I requirements at their site.

2. General Comments on the Use of the Littoral Zone Concept

Many commenters made general statements of opposition to the use of the concept of littoral zone as part of the proposed rule, each for a variety of reasons. Most of the comments expressed concern over one or more of the following issues: The proposed definition and approach is too broad and untenable; the conditions used to define the littoral zone can vary greatly on an annual basis; the proposal is poorly supported by the scientific literature; and the proposal is a poor proxy for biological productivity and ignores ecological complexity and site-specific conditions. In general, commenters acknowledged that some areas of a waterbody are more sensitive to cooling water intake structure impacts but disagreed with EPA's approach for defining the concept. For example, the term ''area of high impact,'' proposed in the NODA, represented an improvement over the term ''littoral zone,'' but commenters noted that the proposed term still lacked a clear definition. One commenter further noted that a site-specific approach would allow for a more thorough analysis of a waterbody and account for these sensitive areas. Another commenter argued that the approach was inappropriate, because EPA does not have the authority to establish less restrictive requirements in some waterbodies.

EPA recognizes that most commenters, albeit for a variety of sometimes conflicting reasons, do not support use of a littoral zone or similarly broad concept to specify requirements for best technology available for minimizing adverse environmental impact. EPA instead has adopted a two-track framework in which permit applicants can fully address site-specific factors in proposing what technologies or alternatives they will use to reduce impingement and entrainment to levels readily achievable with use of low-cost, widely used technologies.

3. Specific Comments on the Definition or Applicability of the Littoral Zone

a. Littoral Zone—Oceans

Most commenters opposed the proposed definition and use for oceanic littoral zones. Generally, commenters saw it as too broad, vague, and unsupported by scientific literature, although one commenter did disagree with a reduced level of protection for oceanic waters. Some commenters noted that the entire continental shelf could be interpreted as the littoral zone under the proposed definition. Other commenters disagreed with the usage of salinity as a defining criterion, noting that many environmental factors (e.g., seasonality, tides, weather) can influence the salinity levels and therefore alter the geographic location of the littoral zone. One commenter added that some estuarine waters could possibly be classified as oceanic waters, thus reducing the level of protection required by the regulation. Commenters were also asked to comment on a proposed fixed distance from shore as a definition of the littoral zone. Some commenters did support a fixed distance (from 200 to 500 meters offshore) but most commenters opposed the proposed definition, because of the need to recognize site-specific characteristics, such as biological resources, areas of high productivity, and waterbody size and configuration, at each facility. Many of the same comments opposing the fixed-distance approach are echoed in the general comments about the inadequacy of the littoral zone approach noted above.

For the reasons discussed above, EPA has adopted an alternative regulatory structure and will not in this rule set nationally defined areas within oceans where different requirements apply for best technology available for minimizing adverse environmental impact.

b. Littoral Zone—Freshwater Rivers

Only a few of the comments received addressed freshwater rivers and streams, but those few comments raised concerns over the proposed definition of the littoral zone. One commenter noted that, generally, the flow, turbidity, and seasonality at a site can greatly affect the vegetation and light penetration, thereby affecting the extent of the littoral zone. This commenter also added that riverine intakes are often shoreline intakes and noted that the definition would be difficult to apply to intakes because of hydrologic factors such as meanders and shoreline construction techniques. Another commenter submitted additional data and analysis supporting the concept that freshwater lakes and rivers are less vulnerable to the effects of impingement and entrainment than other types of waterbodies.

Today's final rule adopts a different regulatory framework—a two-track approach—and does not set different requirements for best technology available for minimizing adverse environmental impact for different parts of freshwater rivers. Instead, under Track II, an applicant may conduct site-specific studies and possibly determine that a different cooling water intake structure location within the waterbody would reduce impingement mortality and entrainment to a level of reduction comparable to the level achieved under Track I requirements at a lower cost. If so, the applicant is free to propose an alternative location for its intake in its permit application.

c. Littoral Zone—Lakes and Reservoirs

One commenter noted that site-specific factors must be considered when locating a cooling water intake structure. The commenter argued that it was not necessarily true that intakes located in the littoral zone of lakes or reservoirs impact more species or species having higher economic value compared to intakes sited offshore. The commenter also stated that based on its experience, the dominant species entrained and impinged within lake systems were forage species (e.g., gizzard shad, alewife, smelt) regardless of intake location.

EPA agrees that it is important to consider site-specific factors when identifying the most appropriate location for a cooling water intake structure. As discussed above, under a Track II approach, an applicant may conduct site-specific studies to determine where best to site its intake (inshore or offshore) as long as it can be proven that the chosen location would reduce the level of impingement mortality and entrainment of all stages of fish and shellfish to a level of reduction comparable to the level the facility would achieve under the Track I requirements. However, EPA does not agree that the susceptible life history stages of lake forage species (such as those listed by the commenter) are as likely to be impinged or entrained at an offshore intake as an intake located inshore. Basic life history information for many forage species documents that spawning events and juvenile stages often occur in nearshore lake waters. As an example, young-of-the-year gizzard shad form schools and are usually found close inshore within shallow waters overlying mud bottom (Dames & Moore, 1977). Similarly, although adult alewifes typically inhabit deep, pelagic waters of landlocked lakes, they migrate to harbors and nearshore waters to spawn in spring and early summer.

d. Littoral Zone—Estuaries and Tidal Rivers

Commenters were more divided in their comments on estuaries and tidal rivers. Some commenters generally supported the proposed definition of an estuary and the increased level of protection for these waters. Others noted that the proposed definition greatly oversimplified its ecological function, since not all areas within an estuary are equally productive. Another commenter noted that the proposed rule applied the greatest level of restrictions to the waterbody type with the greatest heterogeneity. Several commenters expressed concern over the use of salinity as a delineation tool, noting the tendency for the 30 ppm gradient to move within the waterbody.

Based on facility size, EPA is setting the same performance-based technology requirements for tidal rivers and estuaries as for all other waterbodies under Track I of the final rule. To the extent that site-specific characteristics of a proposed facility location make the Track I requirements more or less effective at reducing impingement and entrainment, the facility choosing to pursue Track II will have a site-specific goal for evaluating the efficacy of alternative technologies and approaches.

4. Waters Not Designated To Support Aquatic Life Uses

In the NODA, EPA requested comment on the issue of less stringent requirements for facilities located on waterbodies that are not designated to support aquatic life. One commenter supported less stringent requirements than proposed, requesting that facilities located on waters not designated to support aquatic life be exempt from the 316(b) regulations. This commenter also noted that such an exemption would not necessarily be permanent, since States have the authority to reclassify waters to again support aquatic life. Another commenter did not support the proposed approach. A third commenter argued that the CWA does not allow for exemptions from technology-based requirements on the basis of the designated use of the receiving waters. Some commenters submitted specific examples of impaired waterbodies and listed nutrient enrichment as one of the causes of impairment.

Today's final rule does not establish less stringent requirements for waterbodies not designated to support

aquatic life use. However, to the extent that the lack of an aquatic life use would result in Track I requirements achieving limited reductions in impingement and entrainment at a site, a permit applicant willing to conduct site-specific studies under Track II might be able to demonstrate that alternative technologies or approaches would reduce the level of impingement mortality and entrainment to a level of reduction comparable to the level the facility would achieve if it met the Track I requirements at that location. EPA addressed use impairment and the stress that cooling water intake structures may add to impaired waterbodies at VI. B. above.

D. Flow and Volume

Under the proposed rule, EPA proposed limitations on intake flow and volume for new facilities that varied depending on the type of waterbody upon which the facility is to be located. Specifically, intake flows at facilities whose cooling water intake structure withdraws from freshwater lakes and rivers would be limited to the lower of five (5) percent of the source water body mean annual flow or twenty-five (25) percent of the 7Q10. Facilities located on lakes and reservoirs would be limited to intake flows that do not disrupt, alter the natural thermal stratification or turnover pattern (where present) of the source water except in cases where the disruption is determined to be beneficial to the management of fisheries for fish and shellfish by any fishery management agency(ies). Intakes in tidal rivers and estuaries would be limited to no more than one (1) percent of the volume of the water column in the area centered about the opening of the intake, with a diameter defined by the distance of one tidal excursion at the mean low water level. The additional requirement of intake flow commensurate with that of a closed-cycle recirculating cooling water system was proposed for intakes located in either estuaries and tidal rivers or the littoral zone of any waterbody.

EPA requested comment on each proposed limitation by waterbody type, unique situations such as the Great Lakes, and the introduction of more stringent flow requirements for intakes in estuaries, tidal rivers, and littoral zones.

In general, commenters opposed the proposed flow and volume limitations. They argued that EPA did not present a link between intake flows and adverse impact, that the limits are based on questionable grounds, and that EPA lacked the authority to enact such limits, and against specific items in each proposed waterbody limitation.

On the basis of the supporting data presented in the proposed rule and the NODA, Track I and Track II of today's final rule maintain the proposed flow limitations with some changes. EPA believes the record contains ample evidence to support the proposition that reducing flow and capacity reduces impingement and entrainment, one measure of adverse environmental impact, and may reduce stress on higher levels of ecological structure including population and communities. (See, #2–029, 2–013L–R15 and 2–013J). EPA also has determined that a capacity- and location-based limit on withdrawals in certain waterbody types is an achievable requirement that will have little or no impact on the location of cooling water intake structures projected to be built over the next 20 years.

1. Relation of Flow and Capacity to Impact

Several commenters disagreed with EPA's contention that a high intake flow volume necessarily corresponds to higher rates of adverse environmental impact. Commenters pointed to several facilities with relatively high intake volumes that reported no significant loss of aquatic life due to entrainment or impingement. The commenters asserted that, collectively, these cooling systems showed no significant impact on the recovery of impaired aquatic species or on the overall health of the aquatic population. By contrast, some commenters faulted EPA's proportional flow requirements for failing to account for cumulative impacts in waterbodies that have been previously designated as sensitive. In their view, such waters would suffer a disproportionate impact from high intake volumes than would less sensitive waters. Relying heavily on a flow-based requirement would ignore this potentially ecologically harmful effect.

Many commenters also disagreed with the notion that flow-induced entrainment automatically equates to adverse impact. Commenters argued that any intake flow would likely result in some entrainment loss but that this does not substantially harm the biological community of the source water. To support this, commenters provided examples that demonstrate healthy sport and commercial fishing populations in close proximity to large power plants. Citing these examples, commenters argued that EPA's proposed best technology available requirements based on entrainment and impingement are overly restrictive and cost prohibitive. Instead, commenters proposed basing the 316(b) requirements more on the overall health and viability of the surrounding aquatic environment than on rates of entrainment and impingement.

On the other hand, some commenters supported EPA's assertion that volume and impact are directly proportional. One commenter provided statistical evidence from several cooling system studies that demonstrated higher rates of entrainment and impingement when intake volumes were increased.

Several commenters questioned EPA's emphasis on reducing intake flow to minimize impact while ignoring other influential factors, such as life history strategy, distribution throughout the water column, and adaptations to external stresses, among others, that can result in high entrainment and impingement mortality rates. The commenters argued that such factors can often be mitigated by structural design or location modifications without incurring the expense associated with a reduction in the overall volume of water withdrawn. Similarly, other commenters noted that EPA failed to address technologies and design modifications that could achieve the desired effect—reduction in entrainment and impingement losses—while still maintaining a high rate of withdrawal.

EPA believes the record contains ample evidence to support the proposition that reducing flow and capacity reduces impingement and entrainment, one measure of adverse environmental impact, and may reduce stress on higher levels of ecological structure including population and communities. (*See* DCN #2–029 in the record for this rule (compilation of swim speed data), which demonstrates the potential vulnerability of many fish species to impingement. The documents DCN #2–013L–R15 and 2–013J support the proposition that flow is related to entrainment.) The widespread use of capacity-reduction technology at almost all proposed new electric generating facilities and by a substantial number of new manufacturers makes capacity reduction an appropriate component of best technology available for minimizing adverse environmental impact at new facilities. EPA disagrees with commenters that other factors influential to impingement and entrainment have been ignored. Both Track I and Track II of the final rule allow for site-specific evaluations in determining the appropriate technologies to be implemented. For example, the Design and Construction Technology Proposal Plan required in Track I and the Evaluation of Potential

Cooling Water Intake Structure Effects in Track II allow for site specific consideration of factors other than flow to minimize impacts from impingement and entrainment. Cumulative impacts are addressed on a case-by-case basis by each permitting authority.

2. Basis for Flow Proportional Limits

Numerous commenters rejected the justification for the flow requirement proposed by EPA as being too vague and untenable. Specifically, commenters questioned the proposed goal of a ''99 percent level of protection'' for aquatic communities and how it relates to levels of protectiveness in other water quality-based programs. Many commenters believed both ''99 percent'' and ''level of protection'' were vague and called on EPA to provide more explicit definitions in the final rule. Other commenters questioned the gain in overall aquatic health that can be achieved by setting the requirement at such a high level. Several commenters cited other federal programs and publications, such as the *Water Quality Standards Handbook,* in support of their claim that EPA has no precedent on which to base its proposed requirement. Other programs have demonstrated that a lower target protection level is still adequately protective of the viability of the total aquatic environment. Commenters noted that a high standard would increase compliance costs significantly while producing no measurable improvement in the overall health of the source waterbody and called on EPA to better justify its support of the proposed requirement.

While EPA believes this final rule will significantly increase protection for aquatic communities, the Agency has determined that the proportional flow requirements represent limitations on capacity and location that are technically available and economically practicable for the industry as a whole. EPA examined the performance of existing facilities based on data from the section 316(b) industry survey in terms of proportional flow to determine what additional value could be used as a safeguard to protect against impingement and entrainment, especially in smaller waterbodies, where multiple intakes are located on the same waterbody, or in waterbodies where the intake is disproportionately large as compared to the source water body. As discussed in Section V.B.1.c. above, EPA found most existing facilities meet these requirements. EPA expects that new facilities would have even more potential to plan ahead and select locations that meet these requirements. EPA recognizes that some measure of judgment was involved in establishing the specific numeric limits in these requirements and that these requirements are conservative in order to account for multiple intakes affecting a waterbody. In particular, the 1 percent value for estuaries reflects that the area under influence of the intake will move back and forth near the intake and withdrawing 1 percent of the volume of water surrounding the intake twice a day over time would diminish the aquatic life surrounding the intake. The 5 percent value mean annual flow reflects an estimate that this would entrain approximately 5 percent of the river or stream's organisms and a policy judgment that such a degree of entrainment reflects an inappropriately located facility. Nevertheless, because they address important operation situations and appear to be highly achievable for new facilities, EPA believes they are appropriate to this rule.

These requirements are expected to have little or no impact on the location of cooling water intake structures projected to be built over the next 20 years as new facilities have the opportunity to choose sites that meet their specific design and cooling water needs before construction begins.

E. Velocity

1. Design Through-Screen Velocity as a Standard Measure

Under the proposed rule, any intake located in a freshwater or tidal river, stream, estuary, or ocean or within or near the littoral zone of a lake or reservoir would have to meet a maximum intake velocity requirement: a design through-screen intake velocity of 0.5 feet per second (ft/s).

EPA requested comment on the appropriateness of design through-screen velocity as a standard measure with 0.5 ft/s as the intake velocity, and the utility and appropriateness of a nationally based velocity requirement for the 316(b) regulations. Comments addressed these topics, as well as a range of other issues: problems with biofouling, issues better addressed through a site-specific approach, applicability to offshore oil and gas facilities, and applicability to existing facilities.

Generally, industry commenters thought the 0.5 ft/s requirement to be overprotective and not supported by the scientific literature. On the other hand, states and public interest groups commenters agreed with this requirement. Commenters also gave examples of several situations in which the velocity requirement would be inappropriate. Comments on the NODA generally reiterated issues raised in the comments on the proposed rule.

Numerous commenters questioned the proposed intake velocity requirement on several grounds. Many of the comments suggested that the proposed requirement is based on limited scientific data and undocumented or unsupported government policies. Commenters generally cited the age of the data used to support the requirement, the small number of scientific studies upon which the requirement is based, and the unclear origins of existing government policies that advocate using the 0.5 ft/s requirement. Other commenters stated that the requirement is very conservative and still may not prevent adverse environmental impact. A number of commenters pointed to other factors that affect impingement and entrainment, such as light, turbidity, temperature, and fish behavior. Other commenters suggested alternative requirements, including 1.0 ft/s, an allowable range of velocity from 0.5 ft/s to 1.0 ft/s, a species-specific velocity requirement dependent on the species composition of nearby waters, and a case-by-case velocity limit. Several other commenters further noted that a number of existing facilities with intake velocities exceeding 0.5 ft/s have been determined to be in compliance with 316(b) or to have minimal impacts to fish populations. Other commenters questioned the record support for determining the safety factor used in deriving the proposed velocity requirement. Some commenters supported the velocity requirement, with one commenter noting that it is well-established as a protective requirement and is consistent with the levels of protection required under other existing regulations.

Several commenters expressed concern over the use of design through-screen velocity as the proposed requirement. Some pointed out that approach velocity has been the accepted standard for measuring velocity and questioned the lack of justification for proposing a different methodology. One commenter noted that a specific measure of velocity may be better suited for the design of a particular intake (e.g., through-screen velocity for a wedgewire screen and sweeping velocity for an angled screen). Another commenter opposed the use of design through-screen velocity, arguing that it is difficult to measure and does not represent the velocity that fish must detect in order to avoid impingement. Others noted that a through-screen velocity of 0.5 ft/s would, by definition,

require an approach velocity of less than 0.5 ft/s. A commenter also questioned the appropriateness of using through-screen velocity, because intake screens can easily become clogged or fouled, having a dramatic effect on velocity and water flows at and through the screen. Other commenters supported the use of design through-screen velocity, noting that it has long been the industry and regulatory standard for measuring intake velocity. Several commenters suggested methods for measuring approach velocity.

Finally, several commenters drew comparisons with existing velocity requirements used by NMFS Northwest Region. Some of these comments requested that the proposed requirement be fully consistent with the existing NMFS requirements. Others noted that the proposed requirements are actually more stringent than the NMFS requirements when compared using a flow vector analysis, contrary to the Agency's statement that the proposed requirements were less stringent than NMFS requirements.

Given the compilation of supporting data presented in the proposed rule and the NODA, Track I of today's final rule maintains the proposed intake velocity requirement of 0.5 ft/s through-screen velocity. The 0.5 ft/s through-screen requirement is well supported by existing literature on fish swim speeds and will also serve as an appropriately protective measure. EPA believes a requirement that protects almost all fish and life stages is particularly appropriate to provide a margin of safety when, as is common, screens become occluded by debris during the operation of a facility and velocity increases through the portions of a screen that remain open. EPA notes that more than 70 percent of the manufacturing facilities and 60 percent of the electricity generating facilities built in the past 15 years have met this requirement and believes the requirement is an appropriate component of best technology available for minimizing adverse environmental impact at new facilities.

As documented by the data collected for the NODA, EPA believes the 0.5 ft/s requirement is scientifically based, technically sound, protective of aquatic resources, and technically available and economically practicable as demonstrated by the fact that it is frequently achieved at recently built facilities. As discussed below, the requirement is well supported by existing literature on fish swim speeds and will also serve as an appropriate protective measure, since the data suggest that a 0.5 ft/s intake velocity would protect 96 percent of the tested fish. EPA notes that if the permit applicant does not want to meet the specific Track I velocity requirement, the applicant can, under Track II, conduct site-specific studies and seek to demonstrate comparable reduction of impingement mortality and entrainment. This may allow facilities to install cooling water intake structures with greater that 0.5 ft/s velocities if they can demonstrate that they would have the same reduction of impingement and entrainment as Track I standards which include the 0.5 ft/s limitation on velocity. Additionally, past permitting decisions were made using the best judgment at the time of the decision. These permitting decisions should not be interpreted to signify best technology available in future decisions.

The NODA presented further data on fish swim speeds. The velocity of water entering a cooling water intake structure exerts a direct physical force against which fish and other organisms must act to avoid impingement and entrainment. An analysis of swim speed data demonstrates that many fish species are potentially unable to escape the intake flow and avoiding being impinged. EPA received or collected data from EPRI (see W–00–03 316(b) Comments 2.11), from a University of Washington study that supports the current National Marine Fisheries Service velocity requirement for intake structures, and from references included in comments from the Riverkeeper (see Turnpenny, 1988, referenced in W–00–03 316(b) Comments 2.06; document found in DCN #2–028B in the record for this rule). These data were compiled into a graph (Swim Speed Data, DCN #2–029 in the record of this rule). The data suggest that a 0.5 ft/s velocity would protect 96 percent of the tested fish.

In developing the intake velocity requirement, EPA assumed a flat screen with the intake flow directly perpendicular to the face of the screen, because this is a typical arrangement for a cooling water intake structure. However, angled screens, such as those described in the NMFS requirements, are used in some intake designs, and EPA does not wish to discourage any intake designs. Under § 125.84(e), the Director may require additional controls (such as the NMFS requirements) to complement the protection afforded by the velocity requirement. EPA also developed the velocity requirement with a highly protective intake velocity in mind, regardless of the intake configuration. As a result, EPA's requirements may be more stringent than existing requirements required by NMFS or other agencies.

EPA recognizes that approach velocity has been a measurement technique for intake velocity in the past. However, many recently constructed facilities have been designed to meet through-screen intake velocity limitations. Additionally, EPA notes that design through-screen velocity will be simpler to measure and therefore be easier to implement on a national level for both regulators and facilities than approach velocity. New facilities can be designed with consideration given to the through-screen velocity requirement, and designs can be altered accordingly. Intake velocity will also be simpler to measure, as facility engineers can simply calculate the intake velocity on the basis of intake flow and the intake screen area, as opposed to the more complex data gathering process involved in measuring approach velocities near an intake screen. EPA also recognizes that the approach velocity will be less than 0.5 ft/s. The intake velocity requirement is intended to be a highly protective requirement. Regardless of the intake structure design or the presence of sufficient detection or avoidance cues, the intake velocity is low enough to protect of a majority of fish species. For these reasons, the final rule maintains the requirement to measure intake velocity on a design through-screen basis.

2. Appropriateness of a National Velocity Requirement

Numerous comments were received regarding the appropriateness of a national-scale requirement for intake velocity. Many commenters expressed concern that a national requirement would be an unnecessary burden on facilities. Specifically, some commenters noted that a site-specific framework for the 316(b) rule and velocity requirement would be preferable, as it would best account for site-specific details, some of which may affect the rates of impingement and entrainment. Other commenters questioned using a national requirement; given the variability in environmental conditions and fish swim speeds, these commenters said making a national approach is inappropriate to suitably cover the range of organisms found in a given water body. Some commenters noted that the velocity requirement might preclude the future use or implementation of some highly effective technologies. One commenter noted that several studies have suggested little or no correlation between flow and impingement or entrainment; the commenter argued that, therefore, a relationship between

impingement or entrainment and intake velocity does not exist.

As documented by the data collected for the NODA, the 0.5 ft/s requirement is scientifically based, is protective of aquatic resources with a reasonable margin of safety, and is met by many recently built facilities. EPA believes it is an appropriate component of best technology available for minimizing adverse environmental impact at new facilities. Permit applicants who wish to build a facility using higher intake velocities have the option, under Track II, to conduct site-specific studies and seek to demonstrate that their alternative will reduce impingement mortality and entrainment to a level of reduction comparable to the level the facility would achieved if it met the Track I requirements, including the velocity limit of 0.5 ft/s.

While EPA acknowledges that multiple factors may affect impingement and entrainment at a given intake, EPA believes that there is ample evidence contained in the record to support a correlation between velocity and/or flow and impingement and entrainment. As stated in the preamble to the rule, intake velocity is one of the key factors affecting the impingement of fish and other aquatic biota. The velocity of water entering a cooling water intake structure exerts a direct physical force against which fish and other organisms must act to avoid impingement and entrainment. The compilation of swim speed data (DCN #2–029 in the record of the rule) demonstrates that many fish species are potentially unable to escape the intake flow and avoid being impinged. The record also supports the proposition that flow is related to entrainment.[89]

Finally, EPA chose a national requirement in order to provide a consistent standard for facilitating implementation given the technical availability and economic practicability of the requirement.

3. Other Comments Concerning the Velocity Proposal

a. Biofouling at Intakes

Several commenters submitted that an intake velocity of 0.5 ft/s may lead to increased difficulties with biofouling at facility intakes, especially at offshore oil and gas extraction facilities. Another commenter noted that with an increase in biofouling facilities would need to increase treatment efforts. Frequently, these efforts involve adding chemical treatments to water flows and may have subsequent adverse impacts on water quality. Another management strategy noted by a commenter is to maintain sufficiently high intake velocities to preclude colonization by fouling organisms. One commenter also expressed concern over the implications of biofouling at fine mesh screens and the potential for these protective technologies to become quickly fouled. One commenter supported the velocity requirement, noting that commercially available alloys have been shown to be highly effective in repelling biofouling organisms.

EPA recognizes that maintaining sufficiently high intake velocities is one possible solution for minimizing settlement by biofouling organisms. However, further research by the Agency suggests that this is not the most effective technique. Often, intake velocities are designed to be as low as possible to reduce the impingement and entrainment of aquatic organisms. Additionally, the intake systems of many facilities are unprepared to support such high intake velocities and would possibly require modifications in order to maintain such velocities. An analysis of facility survey data at existing facilities suggested that only 33 (3.4 percent) of 978 surveyed facilities have intake velocities of sufficient magnitude (greater than 5 ft/s) to inhibit biofouling. Fortunately, a variety of viable alternative technologies and management strategies for dealing with biofouling are available. Examples of these options include the use of construction materials that inhibit attachment of organisms, mechancial cleaning, and chemical and/or heat treatments. While no one strategy has been shown to be universally applicable, there are certainly affordable and implementable options. Maintaining a high intake velocity has not been shown to be the most effective way to control biofouling, since other methods have been shown to be more effective at a lower cost, especially in the context of new facilities. A facility that has yet to be constructed can integrate biofouling control technologies into its design and minimize the impacts of biofouling on normal operations.

b. Concerns Better Addressed by a Site-Specific Approach

Several commenters raised other concerns about the proposed velocity requirement, pointing to a variety of issues that they argue could be more easily addressed on a site-specific level. Some commenters noted that intakes located on large or fast-moving waterbodies may have difficulty maintaining the proposed intake velocity. For example, an intake located in a river moving at 3.0 ft/s may be unable to maintain a constant 0.5 ft/s intake velocity because of the ambient flow. As for the biota near the intake, the commenters submitted that these organisms have adapted to a higher-velocity environment and do not necessarily require protection under a velocity requirement. Other commenters noted that the direction of flow near an intake can have a substantial effect on the intake velocity and detection by fish. For example, the intake velocity at an intake subject to tidal movements or a longshore current may be affected. Another commenter expressed concern that the intake velocity is meaningful only if measured where the screen is the first component of the cooling water intake structure encountered by an organism, such as with a wedgewire screen. Intake canals, trash racks, and other cooling water intake structure components pose a threat by potentially entrapping fish that are unable to locate an escape route. One commenter noted that experimental technologies, such as strobe lights, sound, or intake velocities greater than 0.5 ft/s (up to 10 ft/s for some technologies) may not be developed because of the restrictions on intakes. One commenter observed that a reduction in intake velocity may also reduce the amount of cooling water taken in by a facility. The commenter observed that reducing the cooling capacity of the cooling system may adversely affect facility safety and efficiency.

For faster-moving waterbodies and in other situations where a permit applicant may wish to use a higher intake velocity, facilities may opt to follow Track II and seek to demonstrate that reductions in impingement mortality and entrainment would be comparable to the level achieved with the Track I requirements. Given the data EPA has seen on the protective nature of the 0.5 ft/s requirement (see DCN #2–028 in the Docket for the rule), EPA does not foresee a significant issue regarding entrapping fish and will continue in Track I to specify design through-screen velocity as the measure for determining compliance with the velocity requirement. EPA also notes that facilities wishing to employ developmental technologies may follow Track II and demonstrate a comparable level of protection.

For new facilities, EPA does not anticipate that cooling system safety for nuclear-fueled facilities will be an issue

[89] The documents DCN# 2–013L–R15 (Goodyear. 1997. Mathematical Methods to Evaluate Entrainment of Aquatic Organisms by Power Plants) and DCN# 2–013J (EPRI. 1999. Catalog of Assessment Methods for Evaluating the Effects of Power Plant Operations on Aquatic Organisms.) in the record of the rule both support this premise.

because any requirements can be addressed through facility design. New facilities have the opportunity to address and mitigate safety and efficiency issues during the design of the facilities. The fact that 79 percent of power generating plants and 46 percent of manufacturing facilities built within the last five years meet the Track I velocity requirement demonstrates that facilities designed in accordance with this requirement can incorporate any necessary features to ensure proper functioning of the cooling system.

F. Dry Cooling

In the proposed rule EPA requested comment on regulatory alternatives based wholly or in part on a zero-intake flow (or nearly zero, extremely low-flow) requirement commensurate with levels achievable through the use of dry cooling systems. See, 65 *FR* 49080–49081. EPA rejected dry cooling as best technology for minimizing adverse environmental impact for the reasons discussed in Section V.C above.

Some commenters, citing several examples, responded that dry cooling systems must be the best technology available for minimizing adverse environmental impact because they reduce intake volume and the killing of aquatic organisms to extremely low levels. These comments claim that dry cooling is an available and demonstrated technology. They focus on several demonstrated cases of dry cooling and discuss its use for a range of fuel sources, ownership categories, climates, and electric generating capacity. The comments claim that dry cooling technology in the United States has been growing rapidly since the early 1980s and represents approximately 27 percent of new capacity since 1985. Additionally, commenters in favor of the dry cooling alternative state, on the basis of recent construction trends, that the best technology available for the New England region is dry cooling systems. The commenters provide examples of 15 steam electric stations currently operating, under construction, or recently approved for construction using dry cooling in New England. These projects range in capacity from 24 MW to 1500 MW, with an average capacity of 480 MW and a total capacity of 7200 MW. Commenters supporting the dry cooling alternative claim that the technology frees the industry user groups from unnecessarily restrictive requirements to site facilities adjacent to or short distances from waterbodies or other sources of cooling water and eliminates discharges (of both thermal pollution and water conditioning chemicals) to these waterbodies. This freedom from water dependency, the comments assert, allows new power plants to locate in close proximity to the end users of electricity, thereby decreasing energy loss due to transmission, and to use alternative sources of water such as treated wastewater effluents, municipal supplies, and groundwater. EPA rejected dry cooling for the reasons discussed at V.C above.

Some commenters asserted that dry cooling systems are not necessary for minimizing adverse environmental impact nor do they qualify as the best technology available. They assert that dry systems are not considered to be a viable, cost-effective design choice unless there are unique circumstances and conditions associated with either the site or the market climate for the project. The comments recommend that adoption of dry cooling systems be left to the permittee's judgment and not be a uniform requirement. The physical space requirements, the commenters assert, severely limit the siting options available to new facilities. They oppose the imposition of dry cooling in southern climates, where, they claim, there is an abundance of high volume surface water available for cooling. Additionally, the commenters claim that dry cooling has not been shown necessary for minimizing adverse environmental impact. They also contest claims made by other commenters on the proposal that dry cooling has been demonstrated for a variety of climates and generating capacities. These commenters counter claims made by other commenters on the proposal that dry cooling is a demonstrated technology for large-size power plants. EPA has rejected dry cooling as best technology available for the reasons discussed at V.C above.

Other commenters discuss dry cooling technologies at manufacturing facilities. The commenters challenge the viability of dry cooling systems in manufacturing facilities that cool process fluids to ambient levels (e.g., below 100 degrees F) or do not condense steam. They claim that the dual use of process and cooling water prevents the application of dry cooling. EPA agrees that dry cooling technologies for manufacturing cooling waters pose engineering feasibility problems. EPA rejects dry cooling as a basis for a national requirement for new manufacturing facilities (as discussed in Section V.C above) but points to several demonstrated cases of dry cooling for cogeneration plants at or adjacent to manufacturing facilities as encouragement for cogenerating plants to consider the technology on a site-specific basis.

The cost of dry cooling systems is discussed in a variety of comments. Generally, all commenters discuss elevated capital and operating and maintenance (O&M) costs in comparison with similar capacity recirculating wet cooling towers. An analysis of modeled new combined-cycle plants in five regions of the United States was submitted with one comment. This analysis estimated that capital and total O&M costs for dry cooling systems exceed those for wet cooling systems by greater than 75 percent, regionally and nationally. Other commenters generically assert that the capital and operating costs of the technology significantly exceed those of recirculating wet cooling towers of comparable capacity. Even commenters in favor of dry cooling as the best technology available acknowledge that the cost of a dry cooling system can be as much as three times that of a comparable wet cooling system. However, these commenters also contest that the cost of the technology is clearly not wholly disproportionate to the environmental benefit gained. These commenters in favor of dry cooling as the best technology available claim that the capital cost and O&M costs of air-cooled structures at combined-cycle electric generating plants represent a small fraction, only 2 to 3 percent (using EPA's proposal cost estimates), of the estimated annual revenues for those facilities. These commenters state that because newer combined-cycle plants need cooling only for the steam portion of their cycle (only about one-third of their total capacity), they can be cooled with a much smaller dry cooling system than a comparably sized, steam-only generating plant. Thus, these commenters claim, the increased cost for dry cooling is considerably smaller than it would have otherwise been for conventional all-steam plants. These commenters add that they believe the costs of installing dry cooling as the best technology available at a fraction of a cent per kilowatt hour, would not be felt or even noticed by consumers. EPA discusses the costs of dry cooling extensively in Chapter 4 of the *Technical Development Document.* EPA agrees with commenters that elevated costs of the technology as compared with other cooling technologies pose a significant implementation problem for new facilities. Specifically, as discussed in Section V.C above, the compliance costs of dry cooling based requirements would result in annualized compliance cost of greater than 4 percent of revenues for all 83 electricity generators,

and of greater than 10% of revenue for 12 of the 83 generators.

The performance of dry cooling systems is addressed in many comments. Some comments point to lower performance than wet cooling systems and greater sensitivity to climatic conditions as being crucial for evaluating the efficacy of the technology. These comments claim that depending on climatic conditions, certain locations in the country will have a higher probability of incurring energy penalties. These commenters cite performance drawbacks to dry cooling systems due to operation at elevated turbine backpressures or reductions in energy production in locations with high daily or seasonal dry-bulb temperatures. One commenter provided results from a modeling exercise simulating energy inefficiency impacts at dry cooling facilities in a variety of climatic conditions. The results from the commenter's analysis showed summer peak performance shortfalls (*i.e.,* peak energy penalties) of greater than 30 percent for dry cooling facilities. Additionally, the commenters estimate that the energy penalty would vary considerably throughout the United States because of climactic conditions. Conversely, some commenters claim that the energy penalty from some dry cooling facilities in some areas is equivalent to that calculated by New York State officials for the Athens Generating Company facility, where they estimated a 1.4 to 1.9 percent reduction in overall plant electrical generating capacity as a consequence of using a dry cooling system versus a hybrid wet'dry system. [90] The commenters add that, in their view, energy conservation measures can more than offset any potential minor loss of efficiency from dry cooling. The commenters claim that the building of modern generating facilities provides significant efficiency gains that dwarf any potential loss due to the cooling system design. These commenters claim that transmission losses exceed the energy penalty associated with the dry cooling system; further, they assert that because dry cooling makes it possible to locate away from major bodies of water and closer to energy users, a facility can be more than compensated for the energy penalty. Finally, the commenters state that a 1 to 2 percent loss for the sake of greater protection of water resources is comparable to other efficiency penalties EPA requires of the electric industry for reductions in NO_X and SO_2 emissions. The performance penalties of dry cooling systems play a significant role in EPA's decision to reject dry cooling as the best technology available. See Section V.C above for further discussion.

Hybrid wet and dry cooling systems are addressed in several comments. One commenter contends that the viability of hybrid systems for large-scale cooling operations (e.g., at a power plant with capacity greater than 500 MW) is uncertain. The commenter identifies site-specific performance advantages of hybrid systems over dry cooling, noting that the most common type of hybrid system is designed to eliminate visible plumes from wet cooling towers. These comments additionally claim that hybrid plume abatement systems are not water-conserving systems and that their costs are greater than wet cooling tower systems. EPA considers hybrid cooling systems not to be adequately demonstrated for power plants of the size projected to be within the scope of the rule. As such, EPA has not adopted the technology as a component of the best technology available requirements of today's rule. However, EPA recognizes that there is distinct potential for the use of hybrid cooling systems, especially in cases where plume abatement is concerned.

Some commenters claim that air emissions from electricity generation would increase because of energy penalties from dry cooling systems. These commenters state that an energy penalty creates a need for replacement power, which must be met by even more new generating capacity resulting in an increased potential for environmental impacts (such as increased air emissions). The comments add further that estimating those emissions would project the costs of power production and the mix of generating capacities (e.g., coal-fired, nuclear) available at the time of anticipated demand. Other commenters take the view that increased air emissions due to dry cooling systems are not a concern. EPA is concerned about the degree to which dry cooling-based requirements would increase air emissions associated with electricity generation. In the cases where performance penalties are high (i.e., in hot climates or during hot climatic periods), the increases in air emissions due to the potential adoption of dry cooling-based requirements are of concern to the Agency. This issue is further discussed in Section V.C in the context of EPA's rejection of dry cooling.

For the final rule EPA concludes that dry cooling systems are not the best technology available for minimizing environmental impact. EPA recognizes that dry cooling systems can achieve significant reductions in the impingement and entrainment of aquatic organisms compared with other cooling systems, especially once-through systems. Additionally, EPA acknowledges that the technology has been demonstrated as a viable cooling alternative for certain power plant applications under certain circumstances. EPA notes, however, that few of the plants constructed with the technology have been built with cooling systems of a size comparable to what would be required at several of the planned coal-fired systems EPA projects within the scope of the rule. The dry cooling technology presents flexibility to power plants, especially those of small size, those locating in arid regions, and those with water scarcity issues, or those wishing to avoid NPDES permitting issues. However, the technology presents several clear disadvantages that prohibit its adoption as a minimum national requirement or as a minimum requirement for subcategories of facilities. Although EPA recognizes that the technology—by using extremely low-level or no cooling water intake—reduces impingement and entrainment of organisms to dramatically low levels, EPA interprets the use of the word ''minimize'' in CWA section 316(b) to give EPA discretion to consider technologies that reduce but do not completely eliminate impingement and entrainment as meeting the requirements of section 316(b) the CWA.

A minimum national requirement based on dry cooling systems would result in annualized compliance cost of greater than 4 percent of revenues for all 83 electricity generators, and of greater than 10% of revenue for 12 of the 83 generators. Because the technology can cause inefficiencies in operation during peak summer periods and in hot climates, adoption as a minimum national requirement would also impose unfair competitive disadvantage for facilities locating in hot climates, more so than a traditional recirculating wet cooling tower or once-through cooling system. For the subcategory of facilities in cool climatic regions of the United States, adoption of a requirement based on dry cooling for these facilities would also impose unfair competitive restrictions. The competitive disadvantages relate primarily to the capital and operating costs of the dry cooling system. Additionally, adoption of requirements based on dry cooling for

[90] State of New York, Department of Environmental conservation. 1999. Initial post hearing brief, Athens Generating Company, L.P. Case no. 97–F–1563.

a subcategory of facilities with a capacity under a particular level or by fuel type would pose similar competitive disadvantages for those facilities. EPA's record demonstrates that dry cooling systems generally cost as much as three times more to install and construct than a comparable wet cooling system. Dry cooling system O&M costs range from less than or comparable to those for wet systems to two or more times higher. In addition, dry systems generally impose an energy penalty as compared with wet cooling systems. EPA estimates the annual average energy penalty to be 3 percent over a recirculating wet cooling tower system.

Further, EPA considers the degree of energy inefficiency associated with dry cooling to be counter to the performance of the best technology available candidate technology. EPA's record shows an annual average energy penalty for dry cooling of approximately 3 percent relative to recirculating wet cooling towers. This energy penalty represents the typical performance of a dry cooling system in northern climates, extended to the rest of the national climates. However, the peak summer performance is expected to decrease significantly in certain hot climates. EPA estimates that, for a newly constructed and designed facility, the peak summer shortfall could exceed the annual penalty by an additional 3 percent. This value could increase significantly as the facility ages; it hinges on regular and thorough maintenance.

EPA concludes that the air emissions increases from power plants due to adoption of a requirement based on dry cooling would be counter to the performance of a best technology available candidate technology. Changes in energy consumption associated with dry cooling would result in changed fuel consumption and therefore could result in greater air emissions from power plants using dry cooling than would occur if the plants used wet cooling. EPA estimates that the average annual air emissions for the power plants in scope of the final rule with a dry cooling alternative for CO, NO_X, SO_2, and Hg emissions would be greater than if the plants used wet cooling. See Section VI.B.2.e. See Chapter 3 in the *Technical Development Document* for more information on EPA's air emissions analysis.

G. Implementation-Baseline Biological Characterization

In the proposed regulations, the Agency proposed that all facilities perform a source water baseline biological characterization to establish an initial baseline for evaluating potential impact from the cooling water intake structure before the start of operation. The study required that information be collected over a 1-year period. This information was needed to determine the kinds, numbers, life stages, and duration of aquatic organisms in the vicinity of the cooling water intake structure. The Director would use the findings of the study to evaluate the efficacy of the location, flow, and velocity requirements and to define the need for design and construction technologies. The regulations would have also required facilities to conduct impingement monitoring over a 24-hour period once per month and entrainment monitoring over a 24-hour period no less than biweekly during the period of peak reproduction and larval abundance. After two years, the permitting agency would be allowed to reduce the frequency of impingement and entrainment monitoring. EPA's July 2000 information collection request estimated costs for the Source Water Baseline Biological Characterization at an average of $32,000. Monitoring was estimated at approximately $38,000 annually for entrainment and $13,000 annually for impingement. The NODA provided updated costs for both the source water baseline characterization and post operational monitoring.

1. Need for the Source Water Baseline Biological Characterization

Numerous commenters from both the States and the industry agreed that the source water baseline biological characterization was reasonable to determine the condition of the aquatic system. Other commenters questioned the need for a 1-year study that would provide information of limited utility because of the variation that natural populations exhibit from year to year. Some commenters were concerned that the baseline year may not be representative of the average characteristics of the organisms and that comparing subsequent monitoring with the baseline may provide erroneous conclusions.

Some commenters expressed their concern that the requirement to perform the baseline biological characterization would delay issuance of an NPDES permit and that the time required to develop the study in cooperation with and with approval from the permitting authority would increase the development time by 3 to 6 months. They estimated that the time to perform the study would be approximately 18 to 21 months. In particular, the electric utility industry stated that the additional time may result in construction delays that would threaten the availability or price structure of electricity in certain areas.

In addition, some commenters stated that there may be no need for a study if highly protective technology such as closed-cycle cooling is proposed to be used by the permittee, especially if the facility is located on a large waterbody.

Some commenters suggested that the studies be required only if alternative requirements were requested and not if the strict technology-based requirements are adopted. One commenter questioned the need for reevaluating the baseline biological characterization for the next permit term.

In response to these comments, EPA has modified the baseline biological characterization requirements in the rule to allow for the use of existing data, both for the initial permit issuance and reissuance. In today's final rule, Track I specifies highly protective technology-based performance requirements and does not require a permit applicant to conduct monitoring prior to submitting an application. The applicant must gather existing information on the site and select design and construction technologies that will minimize impingement and entrainment and maximize impingement survival. Under Track II, the applicant must conduct a considerably more rigorous study if he or she seeks to demonstrate that alternatives to the Track I requirements will reduce the level of impingement mortality and entrainment to a level of reduction comparable to the level the facility would achieve if it met the Track I requirements at a site.

2. Cost of Source Water Baseline Biological Characterization

Numerous commenters stated not only that the proposed sample collection was time consuming but also that the analysis and identification of the samples of aquatic insects and ichthyoplankton were extremely labor intensive. Some commenters suggested that the studies be required only if alternative requirements were requested and not if the strict technology-based requirements were adopted.

Numerous commenters stated that existing qualitative information is already available on aquatic species at many sites located on major waterbodies. At these sites, little additional information would be provided by an additional year of sampling in the vicinity of a proposed cooling water intake structure. These commenters would like the Agency to prepare additional guidance as to when

existing information would be appropriate. Another commenter questioned the acceptability of existing information that is more than 5 years old, because of changes in water quality, species composition, and other variables.

One commenter stated that the study should be tailored to the needs of the site. The commenter stated that some static or controlled environments might require a less rigorous study, while more complex and changing environments might require a more rigorous study to fully characterize the site. Other commenters stated that the requirements in the regulation were ambiguous.

Commenters were concerned that the costs estimated for the proposed rule, at an average of $32,000, were unrealistically low and that a more reasonable estimate might be $100,000. Some commenters stated that the estimate for a proper characterization study would be 10 times the original estimate. One commenter stated that the $32,000 may be low even for a paper study, stating that a simple study with the barest scope of work would cost in excess of $50,000 while impingement and entrainment monitoring would cost approximately $100,000–$150,000 per year.

Some commenters stated that the costs EPA estimated were too low in light of the accuracy that would be needed to determine whether significant adverse environmental impact exists and whether further mitigative measures or technologies must be used and that the characterization will also serve as the benchmark against which future performance is measured. One commenter stated that the accuracy needed would require stratified sampling.

Some commenters stated that the costs presented in the NODA for post-operational monitoring were still too low. They stated that at a minimum multi-species assessments for decisionmaking would cost approximately $50,000.

EPA believes that the post-operational monitoring cost is accurate. This cost was developed to reflect the extent of the monitoring required, which is noticeably less than previous 316(b) monitoring requirements. It is likely that the commenter is referring to these previous monitoring requirements when making comments as to the cost of these efforts. For example, previous studies may have required extensive impingement and entrainment monitoring and detailed taxonomic studies. The post operational monitoring required by this rule is expected to be less burdensome, requiring only monthly surveys for impingement and entrainment and possibly species identification. This level of effort is considerably less than the monitoring conducted under previous section 316(b) studies and is therefore less costly.

3. Impingement and Entrainment Monitoring

Some commenters requested that impingement and entrainment monitoring not be required if the strict technology-based requirements were adopted by a facility. They thought that installing the technology should be adequate to show compliance and to demonstrate that the objectives of section 316(b) had been met. Other commenters suggested that postoperational monitoring be implemented on a site-by-site basis where there is evidence that unanticipated potential impacts could occur or where habitat restoration has restored aquatic populations.

EPA disagrees with commenters who advocate no impingement and entrainment monitoring during the permit for permittees who opt to meet the Track I requirements. The Track I requirements for design through-screen velocity and for selecting and installing design and construction technologies that minimize impingement mortality and entrainment require the permittee to install and operate technologies that require periodic maintenance and operation in a prescribed manner. Periodic monitoring is appropriate. The permit director also must determine for each permit renewal whether additional design and construction technologies are necessary, and impingement and entrainment monitoring will provide information needed for this determination. See 125.89(a)(2).

H. Cost

1. Consideration of Facility Level Costs

EPA received comments on the proposal regarding its facility level cost estimates for the proposed requirements and a number of the regulatory alternatives. The issues addressed by commenters covered a range of topics, which EPA summarizes below.

Some commenters claim that EPA has not considered or addressed all environmental costs and impacts of the regulatory alternatives. The commenters state that EPA has not considered the operating efficiency losses of wet and dry cooling tower systems. They claim that both auxiliary power requirements and performance penalties may result in reductions in capacity and in the quantity of energy to end-users. The commenters state that replacing this power from other higher-cost sources will result in social costs for which EPA has not accounted. As a result of performance penalties, according to the commenters, the quantity of fuel required to generate the same quantity of energy increases. They add that recirculating cooling towers may result in the following additional environmental impacts, for which EPA has not accounted: visibility impacts from recirculating cooling towers, local climate change from wet cooling tower plumes, wildlife losses (e.g., birds colliding with towers), fish losses due to loss of heated aquatic plumes to over-wintering habitats, increased air emissions from sources replacing lost power, and increased impediments to waterway navigation due to icing in northern regions.

EPA initially responded by providing information in the NODA regarding this subject and outlined its intent to account for some additional costs in the final rule (66 *FR* 28866 and 28867). The cost estimates for the final rule include consideration of performance penalties and other environmental issues highlighted by the commenters. The final rule accounts for the ''energy penalty'' for facilities that are projected to install recirculating wet cooling tower systems in lieu of once-through cooling systems. EPA estimated marginal performance penalties, the costs to replace the lost power due to these penalties, and the increased air emissions of the penalties. Additionally, visibility impacts from cooling towers, local climate change from wet cooling tower plumes, wildlife losses (*e.g.,* birds colliding with towers), fish losses due to loss of heated aquatic plumes to support over-wintering habitats, and increased impediments to waterway navigation due to icing in northern regions are considered local impacts that can be addressed through the use of Track II or, in some cases, through design modifications of the recirculating wet cooling tower. EPA has provided costs for plume abatement (2 percent of the number of cooling towers) to address cooling tower emissions and considers the other impacts to be negligible and best addressed on a site-specific basis.

Some commenters criticize EPA's approach to estimating capital and operating costs of recirculating wet cooling towers. The commenters claim that EPA has significantly underestimated the costs of a recirculating wet cooling tower by considering only the cost of the cooling tower without the additional cost of other necessary cooling system

equipment such as wiring, foundations, noise attenuation treatment, the cost of construction and other equipment. They claim also that EPA's estimates understate makeup water costs for wet cooling towers. The commenters add that EPA's cost multipliers for recirculating wet cooling towers are questionable and not consistent with a number of engineering texts. With respect to O&M costs, they question EPA's estimates for economies of scale. For dry cooling towers, the commenters object to EPA's methodology of making a direct cost comparison between dry cooling systems and wet cooling systems. They claim that EPA's approach for estimating capital and O&M costs for dry cooling towers is flawed because it relies on cooling water flow as the cost basis. In addition, they state that EPA does not provide cost equations or curves for dry cooling systems. One commenter claims that winterization costs of dry cooling systems were not considered by EPA and that EPA therefore has underestimated the system's costs.

EPA fully documented the bases for recirculating wet cooling tower cost estimates in the NODA (66 *FR* 22866 and 22867). EPA disagrees with many of the comments regarding flaws in estimating capital and operating costs for cooling towers. The *Technical Development Document* and comment response document discuss EPA's costing estimates and consideration of the variety of issues asserted by commenters, such as documentation of equipment costs, foundations, noise attenuation, and the cost of construction. EPA has also considered the comments regarding makeup water costs. The estimates of costs for this rule reflect a realistic and accurate basis for makeup water usage in wet cooling towers. These issues are discussed further in Chapter 2 of the *Technical Development Document.* With respect to EPA's estimates of O&M economies of scale, EPA revised its estimates based on comments received and further analysis. EPA conducted a thorough review of its data and the public comments. Although the comments did not persuasively describe errors in EPA's economies of scale estimates, they did prompt EPA to reconsider the concept. EPA's further research revealed that there are economies of scale associated with certain components of O&M, but that use of economies of scale for total O&M costs would not be appropriate. As such, EPA's estimates for operation and maintenance costs for wet cooling towers have been refined to reflect no economies of scale. See Chapter 2 of the *Technical Development Document* for further discussion.

In the NODA, EPA included further documentation to support its estimates of the costs of dry cooling systems (both for capital and O&M components). Despite the comments received expressing concern over the methodology employed by EPA to estimate the costs, EPA continues to view its empirical models as robust, accurate, and well suited for the purposes of the final rule. EPA acknowledges that basing cost curves for dry cooling systems on cooling flow is unconventional. However, the model is based on empirical data and accurately estimates the costs of dry cooling systems. Regarding the subject of winterization, EPA's costs inherently include this technological aspect as it is an incorporated design feature in modern dry cooling systems upon which the empirical models are correlated. See Chapter 4 of the *Technical Development Document* for further information regarding EPA's costing methodology for dry cooling.

One commenter questions EPA's estimates regarding the ''design approach value'' used in plant cooling systems. The commenter recommends that EPA adopt an approach value of 8°F instead of 10°F. The commenter claims that EPA has understated the size of the cooling towers with its approach value estimate. EPA provided significant documentation in the NODA regarding its estimates of cooling system design approach values. Specifically, data demonstrate that a 10 degree design approach for a wet cooling tower is acceptable industry practice. Chapter 3 of the *Technical Development Document* discusses this subject further and presents EPA's supporting data.

Comments from manufacturers express concern over potential energy losses due to abandoning the use of waste heat for process water heating. They expressed concern that the proposed rule would discourage the practice of process and cooling water reuse. The commenters assert that if these potential energy loss costs were added to the other costs of the proposed rule, that the total cost could be substantially higher, possibly by several million dollars. Thus, the commenters state, the proposed rule could pose a significant and perhaps insurmountable hurdle for construction of new manufacturing facilities. EPA considered these comments and is adopting a definition of cooling water for the final rule (see § 125.83) that addresses these concerns. At § 125.86(b)(1)(ii), EPA also specifies that the amount of water withdrawn for cooling purposes that is reused or recycled in subsequent industrial processes is equivalent to closed-cycle recirculating cooling water for the purposes of meeting the Track I capacity-reduction, requirements at § 125.84(b)(1). However, the amount of cooling water that is not reused or recycled must be minimized. Therefore, the commenters' concerns that costs could be substantially higher, possibly by several million dollars have been addressed in the final rule.

Further, some commenters claim that EPA has not considered the costs of a sufficient number of regulatory alternatives or alternative technologies. EPA included, in Section VIII of this preamble and the *Economic Analysis* (Chapter 10), cost information on the range of regulatory alternatives considered for the final rule.

One commenter on the NODA described the costs associated with potential delays in permit approvals. The commenter stated that should permitting delays extend the construction period, the associated costs would accumulate at a monthly rate associated with the finance costs associated with down-payments on equipment, the lost income from sales of electricity, and the cost of purchasing replacement power. For regulatory alternatives that have projected permitting delay, EPA has incorporated the commenter's suggestion to the extent possible. For the final rule, EPA is basing the regulatory option on a two-track compliance option that, under the ''fast track,'' has no associated delay in permitting. In addition, EPA has not accounted for cost savings of the rule over the current, resource intensive, case-by-case regulatory approach. In that sense, the final rule overestimates compliance costs.

Another commenter to the NODA provided a case-study example for converting the Indian Point Units 2 and 3 to closed-cycle cooling water systems or dry cooling systems. The results show a small cost impact for closed-cycle cooling water systems and a modest cost impact for dry cooling, according to the commenter. In terms of the cost for producing power, the incremental cost for the installation and use of a closed-cycle cooling water system, according to the commenter's analysis is 0.01 to 0.03 cents per kWh. The commenter's analysis shows incremental costs for the installation and use of a hybrid cooling system between 0.14 and 0.19 cents per kWh and 0.21 to 0.27 cents per kWh for dry cooling. EPA evaluated the case-study analysis presented by the commenter for this retrofit situation and finds the costs

to be relatively applicable (as the costing analysis was based on EPA's proposal cost estimates, EPA notes that some costing methodology revisions are not reflected in the commenter's analysis). EPA disagrees with several cost-related estimates made in the commenter's analysis, and therefore determines that the cost impacts of dry cooling technologies on the price of electricity is somewhat understated. See response to comment document for further discussion of this case-study analysis and EPA's technical review of the study.

2. Need For More Complete Assessment

A number of industry respondents criticized the economic analysis supporting the rule arguing that it has underestimated the cost of the proposal. Several comments noted that the technology cost, along with the baseline biological characterization, has been underestimated. A few comments asserted that EPA has not considered additional alternatives in selecting the preferred option to comply with requirements of the Executive Order 12866. Industry commenters noted that EPA has not selected the best technology available on a cost-benefit basis. Commenters also noted that the environmental cost of the technologies has not been reflected in the *Economic Analysis.* EPA recognizes that it selected best technology available for minimizing adverse environmental impact on the basis of what it determined to be an economically practicable cost for the industry as a whole. EPA did this by considering the cost of the rule as compared with the revenue of a facility, as well as the cost compared to the overall construction costs for a new facility. This approach is analogous to the economic achievability analyses it conducts for other technology-based rules under sections 301 and 306 of the CWA which use very similar language to section 316(b) and to which section 316(b) refers, and is consistent with the legislative history of section 316(b) of the CWA. At the same time, the record does contain analysis of the costs for a number of the regulatory alternatives considered under the rule.

After reviewing these comments, EPA has revised the *Economic Analysis.* As discussed in the NODA, EPA has gathered additional cost information to verify its cost estimates. It has collected additional information on benefit or the efficacy of the technologies used in the costing exercise. EPA has used more recent forecasts to estimate the number of electric generation facilities. The energy penalty associated with certain technology options, which was not included in the economic analysis for the proposal, has been included in the final economic analysis. EPA considered the costs for a number of alternatives to the requirements in today's final rule.

3. Accuracy of the Estimates

A number of commenters questioned the accuracy of the cost estimates. One commenter (Electric Power Supply Association) stated that EPA's estimates of the cost of the rule are based on several critical and arguable assumptions: (1) The rate of new facility development in the coming years, (2) the proportion of new facilities that would employ cooling water intake structures, (3) the costs of adopting one technology versus another, and (4) the cost of scientific and engineering studies. The combined effect of these assumptions, it is claimed, is that EPA underestimated the cost of the rule by as much as one-hundred-fold. Another commenter claimed that the cost of the rule would be more than five times higher than the EPA's estimates. The Utility Water Act Group (UWAG) estimated the cost of installing a cooling tower alone at $6,366.7 million for recirculating wet cooling towers and $11,245.3 million for dry cooling, assuming 100 percent of the combined-cycle facilities would be required to install towers.

EPA considers these estimates to be unreasonable. After careful review of comments received and additional analyses, EPA estimates the annualized compliance cost of the final rule to be $47.7 million. This cost estimate includes a revised forecast for new electric generation capacity, a revised technology baseline for regulated facilities, a revised estimate of the number of regulated manufacturing facilities, and inclusion of costs for a comprehensive demonstration study in Track II. The example costs presented by UWAG were, as described by the commenter, not directly comparable to EPA's cost estimates. The commenter included a significant equipment cost in its analysis—that of the steam condenser—that clearly is not applicable to the incremental costs of this rule, as all new facilities would install a steam condenser regardless of this rule. In addition, several estimates for design variables differ from those used by EPA and significantly bias the capital and operation and maintenance costs upward. EPA analyzes and discusses the UWAG example for costs in the response to comment document.

4. Energy Supply

Some industry respondents, including the Utility Water Act Group, argued that the section 316(b) proposal would be a significant threat to the national energy supply, would prohibit location of new power plants in most places, and would serve as a barrier to entry in the electric generation market. EPA disagrees with these assertions based on the siting impact analysis discussed at Section V.B.2., the relatively low cost of the rule as a proportion of revenues (as discussed in Section VIII), and the energy impact analysis described in Section X.J.

Some of the commenters stated or implied that the cost of the rule would have a significant impact on meeting growth in energy demand. EPA disagrees with this assertion because the compliance cost of the final rule is an insignificant component of not only new facility revenue but also the construction cost of a new plant. Thus, the cost of the rule is too small to affect the electric generation market. The cost of the final rule is so low primarily because 93 percent of the projected new in-scope combined-cycle facilities, which are responsible for most of the new electric generation capacity, have already planned to install recirculating wet cooling towers in the baseline. Therefore, they will incur, in addition to permit application cost, only a cost associated with selecting and implementing a design and construction technology such as a wedgewire screen or a fish return system on a traveling screen. In addition, estimates show that most new in-scope coal facilities also plan to install cooling towers independently of this rule. Thus, the rule requirements will not have any significant effect on the energy supply. Had EPA chosen dry cooling technology as the best technology available for minimizing adverse environmental impact, the energy impact would have been significant (i.e., upwards of 0.51 percent reduction (1,904 MW) of the projected new generating capacity).

Commenters asserted that the requirements of the rule could adversely affect the reliability of the electric power system, potentially increasing the risk of brownouts or blackouts or a curtailment of load provided to a particular user. EPA disagrees with this assertion. While Track I requirements (for facilities with intake flows equal to or greater than10 MGD) to reduce capacity commensurate with the use of a closed-cycle, recirculating cooling system and to select and install design and construction technologies would result in an additional use of electric

power at a power plant not already planning to use these technologies, the magnitude of the electric use compared with total electric supply at the national level is negligible (approximately 0.03 percent (100 MW) of projected new capacity). Only four coal-fired and five combined-cycle plants are projected to install recirculating wet cooling towers because of the rule. Moreover, the magnitude of electricity required in the operation of design and construction technologies, such as a fish return system, is very small. Finally, future facilities are not necessarily required to install cooling towers; under Track II they have an option to conduct site-specific studies and seek to demonstrate that other technologies will reduce impacts to fish and shellfish to a level comparable to the level that would be achieved at their site with the Track I requirements for intake capacity and velocity. Thus, the efficiency issue associated with the recirculating wet cooling towers, raised in some comments, overemphasizes the effect on the power supply at the national level. Similarly, EPA does not believe that other requirements of the rule, such as the velocity limit and proportional flow requirements, will adversely affect efficiency at power plants. The Track I velocity requirements of the rule can be met by design changes including enlarging the opening of the cooling water intake structure and screens without reducing the flow and hence without influencing the cooling efficiency. The proportional flow limits in the rule would also be largely met by power plants without any discernible impact on their efficiency or net energy supply. As discussed in section V.B.1.c. above, EPA found that most existing facilities meet these requirements. The proportional limitation can be met during design by siting on an alternative waterbody or by choosing alternative technologies, for example. Additionally, see Section V.B.1. for a discussion of proportional flow limits.

Commenters expressed concern that the regulatory requirements would result in delays in the construction of the new power plants, thus affecting the power supply and electricity prices. However, under Track I in the final rule, facilities can build a power plant without any required pre-permit monitoring.

Some industry commenters asserted that the requirements of the rule could be a hindrance to cogeneration. EPA disagrees with this conclusion. Contrary to the assertion, Track I in the final rule provides incentives for cogeneration because it considers reuse of cooling water as process water and vice versa as equivalent to recirculation. Thus, a cogeneration facility can reuse cooling water as process water or vice versa and eliminate the need to install a recirculating wet cooling tower to save costs or reduce the size of any tower needed to meet the Track I intake capacity requirement.

5. Forecast for New Utility and Nonutility Electric Generators

Most comments on the forecast of new utility and nonutility electric generators claimed that EPA underestimated the number of new generators in scope of the proposed section 316(b) new facility rule. Commenters cited several reasons for the alleged underestimate: (1) The use of an incomplete, outdated, or biased database as the basis of the estimate; (2) an underestimation of the number of facilities that will operate a CWIS; (3) an underestimation of the size of new facilities; and (4) the use of new capacity forecasts that are based on conservative assumptions regarding anticipated growth in demand for electricity. Two commenters claimed that the underestimation may be five-fold. Commenters also suggested that EPA underestimated the intake flow of regulated (in scope) facilities and the number of new generators that will use a once-through cooling system. One commenter claimed that the proposed section 316(b) new facility rule would cause additional delays in bringing new electricity supply on line.

EPA used the most current and complete data available at the time to develop the projected number of new electric generators. To address the above comments, EPA updated and expanded its research as new data have become available. In support of the final section 316(b) new facility rule, EPA used the February 2001 version of the NEWGen database. Compared to the January 2000 NEWGen database used for proposal, the newer version contains more than twice the number of new projects (941 compared to 466). EPA researched more than three times as many greenfield combined-cycle facilities (320 compared to 94) and obtained cooling water source information on almost four times the number of facilities (199 compared to 56). While EPA recognizes the fast pace of changes in the electricity generation industry, EPA believes that the substantial increase in the number of greenfield electric generators analyzed will address concerns commenters had voiced. In addition, the much larger number of facilities identified as being in scope of the final section 316(b) new facility rule (57 compared to seven) will provide a more robust and representative basis for estimating the characteristics (including size and cooling system type) and costs of new greenfield generators. Finally, EPA is using the Department of Energy's (DOE) updated Annual Energy Outlook 2001 as the basis for its total new capacity forecast. The 2001 Outlook is based on higher economic growth (in the reference case, 3.0 percent) and electricity demand (in the reference case, 1.8 percent) compared to the Annual Energy Outlook 2000 (2.2 percent and 1.4 percent, respectively). It should be noted that, for both the proposed and the final section 316(b) new facility rule, EPA's projection of new electric generators is based on forecasts made by the DOE's Energy Information Administration (EIA), not forecasts made by EPA.

6. Forecast for New Manufacturers

EPA received few comments on the number of new manufacturers estimated for the proposed rule. One main concern was that the proposed regulations could adversely impact offshore and coastal oil and gas drilling operations. At proposal, EPA had not considered or projected impacts on this industrial category. Among other concerns, these commenters stated that: (1) offshore and coastal oil and gas drilling facilities have much more limited technology options for addressing any adverse environmental impact of cooling water intake than land-based facilities; (2) under current regulations (40 CFR 435.11), existing mobile oil and gas extraction facilities are considered new sources when they operate on new development wells and could be required to perform costly retrofits in order to comply with the 0.5 fps velocity requirement if they become subject to the proposed requirements for cooling water intake structures at new facilities; and (3) higher cooling water intake velocities are necessary in marine waters to control biofouling of cooling water intake structures.

EPA also received comments suggesting that certain industry segments should be exempted from the final section 316(b) new facility rule. One commenter claimed that EPA intended to exclude the wood products segment of the forest products industry from the proposed section 316(b) new facility rule because the proposal analysis did not explicitly analyze this segment. This commenter suggested this segment should be exempted because facilities generally use little water. Another commenter claimed that EPA has overestimated the number of new greenfield chemical facilities. This commenter stated that the actual number of new chemical facilities is

very low and that therefore, according to OMB guidelines, regulation of that industry segment is not justified.

In response to these industry comments, EPA will propose and take final action on regulations for new offshore and coastal oil and gas facilities, as defined at 40 CFR 435.10 and 40 CFR 435.40, in the Phase III section 316(b) rule. EPA is deferring regulation of these facilities due to the unique engineering, cost, and economic issues associated with offshore and coastal drilling rigs, ships, and platforms. EPA will not categorically exempt new facilities in those land-based industry segments from the final section 316(b) new facility rule for any of the reasons suggested by commenters. EPA analyzed those industries that are most likely to experience adverse industry-level economic effects, based on their large-volume cooling water use. Any facility that meets the in-scope requirements set forth in § 125.81 will have to comply with the rule, irrespective of the number of in scope facilities in that segment, the industry's general cooling water characteristics, or whether the industry segment was explicitly analyzed in the proposal analysis. Should facilities in these other industrial categories face compliance costs wholly disproportionate to those EPA considered and found to be economically practicable in today's economic analysis, they can seek alternative requirements in accordance with the provisions at § 125.85.

I. Benefits

1. Cooling Water Intake Structure Impact Analysis Component of the Benefits Analysis for the Proposed Section 316(b) New Sources Rule

Comments related to EPA's cooling water intake structure impact analysis in Chapter 11 of the new sources EEA were received from two industry commenters. The comments focused on four main topics: (1) Potential population-level consequences of impingement and entrainment, (2) potential compensatory responses of fish populations to mortality of early life stages, (3) potential impingement and entrainment survival, and (4) species and habitats that may be particularly sensitive to cooling water intake structure impacts.

Both commenters argued that EPA should have evaluated the impingement and entrainment numbers presented in Chapter 11 of the EEA in relation to the total population of affected species, and one commenter commissioned a fisheries scientist to conduct such an analysis. EPA believes that a population-level analysis of the data presented in Chapter 11 is inappropriate for several reasons. First, as stated by EPA in its presentation of the data in Chapter 11, the purpose of the data compilation was to provide information on the relative magnitude of impingement and entrainment, not to evaluate potential secondary effects on the affected populations. Thus, EPA did not attempt to assemble the other types of data that the commenter noted would be required to evaluate potential effects of these losses on the populations of affected species. Such data include survival rates of early life stages, growth rates, reproductive rates, population size at the time of impingement and entrainment, and potential carrying capacity of the population in the surrounding waterbody. EPA notes that in most cases the studies that EPA examined did not provide such data.

EPA also notes that the data uncertainties and potential biases associated with the impingement and entrainment data presented in Chapter 11 of the *Economic Analysis* (discussed by EPA in Section 11.2) should be taken into account in any analysis of the data, including evaluation of potential population-level effects. As EPA noted in Chapter 11, there is insufficient information in many of the source documents to determine how impingement and entrainment estimates may have been influenced by choices of which species to study, differences in collection and analytical methods among studies or across years, or changes in a facility over time. EPA is concerned that the consequences of such data uncertainties and biases are even greater for population-level analyses than they are for an analysis of individuals. As EPA noted, the data are not a statistical sample; therefore, ''the data should be viewed only as general indicators of the potential range of impingement and entrainment losses.'' As one of the commenters acknowledges, ''EPA's estimates were used primarily to understand the relative proportion of different species impinged and entrained.''

Both commenters argued that analyses involving long-term predictions of fish populations must include estimates of potential density-dependence (compensation). Again, EPA wishes to emphasize that the data presented in Chapter 11 were not intended for a population-level analysis and are not suitable for such an evaluation. Thus, the argument that compensation must be considered is irrelevant in the context of EPA's EEA.

One of commenters argued that the annual impingement and entrainment rates summarized by EPA do not equate to harm or losses of organisms, because many organisms survive impingement and entrainment. While some organisms may survive impingement and entrainment, the reliability of estimated entrainment mortality rates has been questioned because of various measurement uncertainties and sources of potential bias. [91] Even if the results of existing studies are accepted, the data indicate that under normal operating conditions entrainment mortality can be quite high for many species. Depending on temperature conditions within the intake and the life stage involved, studies of Hudson River species found that entrainment mortality ranged from 93 to 100 percent for bay anchovy, 0 to 64 percent for Atlantic tomcod, 57 to 92 percent for herrings, 41 to 55 percent for white perch, and 18 to 55 percent for striped bass. [92] A recent industry-sponsored review of 36 entrainment survival studies found that anchovies and herrings have the highest entrainment mortality, generally in excess of 75 percent. [93]

The two commenters disagreed with EPA's conclusion that the littoral zone is a more sensitive area. EPA is no longer including consideration of the littoral zone in its final rule. See discussion in Section VI.C.

One commenter objected that EPA did not provide the original worksheets used by EPA to compile the impingement and entrainment data provided in Chapter 11 of the EEA, arguing that this would have facilitated an independent analysis by making it easier to ''quickly identify the studies used.'' However, EPA notes that all data sources are provided in footnotes to the tables and full citations are provided in the references section at the end of Chapter 11. The methods used to compile and summarize these data are

[91] Boreman, J., L.W. Barnthouse, D.S. Vaughan, C.P. Goodyear, S.W. Christensen, K.D. Kumar, B.L. Kirk, and W. Van Winkle. 1982. The Impact of Entrainment and Impingement on Fish Populations in the Hudson River Estuary: Volume I, Entrainment Impact Estimates for Six Fish Populations Inhabiting the Hudson River Estuary. Prepared for the U.S. Nuclear Regulatory Commission, Office of Nuclear Regulatory Research by the Oak Ridge National Laboratory. ORNL/NUREG/TM–385/VI.

[92] Boreman, J., L.W. Barnthouse, D.S. Vaughan, C.P. Goodyear, S.W. Christensen, K.D. Kumar, B.L. Kirk, and W. Van Winkle. 1982. the Impact of Entrainment and Impingement on Fish Populations in the Hudson River Estuary: Volume I, Entrainment Impact Estimates for Six Fish Populations Inhabiting the Hudson River Estuary. Prepared for the U.S. Nuclear Regulatory Commission, Office of Nuclear Regulatory Research by the Oak Ridge National Laboratory. ORNL/NUREG/TM–385/VI.

[93] Electric Power Research Institute. Review of Entrainment Survival Studies: 1970–2000. Prepared by EA Engineering Science & Technology. December 2000.

provided in Section 11.2 of the chapter, along with a discussion of data uncertainties and potential biases.

Another technical issue raised by this commenter concerned the waterbody classification of two of the facilities in EPA's impingement and entrainment tables. For the waterbody classifications, EPA relied on the industry's 1995 Utility Data Institute database because results from EPA's section 316(b) industry survey were not yet available. This database indicated ''river'' for the waterbody type on which the intakes of Hudson River facilities are located. EPA agrees with the commenter that this is misleading, since the portion of the Hudson River where the intakes are located is a tidal river. For analysis supporting today's final rule, facility categorization for all facilities is based on the plant's response to the question on waterbody type in the Agency's section 316(b) industry survey administered for the existing facility rule. EPA has revised its data tables to place data from studies on Hudson River facilities under the ''estuary and tidal river'' classification. Similarly, EPA agrees with the commenter that although the intake of the Monroe plant is on the Raisin River, the facility is more appropriately classified as a Great Lakes facility because of the fish species involved. EPA has therefore revised its tables so that impingement and entrainment data for this facility are now included with data for the Great Lakes. However, as noted above, the final rule does not distinguish among waterbody types, so such classifications do not have a direct effect on the final regulations.

2. Responses to Comments on the Economic Valuation Components of the Benefits Analysis for the Proposed Section 316(b) New Sources Rule

The comments on the new sources benefits analysis (economic component) were all fairly generic in their statements and fairly consistent in their arguments. The main thrust throughout most of the relevant comments was to point out that the Agency had not developed a quantitative benefits analysis and, as such, it had failed to conform to its own guidance and the requirements of Executive Order 12866. Some comments noted that the benefits analysis did not generate relevant quantitative information that could be used to facilitate an informative comparison of benefits and costs, and several comments encouraged EPA to complete its benefits analysis. Industry comments have also repeatedly pointed out that the Agency should perform a site-specific benefits analysis. In addition, several of the comments addressed aspects of how a benefits analysis should be performed. Specifically, comments described (1) what the steps of benefits analysis need to be (identify, quantify, and then value benefits), (2) the use of best practices in applying ''benefits transfer'' techniques for developing plausible monetary values to apply, and (3) the need to properly consider baseline conditions.

As clearly noted and acknowledged in Chapter 11 of the EEA, ''EPA was unable to conduct a detailed, quantitative analysis of the proposed rule because much of the information needed to quantify and value potential reductions in impingement and entrainment at new facilities was unavailable'' (EEA, p. 11–1). The chapter then proceeds to detail the types of information that would be required to do the analysis for new sources (the chapter also offers some examples using available data to illustrate potential benefits based on site-specific studies of some existing facilities.)

The comments received are accurate in the sense that they point out what the Agency acknowledges at the outset, namely, that a quantitative benefits analysis was not feasible for the proposed rule for new facilities. The comments received, however, do not offer data or methods that would enable the Agency to overcome these constraints. In fact, a main thrust of industry's comments has been that the Agency is required to do a site-specific benefits analysis, given the site-specific nature of a benefits analysis.

Because the gaps still exist in the types of information required to conduct a more comprehensive benefits analysis, the Agency has been unable to appreciably expand upon the economic portions of its benefits analysis for today's final rule. However, EPA is developing a more comprehensive assessment of benefits for its upcoming rulemaking for existing facilities, because some of the key data limitations can be more readily overcome when baseline conditions for the facilities and the impacted aquatic ecosystems can be identified and studied (these perspectives are not available for new sources with unknown locations).

Finally, EPA notes that the Agency's Guidelines for Preparing Economic Analysis are, as the title states, ''guidelines'' and not strict requirements. Consistent with these guidelines and standard professional best practices, it is the Agency's intent to develop economic analyses that are as complete and reliable as is feasible for its rulemakings. However, it is neither required nor prudent for EPA to develop empirical estimates of benefits where data limitations or other critical constraints preclude doing so in a credible and reliable manner.

3. Comments on the Relevance and Estimation of Nonuse Values

Two comments were received that questioned the applicability of nonuse benefits to the section 316(b) rulemaking and critiqued EPA's discussion of how such nonuse values might be estimated based on existing literature.

These comments point out that the issue of nonuse values (also known in some literature as ''passive use'' values) has sometimes been controversial, which the Agency recognizes. Further, the comments accurately note that there are limited methods available for measuring nonuse values, and that the accuracy of these methods can be debated because there are no observable market transactions or other ways to infer values by using the revealed preferences of the American people.

EPA recognizes that challenges associated with the estimation of nonuse values have been widely discussed in the economics literature as well as in the context of regulatory analysis and damage case litigation. However, consistent with the broadly accepted view in the economics profession, the Agency believes that nonuse values are likely to exist and apply for many (if not all) of the beneficial ecological outcomes that stem from EPA regulatory actions, including enhancements to aquatic systems as can be anticipated from the proposed section 316(b) rulemaking. There is no convincing evidence to suggest that nonuse values strictly apply to only a small set of environmental resources or only to irreversible changes in the condition of those resources. Further, even if nonuse values were thought to apply only under limited circumstances, the proposed section 316(b) rule is likely to have beneficial impacts on species and resources of concern (*e.g.,* threatened or endangered fish species) and thereby meet even a narrowly defined applicability test.

EPA agrees with the comments in terms of recognizing that there are no clear preference methods available for estimating nonuse values. Nonetheless, there are a number of stated preference methods that can be and have been successfully applied to develop credible estimates of nonuse values. Research using some of the early applications of the contingent valuation method (CVM, which is one type of stated preference method that has been applied by economists for nonuse value estimation)

indicated that nonuse estimates derived from inadequately designed CVM survey instruments may not be wholly reliable. Nonetheless, the body of research on stated preferences that has evolved over the past several years provides a broadening array of tools and methodological refinements that overcome many of the limitations inherent in some of the earlier applications of contingent valuation methods. EPA believes that well-designed, fully tested, and properly implemented stated preference approaches can provide useful and credible measures of nonuse values.

EPA would like to engage in a large-scale primary research effort to develop and apply state-of-the-art stated preference methods to the issue of estimating nonuse values for the ecological outcomes anticipated from section 316(b) regulatory options. However, the Agency lacks the budgetary resources, time, and appropriate authorities to pursue such research. Accordingly, the EEA discusses the viable alternative approach. Chapter 11 presents two types of benefits transfer approaches that the Agency has relied upon in past regulatory analyses and describes the findings of studies used in these exercises. While no estimates of nonuse benefits are made in the EEA, the discussion provided by the Agency establishes the appropriate concepts, approaches, and caveats that would be associated with the benefits transfer approach that would need to be used if the Agency were to develop such estimates.

J. Engineering and Economic Analysis Limitations

Some commenters argued that the industry profiles presented in the proposed rule were inaccurate. One commenter noted that, in particular, the pulp and paper industry has changed substantially since the early 1990's, the time period upon which EPA industry profile assumptions are based.

EPA's economic analysis is based on the forecasts for new facilities. To the extent that forecasts are uncertain, the estimates for costs are uncertain. The economic analysis is based on the 20-year forecast, while the life of the facility is assumed to be 30 years for annualizing costs. Facility life spans could differ from the 30-year life span, and as a result the annualized cost to these facilities could also differ. To estimate the number of new facilities for the chemical sector, EPA assumed, on the basis of comments that the estimate of 50 percent used at proposal was too high, that 25 percent of growth in product demand would be met from the new facilities. However, data were not readily available to verify this assumption. As a sensitivity analysis, EPA also calculated costs by assuming that 37.5 percent of the growth in new capacity in the chemicals sectors would occur at new facilities. In addition, for manufacturing facilities, EPA used the growth rates projected for three to five years to forecast growth over the 20-year time period.

In estimating costs, EPA assumed that new manufacturing facilities that would become operational over the 20-year period would be uniformly distributed over time. Actual growth could differ from this predicted pattern. The economic analysis is based on five major industry groups that account for the vast majority of cooling water withdrawal in the U.S. Some facilities in other industries may withdraw cooling water in excess of 2 MGD and may incur some costs to comply with the requirements of the rule. Such costs are not reflected in the economic analysis because of lack of reliable and readily available data. To the extent that facilities in other industries are affected, EPA believes that the costs and economic impacts would be similar to those considered by EPA and found to be economically practicable.

Numerous commenters argued that the cost estimates in the economic analysis are inaccurate, resulting in the underestimation of the total cost of the rule. Commenters disagreed with the cost analysis for many aspects of the rule, including but not limited to monitoring, operations and maintenance, contingency costs, and capital costs.

To the extent possible, EPA used information on the specific characteristics of planned new plants for which information is available to project the baseline characteristics of facilities affected by the rule.

Some commenters questioned the applicability and appropriateness of the economic analysis in relation to new (greenfield) facilities and existing facilities.

The estimates do not cover substantial modification of existing facilities. These facilities are not covered by the rule; hence, estimates for these facilities are not reflected in this analysis.

K. EPA Authority

Numerous commenters raised issues with regard to EPA's authority to implement section 316(b) in the proposed new facility rule. Commenters asserted that EPA's authority is limited to regulating CWISs and that by regulating dynamic flow, EPA is actually placing operational restrictions on the cooling system which in their view, are not part of a CWIS. Further, they argue that Congress did not give EPA authority to decide how much water a facility should withdraw, and thus, EPA may not regulate the gallons per day withdrawn, but must be limited to regulating physical and behavioral barriers located at the interface between the intake structure and the water body and separation and removal processes located between the point of withdrawal and the cooling water pumps. By these definitions, supply pumps and all other elements of the cooling water system are not intake structure technologies. Thus, commenters asserted EPA has no legal authority to require wet cooling or dry cooling.

In response, EPA emphasizes that it is not requiring wet cooling, but that it is establishing performance-based technology requirements on the dynamic flow of the cooling water intake structure that reduce impingement and entrainment at a level that is achieved by using closed-cycle cooling. Section 316(b) authorizes EPA to impose limitations on the location, design, construction and capacity of CWISs. EPA interprets the statute to authorize it to regulate that volume of the flow of water withdrawn through a cooling water intake structure as a means of addressing ''capacity.'' *In re Brunswick Steam Electric Plant,* Decision of the General Counsel No. 41 (June 1, 1976). Such limitations on the volume of flow are consistent with the dictionary definition of ''capacity'' [94], the legislative history of the Clean Water Act [95], and the 1976 regulations. [96] *Id.* Indeed, as Decision of the General Counsel No. 41 points out, the major environmental impacts of cooling water intake structures are those affecting aquatic organisms living in the volumes of water withdrawn through the intake structure. Therefore, regulation of the volume of the flow of water withdrawn also advances the objectives of section 316(b).

Commenters also stated that EPA's proposed proportional flow withdrawal requirements lack a legal foundation since the references to location and capacity in section 316(b) refer to the CWIS itself, not the whole cooling system, and Congress did not authorize

[94] ''Cubic contents; volume; that which can be contained.'' Random House Dictionary of the English Language, cited in Decision of the General Counsel No. 41.

[95] Legislative History of the Water Pollution Control Act Amendments of 1972, 93d Cong., 1st Sess., at 196–7 (1973).

[96] 40 CFR 402.11(c) (definition of ''capacity''), 41 *FR* 17390 (April 26, 1976).

EPA to limit the siting of new facilities that use cooling water. To the extent that new facilities comply with this requirement by employing a wet cooling system or by obtaining water from other sources, EPA believes that this is within EPA's authority to regulate capacity, as stated above. Because the major environmental impacts of cooling water intake structures are those affecting aquatic organisms living in the volumes of water withdrawn through the intake structure, in the limited circumstances where the volume of water withdrawn would exceed the proportional flow requirements and the facility would need to locate elsewhere to meet the requirement, EPA believes this regulation of location also advances the objectives of section 316(b).

Some commenters argued that section 316(b) is no more stringent than section 316(a) and thus section 316(b) compels EPA to interpret ''adverse environmental impact'' as an impact with a demonstrated impact on a ''balanced indigenous population.'' EPA does not agree that the CWA compels EPA to interpret ''adverse environmental impact'' as that term is used in section 316(b) in the Act by reference to the phrase ''balanced indigenous population'' under section 316(a). The CWA is silent with respect to what is meant by ''adverse environmental impact'' under section 316(b), whereas the CWA specifically mentions ''balanced indigenous population'' as a variance under section 316(a). The main guiding principles for statutory interpretations were articulated in *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 838, 843 (1984). There the court stated, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute. The court need not conclude that the agency construction was the only one it permissibly could have adopted to uphold the construction, or even the reading the court would have reached if the question initially had arisen in a judicial proceeding. Thus, if a statute is ambiguous and an agency's interpretation of the statute is reasonable, a court must defer to the agency. Here, EPA's interpretation of the statute is reasonable and furthers the purposes of the CWA. This interpretation is further supported because Congress used different terms in section 316(b) than it used in section 316(a). Congress did not refer to a ''balanced indigenous population'' in section 316(b) of the CWA. Where Congress includes particular language in one section of a statute, but omits it in another section of the same act, it is generally presumed that Congress acted intentionally and purposely in the disparate inclusion or exclusion. *Bates* v. *U.S.,* 522 U.S. 23 (1997). *See also Florida Public Telecommunications Ass'n, Inc.* v. *F.C.C.,* 54 F.3d 857 (D.C. Cir. 1995). Further, section 316(a) and section 316(b) address two different issues. Section 316(a) addresses the discharge of heated water while section 316(b) address the withdrawal of huge volumes of water. Thus, it is reasonable to view the two different sections of the statute as addressing different environmental problems in different ways. *In re Brunswick Steam Electric Plant,* Decision of the General Counsel No. 41 (June 1, 1976). For purposes of implementing section 316(b) in the new facility rule, EPA thinks it is reasonable to interpret the phrase adverse environmental impacts as including a range of impacts, including impingement and entrainment, diminishment of compensatory reserve, stresses to the population or ecosystem, harm to threatened or endangered species, impairment of state water quality standards, see Section V, above.

Some commenters stated that section 316(b), which focuses on intakes, not discharges, does not authorize EPA to establish a rule authorizing States to set additional cooling water intake structure requirements to meet state water quality standards. EPA addresses this issue in Section V.B. above.

L. Restoration

In the proposed rule EPA requested comments on a variety of mandatory, discretionary, and voluntary regulatory approaches involving restoration measures (65 *FR* 49089). Many commenters supported a role for restoration or mitigation. These commenters stated that restoration is a well-accepted concept that should have a voluntary role in section 316(b) determinations and constitutes an appropriate means for sources to reduce the potential for causing adverse environmental impact to below the level of regulatory concern, or reduced regulatory concern. Commenters further stated that restoration should not be mandatory and that EPA lacks authority to require it but should not preclude restoration measures from playing an important role in section 316(b) permitting decisions. These same commenters stated that restoration should not be considered the best technology available for minimizing adverse environmental impact because it is not a technology that addresses the location, design, construction, or capacity of a cooling water intake structure.

Other commenters strongly opposed restoration measures as substitute for direct controls, arguing that they are not the ''best technology available for minimizing adverse environmental impact,'' but the commenters thought restoration measures may have a role in compensating for past harms to the aquatic environment or as an additional consideration above the protections offered by direct controls. Another commenter added that restoration measures, in the context of section 316(b), are generally unworkable and that the only measurable restoration method would be offsetting, in which an applicant would stop use of an older intake facility that does more harm than the proposed one.

Some commenters also stated that restoration should be included in permitting considerations when it is determined that dry cooling is not feasible. In this case, the facility should use a wet closed-cycle recirculating system and restoration should be considered. These commenters also suggested that, if restoration is allowed, there should be consultation with other State and Federal resource agencies to avoid inconsistent approaches. Finally, commenters stated that section 316(b) does not authorize mandatory restoration.

Today's final rule for new facilities includes restoration measures as part of Track II. EPA is not including restoration in Track I because this track is intended to be expeditious and provide certainty for the regulated community and a streamlined review process for the permitting authority. To do this for new facilities, EPA has defined the best technology available for minimizing adverse environmental impact in terms of reduction of impingement and entrainment, an objective measure of environmental performance. By contrast, restoration measures in general require complex and lengthy planning, implementation, and evaluation of the effects of the measures on the populations of aquatic organisms or the ecosystem as a whole.

EPA is including restoration measures in Track II to the extent that the Director determines that the measures taken will maintain the fish and shellfish in the waterbody in a manner that represents performance comparable to that achieved in Track I. Applicants in Track II need not undertake restoration measures, but they may choose to undertake such measures. Thus, to the extent that such measures achieve performance comparable to that

achieved in Track I, it is within EPA's authority to authorize the use of such measures in the place of the Track I requirements. This is similar to the compliance alternative approach EPA took in the effluent guidelines program for Pesticide Chemicals: Formulating, Packaging and Repackaging. There EPA established a numeric limitation but also a set of best management practices that would accomplish the same numeric limitations. See 61 FR 57518, 57521 (Nov. 6, 1997). EPA believes that section 316(b) of the Clean Water Act provides EPA with sufficient authority to authorize the use of voluntary restoration measures in lieu of the specific requirements of Track I where the performance is substantially similar under the principles of *Chevron USA* v. *NRDC,* 467 U.S. 837, 844–45 (1984). Here, Congress is silent concerning the role of restoration technologies in the statute and in the legislative history, either by explicitly authorizing or explicitly precluding their use. EPA also believes that appropriate restoration measures or conservation measures that are undertaken on a voluntary basis by a new facility to meet the requirements of the rule fall within EPA's authority to regulate the ''design'' of cooling water intake structures. *Bailey* v. *U.S.,* 516 U.S. 137 (1995)(In determining meaning of words used in a statute, court considers not only the bare meaning of the word, but also its placement and purpose in the statutory scheme.)

This interpretation of the statute fits well within the purpose of section 316(b) of the CWA. The purpose of section 316(b) is to minimize adverse environmental impact from cooling water intake structures. Restoration measures that result in the performance comparable to that achieved in Track I further this objective while offering a significant degree of flexibility to both permitting authorities and facilities.

EPA recognizes that restoration measures have been used at existing facilities implementing section 316(b) on a case-by-case, best professional judgment basis as an innovative tool or as a tool to conserve fish or aquatic organisms, compensate for the fish or aquatic organisms killed, or enhance the aquatic habitat harmed or destroyed by the operation of cooling water intake structures. Under Track II, this flexibility will be available to new facilities to the extent that they can demonstrate performance comparable to that achieved in Track I. For example, if a new facility that chooses Track II is on an impaired waterbody, that facility may choose to demonstrate that velocity controls in concert with measures to improve the productivity of the waterbody will result in performance comparable to that achieved in Track I. The additional measures may include such things as reclamation of abandoned mine lands to eliminate or reduce acid mine drainage along a stretch of the waterbody, establishment of riparian buffers or other barriers to reduce runoff of solids and nutrients from agricultural or silvicultural lands, removal of barriers to fish migration, or creation of new habitats to serve as spawning or nursery areas. Another example might be a facility that chooses to demonstrate that flow reductions and less protective velocity controls, in concert with a fish hatchery to restock fish being impinged and entrained with fish that perform a similar function in the community structure, will result in performance comparable to that achieved in Track I.

EPA recognizes that it may not always be possible to establish quantitatively that the reduction in impact on fish and shellfish is comparable using the types of measures discussed above as would be achieved in Track I, due to data and modeling limitations. Despite such limitations, EPA believes that there are situations where a qualitative demonstration of comparable performance can reasonably assure substantially similar performance. EPA is thus providing, in § 125.86, that the Track II Comprehensive Demonstration Study should show that either: (1) The Track II technologies would result in reduction in both impingement mortality and entrainment of all life stages of fish and shellfish of 90 percent or greater of the reduction that would be achieved through Track I (quantitative demonstration) or, (2) if consideration of impacts other than impingement mortality and entrainment is included, the Track II technologies will maintain fish and shellfish in the waterbody at a substantially similar level to that which would be achieved under Track I (quantitative or qualitative demonstration).

EPA does not intend the foregoing discussion or today's rule to be authoritative with respect to any ongoing permit proceedings for existing facilities or previously issued existing facility permits, which should continue to be governed by existing legal authorities. EPA will address the issue of restoration further in Phase II and Phase III.

VII. Implementation

Under the final rule, section 316(b) requirements would be implemented through the NPDES permit program. These regulations establish application, monitoring, recordkeeping, and reporting requirements for new facilities. The regulations also require the Director to review application materials submitted by each new facility and include the requirements and monitoring and recordkeeping requirements in the permit.

EPA will develop a model permit and permitting guidance to assist Directors in implementing these requirements. In addition, the Agency will develop implementation guidance for owners and operators that will address how to comply with the application requirements, the sampling and monitoring requirements, technology plans, and the recordkeeping and reporting requirements in these regulations.

A. When Does the Rule Become Effective?

This rule becomes effective thirty (30) days from the date of publication. After the effective date of the regulation, new facilities are required to submit the application data for cooling water intake structures required under these regulations.

B. What Information Must I Submit to the Director When I Apply for My New or Reissued NPDES Permit?

The NPDES application process under 40 CFR 122.21 requires that facilities submit information and data 180 days prior to the commencement of a discharge. If you are the owner or operator of a facility that meets the new facility definition, you will be required to submit the information that is required under 40 CFR 122.21 and § 125.86 of today's final rule with your initial permit application and with subsequent applications for permit reissuance. The Director will review the information you provide and will confirm whether your facility is a new facility and establish the appropriate requirements to be applied to the cooling water intake structure(s).

At 40 CFR 122.21, today's rule requires all owners or operators of new facilities to submit three general categories of information when they apply for an NPDES permit. The general categories of information include (1) physical data to characterize the source water body in the vicinity where the cooling water intake structures are located, (2) data to characterize the design and operation of the cooling water intake structures, and (3) existing data (if they are available) to characterize the baseline biological condition of the source waterbody. All applicants must also submit a statement specifying whether they will comply with either Track I or Track II

(§ 125.86(a)(1)), and source waterbody flow information (§§ 125.86(b)(3) or 125.86(c)(1)). If you are a Track I applicant, you must also submit (1) data to show you will meet the Track I flow and velocity requirements and (2) a design and construction technology plan demonstrating that you have selected design and construction technologies necessary to minimize impingement mortality and/or entrainment if you are located where such technologies are necessary. If you are a Track II applicant, you must also submit a comprehensive demonstration study with detailed information on source waterbody and intake structure characteristics, and a verification monitoring plan. Applicants seeking an alternative requirement under § 125.85 must submit data that demonstrate that their compliance costs would be wholly out of proportion to the costs considered by EPA in establishing the requirements of §§ 125.84(a) through (e) or that compliance with the rule would cause significant adverse impacts on local air quality, local water resources or local energy markets.

The following describes the application requirements for all new facilities and the requirements specific to Tracks I and II in more detail.

1. All New Facilities

a. Source Water Physical Data

All new facilities must provide the source water physical data required at 40 CFR 122.21(r)(2) in their permit applications. These data are needed to characterize the facility and evaluate the type of waterbody and species affected by the cooling water intake structure. This information will also be used by the permit writer to evaluate the appropriateness of the design and construction technologies selected by the applicant for use at their site in subsequent permit proceedings. Specific data items that must be submitted include (1) a narrative description and scale drawings showing the physical configuration of all source waterbodies used by the facility, including areal dimensions, depths, salinity and temperature regimes, and other documentation; (2) an identification and characterization of the source waterbody's hydrological and geomorphological features, as well as the methods used to conduct any physical studies to determine the intake's zone of influence and the results of such studies; and (3) locational maps.

b. Cooling Water Intake Structure Data

All new facilities must submit the cooling water intake structure data required at 40 CFR 122.21(r)(3) to characterize the cooling water intake structure and evaluate the potential for impingement and entrainment of aquatic organisms. Information on the design of the intake structure and its location in the water column will allow the permit writer to evaluate which species or life stages would potentially be subject to impingement and entrainment. A diagram of the facility's water balance would be used to identify the proportion of intake water used for cooling, make-up, and process water. The water balance diagram also provides a picture of the total flow in and out of the facility, allowing the permit writer to evaluate compliance with the Track I flow reduction requirements (if applicable). Specific data on the intake structure include (1) a narrative description of the configuration of each of your cooling water intake structures and where it is located in the waterbody and in the water column; (2) latitude and longitude in degrees, minutes, and seconds for each of your cooling water intake structures; (3) a narrative description of the operation of each of your cooling water intake structures, including design intake flows, daily hours of operation, number of days of the year in operation, and seasonal changes, if applicable; (4) a flow distribution and water balance diagram that includes all sources of water to the facility, recirculating flows, and discharges; (5) engineering drawings of the cooling water intake structure.

c. Source Water Baseline Biological Characterization Data

All new facilities must submit the source water baseline biological characterization data required in 40 CFR 122.21(r)(4) with their permit application. This information will characterize the biological community in the vicinity of the cooling water intake structure as well as the operation of the cooling water intake structures. The Director may use this information in subsequent permit renewal proceedings to determine if the applicant's design and construction technology plan should be revised. This supporting information must include existing data (if available), which may be supplemented with new field studies if the applicant so chooses. The applicant must submit the following specific data (1) a list of the data that are not available and efforts made to identify sources of the data; (2) if available, a list of species (or relevant taxa) in the vicinity of the cooling water intake structure, and identification of the species and life stages that would be most susceptible to impingement and entrainment (including both nekton and meroplankton) (Species identified should include the range of species in the system including the forage base); (3) if available, identification and evaluation of the primary period of reproduction, larval recruitment, and period of peak meroplankton abundance for relevant taxa; (4) if available, information sufficient to provide data representative of the seasonal and daily biological activity in the vicinity of the cooling water intake structure; (5) if available, identification of all threatened or endangered species that might be susceptible to impingement and entrainment at your cooling water intake structures; (6) documentation of any public participation or consultation with Federal or State agencies undertaken in collecting the data; (7) if the above data are supplemented with data collected in actual field studies, a description of all methods and quality assurance procedures for data collection, sampling, and analysis, including a description of the study area; identification of the biological assemblages to be sampled or evaluated (both nekton and meroplankton); and data collection, sampling, and analysis methods. The sampling or data analysis methods used must be appropriate for a quantitative survey and based on a consideration of methods used in other biological studies performed within the same source waterbody. The study area should include, at a minimum, the area of influence of the cooling water intake structure.

d. Source Water Flow Data

All facilities must demonstrate compliance with the source water flow requirements in §§ 125.84(b)(3) and (c)(2). Information to show that a new facility is in compliance with these requirements must be submitted to the Director in accordance with §§ 125.86(b)(3) and (c)(1).

If your facility is located on a freshwater river or stream, you must submit data that supports that you are withdrawing less than five (5) percent of the annual mean flow. The documentation might include either publicly available flow data from a nearby U.S. Geological Survey (USGS) gauging station or actual instream flow monitoring data that the facility has collected itself. The waterbody flow should be compared with the total design flow of all cooling water intake structures at the new facility.

If your cooling water intake structure is withdrawing water from an estuary or a tidal river, you need to calculate the tidal excursion and provide the flow data for your facility and the supporting calculations. The tidal excursion distance can be computed using three different methods ranging from simple to complex. The simple method involves using available tidal velocities that can be obtained from the Tidal Current Tables formerly published by the National Ocean Service of the National Oceanic and Atmospheric Administration (NOAA) and currently printed and distributed by private companies (available at bookstores or marine supply stores). The midrange method involves computing the tidal excursion distance using the Tidal Prism Method.[97] The complex method involves the use of a two-dimensional or three-dimensional hydrodynamic model. The simplest method to use is the following:

(1) Locate the facility on either a NOAA nautical chart or a base map created from the USGS 1:100,000 scale Digital Line Graph (DLG) data available on the USGS website. These DLG Data can be imported into a computer-aided design (CAD) program or geographic information system (GIS). If these tools are unavailable, 1:100,000 scale topographic maps (USGS) can be used.

(2) Obtain maximum flood and ebb velocities (in meters per second) for the waterbody in the area of the cooling water intake structure from NOAA Tidal Current Tables.

(3) Calculate average flood and ebb velocities (in meters per second) over the entire flood or ebb cycle by using the maximum flow and ebb velocities from 2 above.

$$\text{Velocity}_{\text{Average Flood}} = \text{Velocity}_{\text{Maximum Flood}} * {}^{2}\!/_{\pi} \qquad \text{(Equation 1)}$$

$$\text{Velocity}_{\text{Average Ebb}} = \text{Velocity}_{\text{Maximum Ebb}} * {}^{2}\!/_{\pi} \qquad \text{(Equation 2)}$$

(4) Calculate the flood and ebb tidal excursion distance using the average flood and ebb velocities from 3 above.

$$\text{Distance}_{\text{Flood Tidal Excursion}} = \text{Velocity}_{\text{Average Flood}} * 6.2103 * 3600\ {}^{s}\!/_{hr} \qquad \text{(Equation 3)}$$

$$\text{Distance}_{\text{Ebb Tidal Excursion}} = \text{Velocity}_{\text{Average Ebb}} * 6.2103 * 3600\ {}^{s}\!/_{hr} \qquad \text{(Equation 4)}$$

(5) Using the total of the flood and ebb distances from above, define the diameter of a circle that is centered over the opening of the cooling water intake structure.

(6) Define the area of the waterbody that falls within the area of the circle (see Appendix 2 to Preamble). The area of the waterbody, if smaller than the total area of the circle might be determined either by using a planimeter or by digitizing the area of the waterbody using a CAD program or GIS. For cooling water intake structures located offshore in large waterbodies, the area of the waterbody might equal the entire area of the circle (see D in Appendix 3 to Preamble). For cooling water intake structures located flush with the shoreline, the area might be essentially a semicircle (see C in Appendix 3 to Preamble). For cooling water intake structures located in the upper reaches of a tidal river, the area might be some smaller portion of the area of the circle (see A in Appendix 3 to Preamble).

(7) Calculate the average depth of the waterbody area defined in 6 above. Depths can easily be obtained from bathymetric or nautical charts available from NOAA. In many areas, depths are available in digital form.

(8) Calculate a volume by multiplying the area of the waterbody defined in 6 by the average depth from 7. Alternatively, the actual volume can be calculated directly with a GIS system using digital bathymetric data for the defined area.

If your cooling water is withdrawn from a lake or reservoir, you must submit information such as a narrative description of the waterbody thermal stratification and any supporting documentation and engineering calculations to show that your cooling water intake structure meets the requirement not to alter the natural thermal stratification or turnover pattern (where present) of the source water except in cases where the disruption is determined to be beneficial to the management of fisheries for fish and shellfish by any fishery management agency(ies). Typically, this natural thermal stratification will be defined by the thermocline, which may be affected to a certain extent by the withdrawal of cooler water and the discharge of heated water into the system. This information demonstrates to the permit writer that you are maintaining the thermal stratification or turnover pattern (where present) of the source water except in cases where the disruption is determined to be beneficial to the management of fisheries for fish and shellfish by any fishery management agency(ies) such that it maintains appropriate habitat for the biological makeup of the waterbody.

2. Track I Facilities

a. Flow Reduction Information

New facilities larger than 10 MGD that choose Track I must submit the data on flow reduction required in § 125.86(b)(1) with their permit applications. New facilities between 2 and 10 MGD that choose to comply with the Track I requirements at § 125.84(b) must also submit this data. The information required includes a narrative description of the water balance of the closed-cycle recirculating cooling water system for the facility and an

[97] Diana, E., A.Y. Kuo, B.J. Neilson, C.F., Cerco, and P.V. Hyer. 1987. *Tidal prism model manual,* Virginia Institute of Marine Science, Gloucester Point, VA.

engineering demonstration that the intake flows have been minimized to the maximum extent reasonably possible. You should also consider all feasible methods to re-use blowdown in other plant operations. New facilities between 2 and 10 MGD that choose to comply with the Track I requirements at § 125.84(c) must submit data that shows that the facility's total design water intake flow is less than 10 MGD. *See* § 122.21(r)(3)(iii).

b. Velocity Information

New facilities that choose Track I must submit the data on velocity required in § 125.86(b)(2) with their permit applications. The information required includes a narrative description of the design, structure, equipment, and operation used to meet the performance requirement and any engineering calculations used to calculate design through-screen velocity.

c. Design and Construction Technology Plan

If you select Track I, § 125.86(b)(4) and (b)(5) require you to include a Construction Technology Plan in your application that demonstrates that your facility has selected and will implement the design and construction technologies necessary to minimize impingement mortality and/or entrainment when certain conditions exist at the site. If you select Track I and choose to comply with the requirements of § 125.84(c) (which are available to facilities between two and ten MGD) you much install technologies to reduce impingement at some locations and you must install technologies to reduce entrainment at all sites. *See* § 125.84(c)(3) and (4). Examples of such technologies that may be appropriate for your site include, but are not be limited to (1) fish-handling and return systems, (2) wedgewire screens, (3) fine mesh screens, (4) barrier nets, and (5) aquatic filter barrier systems. The Agency recognizes that selection of the specific technology or group of technologies for your site will depend on individual facility and waterbody conditions.

In the application, you need to describe the technology(ies) you will implement at your facility to meet the requirements in § 125.84(b)(4) and (5) or § 125.84(c)(3) and (4), the basis for their selection, and the expected level of performance. During subsequent permit terms, the Director may require you to implement additional or different design and construction technologies if the initial technologies you selected and implemented do not meet the requirement of minimizing impingement mortality and entrainment.

3. Track II Facilities

a. Comprehensive Demonstration Study

If you select Track II, § 125.86(c)(2) requires you to perform and submit to the Director the results of a Comprehensive Demonstration Study, including data and detailed analyses to demonstrate that you will reduce the impacts to fish and shellfish to levels comparable to the level you would achieve were you to implement the Track I requirements at § 125.84(b)(1), and (2). To meet the ''comparable level'' requirement, you must demonstrate that you have reduced both impingement mortality and entrainment of all life stages of fish and shellfish to 90 percent or greater of the reduction that would be achieved through Track I, or if your demonstration includes consideration of impacts other than impingement mortality and entrainment, that the measures taken will maintain the fish and shellfish in the waterbody at a substantially similar level to that which would be achieved through Track I. Your proposed technologies may specifically include the reuse of spent cooling water as industrial process water and the associated reductions in process water withdrawals from the source waterbody as a means for reducing intake capacity and impingement and entrainment.

The Comprehensive Demonstration Study has four parts:

- A proposal for how information will be collected;
- A Source Water Biological Study;
- An evaluation of potential cooling water intake structure effects; and
- A Verification Monitoring Plan.

These plans and evaluations must be submitted to the Director with the permit application.

Under § 125.86(c)(2)(iii)(B), you may submit data from previous biological studies performed in the vicinity of the proposed or actual intake if the data are no more than 5 years old so that they reasonably represent existing conditions. You must demonstrate that such existing data are fully representative of the current conditions in the vicinity of the intake and provide documentation showing that the data were collected by using established and reliable quality assurance procedures.

Before performing the study you must submit to the Director a plan stating how information will be collected to support the study. This plan must provide (1) a description of the proposed technology(ies) to be evaluated; (2) a list and description of any historical studies characterizing the physical and biological conditions in the vicinity of the proposed or actual intakes and their relevancy to the proposed study; (3) a summary of any public participation or consultation with Federal or State agencies undertaken in development of the plan; and (4) a sampling plan for data that will be collected in actual field studies in the source waterbody that documents all methods and quality assurance procedures for data collection, sampling, and analysis. The study area for such field studies must include, at a minimum, the area of influence of the cooling water intake structure and at least 100 meters beyond. The area of influence is the portion of water subject to the forces of the intake structure such that a particle within the area is likely to be pulled into the intake structure.

You must submit the results of a Source Water Biological Study in accordance with § 125.86(c)(2)(iv)(A). This characterization must include (1) a taxonomic identification and characterization of aquatic biological resources (nekton and meroplankton) to provide a summary of historic and contemporary aquatic biological resources; a determination and description of the target populations of concern (those species and life stages that would be most susceptible to impingement and entrainment); and a description of the abundance and temporal and spatial characterization of the target populations based on the collection of multiple years of data to capture the seasonal and daily biological activity in the vicinity of the cooling water intake structure; (2) an identification of all threatened or endangered species that might be susceptible to impingement and entrainment by the cooling water intake structures; and (3) a description of additional chemical, water quality, and other anthropogenic stresses on the source waterbody. The Director might coordinate a review of your list of threatened or endangered species with the U.S. Fish and Wildlife Service and/or National Marine Fisheries Service staff to ensure that potential impacts to threatened or endangered species have been addressed.

The study must evaluate the potential for cooling water intake structure effects in accordance with § 125.86(c)(2)(iv)(A). This evaluation must include (1) a statement of the baseline against which the comparative analyses will be made. The impingement and entrainment baselines must be calculated for the facility by assuming a design of a once-through cooling water system employing a trash rack and traveling

screens; (2) an engineering estimate of the efficacy of proposed technologies in reducing impacts to fish and shellfish to a level comparable to the level that would be achieved by meeting the Track I requirements at the site. To demonstrate that the technologies meet the ''comparable level'' requirement, the demonstration must show that both impingement and entrainment of all life stages of fish and shellfish have been reduced to 90 percent or greater of the reduction that could be achieved through Track I, or, if impacts other than impingement mortality and entrainment are considered, that the measures taken will maintain the fish and shellfish in the waterbody at a substantially similar level to that which would be achieved through Track I. The efficacy projection must include a site-specific evaluation of technology suitability for reducing impingement and entrainment based on design, location, and operational specification applied to the characterization and a site-specific evaluation of any additional measures based on the physical, chemical, and biological characteristics of the site; and (3) a characterization of impingement and entrainment survival estimates of the proposed alternative technology based on case studies in the vicinity of the cooling water intake structure and/or site-specific technology prototype studies, and a characterization of fish and shellfish propagation and survival based, for example, on case studies documenting the efficacy of any additional measures performed at similar sites.

To demonstrate that you will reduce impingement mortality and entrainment to a level of reduction comparable to the level that you would achieve if you implemented Track I requirements at your site, you will need to develop a conceptual engineering design of a hypothetical recirculating water system for your facility, including the estimated intake flow. The estimated intake flow should take into account an optimized system in which the volume of intake flow/blowdown is minimized to the maximum extent feasible. The conceptual design should also include proposed design and construction technologies that would be used to minimize impingement mortality and entrainment pursuant to § 125.84(b)(4) and (5). Finally, you should estimate the expected level of impingement and entrainment associated with the hypothetical intake structure for all species found in substantial numbers in source waterbody in the vicinity of the intake structure. In estimating entrainment, 100 percent mortality may be assumed to preclude the need to perform entrainment survival studies.

You must then calculate and document the expected level of performance of the proposed alternative technologies for all species found in significant numbers in the source waterbody in the vicinity of the intake structure. Such documentation may consist of pilot-scale testing at the proposed facility, *representative* performance data from *comparable* facilities, or both. In preparing the documentation you should specifically show that the pilot-scale or comparable facility data address the following factors that may affect technology performance:

- Physical and chemical watershed conditions (temperature, freezing and thawing, tidal conditions, wave action, sediment and debris, flow, etc.);
- Biological watershed conditions (individual species, life stages, predator species, seasonality, etc.);
- Engineering feasibility and long-term reliability, and
- Operation and maintenance issues.

Available data suggests that alternative design and construction technologies for cooling water intake structures can achieve the level of reduction in impingement mortality and entrainment required under Track I. Technologies such as fine and wide-mesh wedgewire screens, as well as aquatic filter barrier systems, have been shown to reduce mortality from impingement by up to 99 percent or greater compared with conventional once-through systems. In addition, other types of barrier nets may achieve reductions of 80 to 90 percent, and modified screens and fish return systems, fish diversion systems, and fine mesh traveling screens and fish return systems have achieved reductions in impingement mortality ranging from 60 to 90 percent greater than conventional once-through systems. Similarly, with regard to entrainment, although there is less available full scale performance data, aquatic filter barrier systems, fine mesh wedgewire screens, and fine mesh traveling screens with fish return systems have been shown to achieve 80 to 90 percent greater reduction in mortality from entrainment compared with conventional once-through systems. Several additional factors suggest that these performance levels can be improved upon. First, some of the cooling water intake structure technology performance data reviewed is from the 1970's and 1980's and does not reflect recent developments and innovation (e.g., aquatic filter barrier systems, sound barriers). Second, these conventional barrier and return system technologies have not been optimized on a widespread level to date, as would be encouraged by this rule. Such optimization can be best achieved by new facilities, which can match site conditions to available technologies. Third, EPA believes that many facilities could achieve further reductions (estimated 15–30 percent) in impingement and entrainment by providing for seasonal flow restrictions, variable speed pumps, and other innovative flow reduction alternatives. Finally, new facilities seeking to comply under Track II can choose the specific location of their cooling water intake structures to further optimize the level of reduction in impingement mortality and entrainment (i.e., locate the cooling water intake structure outside of biologically productive or sensitive areas to the extent this would serve to reduce environmental impact). For additional discussion, *see* Section V.B.2.

Finally, new facilities complying under Track II must submit a Verification Monitoring Plan in accordance with § 125.86(c)(2)(iv)(A). The plan must include information on how the facility will conduct a monitoring study to verify the full-scale performance of the proposed technologies and of any additional measures. The plan must describe the frequency of monitoring and the parameters to be monitored. The Director will use the verification monitoring to verify that you are meeting the level of impingement and entrainment expected and that fish and shellfish are being maintained at the level expected. The Director will then determine whether to approve the use of the suite of alternative technologies in subsequent permit issuance. Verification monitoring must start during the first year that the cooling water intake structure begins operation and continue for a sufficient period of time to demonstrate that the facility is reducing impingement mortality and entrainment to a level of reduction comparable to the level the facility would have been achieved by implementing the flow reduction and design velocity requirements of Track I.

4. Data To Support a Request for Alternative Requirements

If, pursuant to § 125.85(a), you request that an alternative requirement less stringent than those specified in § 125.84 be required in your permit, § 125.85(b) places the burden on you to show that your compliance costs are wholly out of proportion to the costs EPA considered during development of

the requirements at issue, or that compliance with the national standard will result in significant adverse impact to local air quality, local water resources, or local energy markets. Compliance costs that EPA considered were subdivided into one-time costs and recurring costs. Examples of one-time costs include capital and permit application costs. Examples of recurring costs include operation and maintenance costs, permit renewal costs, and monitoring, recordkeeping, and reporting costs.

C. How Will the Director Determine the Appropriate Cooling Water Intake Structure Requirements?

The Director's first step would be to determine whether the facility is covered by this rule If the answer is yes to all the following questions, the facility must comply with the requirements of this final rule.

(1) Is the facility a ''new facility'' as defined in § 125.83?

(2) Does the new facility withdraw cooling water from waters of the U.S.; *OR* does the facility obtain cooling water by any sort of contract or arrangement with an independent (supplier or multiple suppliers) of cooling water if the supplier(s) withdraw(s) water from waters of the U.S. and is not a public water system?

(3) Is at least 25 percent of the water withdrawn by the facility used for cooling purposes?

(4) Does the new facility have a design intake flow of greater than 2 million gallons per day (MGD)? [98]

(5) Does the new facility discharge pollutants to waters of the U.S., including storm water-only discharges, such that the facility has or is required to have an NPDES permit?

If these final regulations are applicable to the applicant, the second step would be to determine the locational factors associated with the new facility's cooling water intake structure. The Director would first review the information that the new facility provided to validate the source waterbody type in which the cooling water intake structure is located (freshwater stream or river, lake or reservoir, estuary or tidal river, or ocean). (As discussed above, the applicant would need to identify the source waterbody type in the permit application and provide the appropriate documentation to support the waterbody type classification.) The Director would review the supporting material the applicant provided in the permit application. The Director would also review the engineering drawings and the locational maps the applicant provided, documenting the physical placement of the cooling water intake structure.

For Track I facilities, the Director's next step would be to review the design requirements for intake flow and velocity. For a new facility with an intake flow equal to or greater than 10 MGD that is required to reduce its intake flow to a level commensurate with that which could be attained by a closed-cycle recirculating cooling water system, the Director would review the narrative description of the closed-cycle recirculating cooling water system design and any engineering calculations to ensure that the new facility is complying with the requirement and that the make-up and blowdown flows have been minimized. If the flow reduction requirement is met by reusing or recycling water withdrawn for cooling purposes, the Director must review documentation that the amount of cooling water that is not reused or recycled has been minimized.

The velocity requirement is based on the design through-screen or through-technology velocity as defined in § 125.83. For Track I facilities, the maximum design velocity would always be 0.5 ft/s. To determine whether the new facility meets the maximum design velocity requirement, the Director would review the narrative description of the design, structure, equipment, and operation used to meet the velocity requirement. The Director would also review the design calculations that demonstrate that the maximum design velocity would be met. In reissuing permits, the Director would review velocity monitoring data to confirm that the facility is not exceeding the initial design velocity calculated at the start of commercial service.

Under Track I, the Director would then review the applicant's Design and Construction Technology Plan (if the applicant is located in an area where such technologies are required) and the applicant's Source Water Baseline Biological Characterization data. During each permit renewal, the Director would then review monitoring data, application data, and other supporting information to determine whether the applicant needs to implement additional or different design and construction technologies (see discussion of § 125.89(a)(2) below).

Under Track II, the Director would receive and should review the applicant's proposed plan for preparing the Comprehensive Demonstration Study. When the applicant proposes to rely on existing studies, the Director would assess the data quality and the relevance to the proposed facility. When new biological surveys are proposed, the Director would determine whether they fully characterize the waterbody potentially impacted by impingement and entrainment. Where pilot-scale demonstrations are proposed, the Director would evaluate whether they are generally representative of full-scale operations. After the study is completed, the Director would review the applicant's analysis, specifically to determine whether the proposed alternative technology(ies) will reduce impingement mortality and entrainment to a level of reduction comparable to the level that the facility would achieve if it complied with the Track I requirements for reducing intake capacity and design velocity, or if the proposed measures in conjunction with the proposed technologies will maintain the fish and shellfish in the waterbody at a substantially similar level to that which would be achieved. The Director would also review the facility's Technology Verification Plan for post-operational monitoring to demonstrate that the technologies are performing as predicted.

The proportional flow requirement applicable to all facilities is based on waterbody type. To determine whether the new facility meets the flow requirement, the Director would first verify the new facility's determination of the waterbody flow for the respective waterbody type (e.g., annual mean flow and low flow for freshwater river or stream). The Director would review the source-water flow data the facility provided in the permit application. The Director should consider using available USGS data (for freshwater rivers and streams) to verify the flow data in the permit application. Then the Director would review any supporting documentation and engineering calculations that demonstrate that the new facility would meet the flow requirements. To verify the flow data the new facility provides for an estuary or a tidal river, the Director would review the facility's calculation of the tidal excursion.

The final regulations at § 125.84(e) require compliance with any more stringent requirements relating to the location, design, construction, or capacity of a cooling water intake structure or monitoring requirements at a new facility that a Director deems necessary to comply with any provision of State law, including state water quality standards, including designated

[98] If the answer is no to these flow parameters and yes to all the other questions, the Director would use best professional judgment on a case-by-case basis to establish permit conditions that ensure compliance with section 316(b).

uses, criteria, and antidegradation provisions.

D. What Will I Be Required to Monitor?

At § 125.87, today's final rule requires biological monitoring and visual or remote inspections at all facilities. Track I facilities and Track II facilities that rely on specified velocity levels as part of their alternative technology(ies) are also required to monitor screen head loss and velocity.

Both Track I and Track II facilities must conduct biological monitoring for impingement and entrainment to assess the presence, abundance, life stages, and mortality (eggs, larvae, post larvae, juveniles, and adults) of aquatic organisms (fish and shellfish) impinged or entrained during operation of the cooling water intake structure. These data would also be used by the permitting authority in subsequent permit terms to determine whether additional or modified design and construction technologies are reasonably necessary (see discussion of § 125.89(a)(2) in D. below). The facility would be required to conduct impingement and entrainment sampling over a 24-hour period no less than once per month when the cooling water intake structure is in operation and report results to the Director annually. After two years, the Director may approve an applicant's request for less frequent biological monitoring if the facility provides data to support the request showing that less frequent monitoring would still allow for the detection of any seasonal and daily variations in the species and numbers of individuals that are impinged or entrained. The Director should approve a request for reduced frequency in biological monitoring only if the supporting data show that the technologies are consistently performing as projected under all operating and environmental conditions and less frequent monitoring would still allow for the detection of any future performance fluctuations.

Under § 125.87(b), Track I facilities are required to monitor the head loss across the intake screens to obtain a correlation of those values with the design intake velocity (Track I) or other specified velocity (Track II) at minimum ambient source-water surface elevation (according to best professional judgment based on available hydrological data). The maximum head loss across the screen for each cooling water intake structure must be used to determine compliance with the velocity requirement in § 125.84(b)(2) and (c)(1). The data collected by monitoring this parameter would provide the Director with additional information after the design and construction of the cooling water intake structure to demonstrate that the facility is operating and maintaining the cooling water intake structure in a manner such that the velocity requirement continues to be met. The Agency considers this the most appropriate parameter to monitor, because, although the facility might be designed to meet the requirement, proper operation and maintenance is necessary to maintain the open area of the screen and intake structure, ensuring that the design intake velocity is maintained. Head loss can easily be monitored by measuring and comparing the height of the water in front of and behind the screen or other technology. Track I facilities that use devices other than screens would be required to measure the actual velocity at the point of entry through the device. Velocity can be measured with velocity meters placed at the entrance into the device.

Weekly visual or remote inspections are required to provide a mechanism for both the new facility and the Director to ensure that any technologies that have been implemented for minimizing adverse environmental impact are being maintained and operated in a manner that ensures that they function as designed. EPA has promulgated this requirement so that facilities that develop plans and install technologies could not operate them improperly so that adverse environmental impact is not minimized to the extent expected. The Director would determine the actual scope and implementation of the visual inspections based on the types of technologies installed at your facility. For example, inspections could be as simple as observing bypass and other fish handling systems to ensure that debris has not clogged the system and rendered it inoperable.

E. How Will Compliance Be Determined?

This rule will be implemented by the Director placing conditions consistent with this rule in NPDES permits. Compliance with permit conditions implementing this rule require the following data and information:

- Data submitted with the NPDES permit application to show that the facility is in compliance with location, design, construction, and capacity requirements (§ 125.86).
- Compliance monitoring data and records, including those for impingement and entrainment monitoring, to show that impingement and entrainment impacts are being minimized (§ 125.87(a)).
- Through-screen or through-technology velocity monitoring data and records to show that the facility is being operated and maintained as designed to continue to meet the velocity requirement (§ 125.87(b)).
- Records from visual or remote inspections to show that technologies installed are being operated properly and function as they were designed (§ 125.87(c)).

Facilities are required to keep records and report the above information in a yearly status report in § 125.88. In addition, Directors may perform their own compliance inspections as deemed appropriate in accordance with 40 CFR 122.41.

F. What Are the Respective Federal, State, and Tribal Roles?

Section 316(b) requirements are implemented through NPDES permits. As discussed in Section II.A today's final regulations would amend 40 CFR 123.25(a)(36) to add a requirement that authorized State programs have sufficient legal authority to implement today's requirements (40 CFR part 125, subpart I). Therefore, today's final rule potentially affects authorized State and Tribal NPDES permit programs. Under 40 CFR 123.62(e), any existing approved section 402 permitting program must be revised to be consistent with new program requirements within one year from the date of promulgation, unless the NPDES-authorized State or Tribe must amend or enact a statute to make the required revisions. If a State or Tribe must amend or enact a statute to conform with today's final rule, the revision must be made within two years of promulgation. States and Tribes seeking new EPA authorization to implement the NPDES program must comply with the requirements when authorization is requested.

In addition to updating their programs to be consistent with today's rule, States and Tribes authorized to implement the NPDES program would be required to implement the cooling water intake structure requirements following promulgation of the final regulations. The requirements must be implemented upon permit issuance and reissuance. Duties of an authorized State or Tribe under this regulation include

- Verification of a permit applicant's determination of source waterbody classification and the flow or volume of certain waterbodies at the point of the intake;
- Verification that the intake structure maximum flow rate is less than the maximum allowable as a proportion of waterbody flow for certain waterbody types;

• Verification that a Track I permit applicant's design intake velocity calculations meet applicable regulatory requirements;

• Verification that a Track I permit applicant's intake design and reduction in capacity are commensurate with a level that can be attained by a closed-cycle recirculating cooling water system that has minimized make-up and blowdown flows;

• Verification that a Track II permit applicant's Comprehensive Demonstration Study demonstrates that the proposed alternative technologies will reduce the impacts to fish and shellfish to levels comparable to those the facility would achieve if it met the Track I requirements;

• Development of draft and final NPDES permit conditions for the applicant implementing applicable section 316(b) requirements pursuant to this rule; and

• Ensuring compliance with permit conditions based on section 316(b) requirements.

EPA will implement these requirements where States or Tribes are not authorized to implement the NPDES program.

G. Are Permits for New Facilities Subject to Requirements Under Other Federal Statutes?

EPA's NPDES permitting regulations at 40 CFR 122.49 contain a list of Federal laws that might apply to federally issued NPDES permits. These include the Wild and Scenic Rivers Act, 16 U.S.C. 1273 *et seq.*; the National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*; the Endangered Species Act, 16 U.S.C. 1531 *et seq.*; the Coastal Zone Management Act, 16 U.S.C. 1451 *et seq.*; and the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* See 40 CFR 122.49 for a brief description of each of those laws. In addition, the provisions of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*, relating to essential fish habitat might be relevant. Nothing in this final rulemaking authorizes activities that are not in compliance with these or other applicable Federal laws.

H. Alternative Requirements

Today's rule establishes national requirements for new facilities. EPA has taken into account all the information that it was able to collect, develop, and solicit regarding the location, design, construction, and capacity of cooling water intake structures at new facilities. EPA concludes that these requirements reflect the best technology available for minimizing adverse environmental impact on a national level. In some cases, however, data that could affect the economic practicability of requirements might not have been available to be considered by EPA during the development of today's rule. Therefore, EPA is including § 125.85 to allow for adjustment of the requirements of § 125.84 in certain limited circumstances.

Section 125.85 would allow the Director, in the permit development process, to set alternative best technology available requirements that are less stringent than the nationally applicable requirements. Under § 125.85(a), any interested person may request that alternative requirements be imposed in the permit. Section 125.85(a) provides that alternative requirements that are less stringent than the requirements of § 125.84 would be approved only if the Administrator determines that compliance with the requirement at issue would result in compliance costs wholly out of proportion to the costs considered during development of the requirement at issue or in significant adverse impacts on local air quality, local water resources or local energy markets; the alternative requirement requested is no less stringent than justified by the wholly out of proportion cost or significant adverse impact; and the alternative requirements will ensure compliance with other applicable provisions of the Clean Water Act and any applicable requirements of State law.

Because new facilities have a great degree of flexibility in their siting, in how their cooling water intake structures are otherwise located, and in the design, construction, and sizing of the structure, cost is the primary factor that would justify the imposition of less stringent requirements as part of the alternative requirements approach. This is because other factors affecting the location, design, construction, and capacity of cooling water intake structures at new facilities can be addressed by modifications that may have cost implications. EPA notes that alternate discharge standards are not allowed in the somewhat analogous case of the new source performance standards that EPA establishes under section 306 of the CWA for the discharge of effluent from new sources in particular industrial categories. However, because EPA is acting under a separate authority in this rule, section 316(b) of the CWA, and because section 316(b) of the CWA is silent concerning this issue, EPA believes it is reasonable to interpret section 316(b) to give EPA discretion to establish alternative requirements for new facility cooling water intake structures. EPA takes this position because this final rule would establish requirements for cooling water intake structures at any type of new facility in any industrial category above the flow threshold.[99] Thus, in some instances it might be possible that the costs of complying with today's final requirements would be wholly out of proportion to the costs EPA considered and determined to be economically practicable. As discussed in the *Economic Analysis* Chapter 7, EPA has analyzed the cost of compliance with today's final requirements for all facilities projected to be built in the reasonably foreseeable future, as well as other types of facilities that might be built at later dates (such as large base-load steam electric generating facilities that do not use combined-cycle technology) and concludes that these compliance costs would be economically practicable for all types of facilities the Agency considered. However, should an individual new facility demonstrate that costs of compliance for a new facility would be wholly out of proportion to the costs EPA considered and determined to be economically practicable, the Director would have authority to adjust best technology available requirements accordingly.

Under § 125.85(a), alternative requirements would not be granted based on a particular facility's ability to pay for technologies that would result in compliance with the requirements of § 125.84. Thus, so long as the costs of compliance are not wholly out of proportion to the costs EPA considered and determined to be economically practicable, the ability of an individual facility to pay in order to attain compliance with the rule would not support the imposition of alternative requirements.

EPA has allowed for alternative requirements where the facility demonstrates, to the satisfaction of the Director, that at a local level, the air quality impacts, non-impingement and entrainment aquatic effects, or energy impacts of complying with the requirements of § 125.84 are significant and justify a different approach to regulating cooling water intake structures.

Section 125.85(a) specifies procedures to be used in the establishment of alternative requirements. The burden is

[99] Except for facilities in the offshore and coastal subcategories of the oil and gas extraction point source category as defined under 40 CFR 435.10 and 40 CFR 435.40.

on the person requesting the alternative requirement to demonstrate that alternative requirements should be imposed and that the appropriate requirements of § 125.85 (a) have been met. The person requesting the alternative requirements should refer to all relevant information, including the support documents for this rulemaking, all associated data collected for use in developing each requirement, and other relevant information that is kept on public file by EPA.

VIII. Economic Analysis

The total estimated annualized compliance costs of today's final rule is $48 million.[100] This estimate includes incremental costs incurred by new facilities that begin operation between 2001 and 2020. Facilities not already meeting section 316(b) requirements incur several types of costs under today's final rule. One-time costs of the rule include capital technology costs and costs for the initial permit application. Recurring costs include operating and maintenance (O&M) costs, permit renewal costs, and costs for monitoring, record keeping, and reporting. EPA's cost estimates are presented in Chapters 6 and 7 of the *Economic Analysis* and in the *Technical Development Document*.

Today's final rule provides for a two-track approach to comply with the rule's requirements. Facilities that already plan to install a closed-cycle cooling system in the baseline are assumed to choose Track I, the ''fast track.'' These facilities will incur only the costs of installing fish baskets and a fish return system if they would not have already elected to install these technologies independent of the rule. EPA records document that the screens were sized to reduce the velocity. Facilities that do not plan to install a closed-cycle cooling system in the baseline are assumed to choose Track II. These facilities will install alternative technologies of their choice that will reduce impingement mortality and entrainment to a level of reduction comparable to the level the facility would achieve if it met the Track I requirements. The alternative technologies considered in the cost analysis are further discussed in Chapter 5 of the Technical Development Document.

Chapter 2 of the *Technical Development Document* outlines EPA's approach to estimating the facility-level costs associated with this rule. EPA estimated costs for a series of model facilities, based on their cooling system type (once-through or recirculating system), the type of water body from which the intake structure withdraws (freshwater or marine water), and a measure of the facility's size (generating capacity for steam-electric generating capacity plants and design intake flow for manufacturers). Model facility characteristics were derived from specific new facilities predicted to be built based on Resource Data International's NEWGen Database, and from existing facilities based on responses to the section 316(b) industry survey of existing facilities (see discussion below) and U.S. Department of Energy information. EPA estimated compliance costs for the 121 new facilities estimated to begin operation between 2001 and 2020, based on model facility characteristics and the requirements of today's final rule. EPA amortized capital cost estimates over 30 years.[101] EPA projected construction of 121 new facilities over the next 20 years after promulgation of the final rule.

A. Electric Generation Sector

For the period 2001 through 2020, EPA estimates that 83 new electric generation facilities will be subject to today's final rule.[102] EPA identified these facilities based on three main data sources: (1) The U.S. Department of Energy's *Annual Energy Outlook 2001* (AEO2001); (2) Resource Data International's NEWGen Database (February 2001 version); and (3) the section 316(b) industry survey of existing facilities. Because the facilities are new facilities that have not yet been built, EPA necessarily had to project certain aspects of the facilities. Hence, the facilities are model facilities. For more information on EPA's facility modeling, see Chapter 5 of the *Economic Analysis*.

EPA estimated facility-level costs for the 83 new electric generation facilities found to be within the scope of this rule by comparing each facility's projected baseline characteristics with the incremental requirements of the rule. If a facility already planned to fulfill any of the applicable requirements independent of the rule, the cost estimates did not include any costs for meeting that requirement. For example, EPA estimates that 74 of the 83 proposed new generating facilities already plan to build a recirculating wet cooling tower, so only 9 facilities are assumed to incur costs for complying with the flow reduction requirement at § 124.84(b)(1) of the final rule.

EPA used annual forecasts of new capacity additions from the AEO2001 to predict how many of the 83 new generating facilities will begin operation in each year between 2001 and 2020. EPA then distributed the new facilities estimated to install a cooling tower evenly over the years with projected new facilities. For example, EPA estimates that three of the 14 new in-scope coal-fired facilities are planning to build a once-through system in the baseline. The cost analysis therefore assumes that the 1st, 6th, and 11th coal-fired facility to begin operation will incur costs of a recirculating wet cooling tower. An additional coal facility which plans to have a cooling pond was treated as having a once-through system in the baseline and was also costed with a cooling tower.[103] This facility was assumed to be the 2nd to begin operation. EPA's assumptions on when new Track I coal facilities will begin operation leads to an overestimate of the total costs of this rule because higher cost facilities are over represented among the coal facilities beginning operation early in the 20-year analysis period. Additionally, EPA estimates that five of the 69 new in-scope combined-cycle facilities would install a recirculating wet cooling tower as a result of the rule. The cost analysis therefore assumes that the 1st, 16th, 30th, 44th, and 58th combined-cycle facility to begin operation will incur costs of a recirculating wet cooling tower.

Total annualized costs for the 83 new facility electric generators are estimated to be $34.7 million (using a 7 percent discount rate). The lowest annualized compliance cost for any electric generator is estimated to be

[100] The estimated annualized compliance costs are presented as a single cost to represent the highestpotential implementation costs to industry. For example, although such costs are based on estimates of howmany facilities will choose compliance under Track I and Track II, even facilities estimated to follow TrackII have been assumed to ultimately have to install closed-cycle recirculating cooling water systems.

[101] The amortization period was selected to correspond to the estimated useful life of the technologiesrequired for compliance with this rule. EPA conducted a sensitivity analysis using a 15-yearamortization period (see Chapter 7 of the *Economic Analysis*).

[102] See Section IV.A. above or Chapter 5 of the *Economic Analysis* for underlying estimates and methods used for estimating the cost of the rule.

[103] In some states, a cooling pond is considered a water of the U.S. In these states, a plant with such a cooling system would have to comply with the recirculating requirements of the final section 316(b) New Facility Rule. In those states where a cooling pond is not considered a water of the U.S., a plant would not have to comply with the recirculating requirements of this rule. The costing analysis made the conservative assumption that facilities with a cooling pond would have to comply with the recirculating requirements. These recirculating facilities with cooling ponds were therefore costed as if they had a once-through system in the baseline.

approximately $170,000; the lowest annualized cost per megawatt of generating capacity is estimated to be $153. The highest annualized cost is estimated to be $19.1 million; the highest cost per megawatt of generating capacity is estimated to be $11,640. Sixty-nine facilities are expected to have relatively low annualized compliance costs (below $200,000 per facility), while 8 facilities will have annualized costs exceeding $1 million per facility.[104] The other facilities would have costs between $200,000 and $1 million per facility.

B. Manufacturing Sector

For the period 2001 through 2020, EPA projected that 38 new manufacturing facilities will incur costs to comply with today's final rule. All of these facilities are model facilities estimated based on industry growth rates (derived from the U.S. Industry and Trade Outlook 2000 and industry-specific sources, such as Kline's Guide to the Chemical Industry) and responses to the section 316(b) industry survey. Facility-specific operational characteristics of the cooling water intake structures, economic and financial characteristics of the projected new facilities, and waterbody type and other locational information were not available. EPA assumed that the characteristics of new facilities in a given 4-digit SIC code will be similar to the characteristics of existing facilities in that same SIC code. Compliance costs were therefore calculated based on the characteristics of existing facilities by SIC code, source water type, cooling system type, and flow, using data from the section 316(b) industry survey of existing facilities. EPA used the same unit costs and methods as for new electric generators.

Total annualized costs for the 38 new manufacturing facilities are estimated to be $13.0 million. The lowest annualized compliance cost for any facility is approximately $175,000; the highest annualized cost is $1.6 million; the average annualized costs for the remaining 36 manufacturing facilities centers around $494,000 per facility. Five of the manufacturing facilities incur annualized costs less than $200,000 per facility, and one chemicals facility incurs annualized costs exceeding $1 million.

Exhibit 4 provides a summary of the estimated annualized compliance costs for today's final rule.

EXHIBIT 4.—NATIONAL ANNUALIZED COSTS OF COMPLIANCE WITH THE SECTION 316(B) NEW FACILITY REGULATION

[in $2000, millions]

Industry category	Number of projected new in-scope facilities	Capital and permit application costs	Recurring costs	Total annualized compliance costs
Electric Generators:				
Combined-Cycle	69	$3.7	$9.6	$13.3
Coal-Fired	14	4.1	17.3	21.4
Total Generators	83	7.8	26.9	34.7
Manufacturing Facilities:				
SIC 26 Pulp & paper	2	0.2	0.3	0.5
SIC 28 Chemicals	22	2.7	4.1	6.8
SIC 29 Petroleum	2	0.3	0.5	0.8
SIC 331 Iron & steel	10	1.9	2.8	4.6
SIC 333/335 Aluminum	2	0.1	0.1	0.2
Total Manufacturing	38	5.2	7.8	13.0
All Projected New Facilities	121	12.9	34.7	47.7

C. Economic Impacts

The estimated annualized compliance costs would represent a small portion of the estimated revenues for almost all of the new facilities subject to today's rule. Costs as a percentage of baseline revenues would be less than 1 percent for all but nine of the facilities. Of these nine facilities, only 3 would experience costs as a percentage of baseline revenues of 3 percent or more.[105] EPA's discussion of cost impacts is presented in Chapter 7 of the *Economic Analysis.* Impacts at the industry level are expected to be very limited because the projected number and total capacity of the new facilities that are within the scope of today's final rule are generally small compared with the industry as a whole. Because EPA does not expect many facilities to be affected and does not expect the costs of the rule to create a barrier to entry or to create a significant change in productivity, EPA does not expect today's final rule to cause significant changes in industry productivity, competition, prices, output, foreign trade, or employment. The baseline revenues and the modest costs for each facility subject to today's rule are sufficient to preclude any barriers to entry.

EPA therefore expects the final rule to be economically practicable for the industries as a whole. The rule is not expected to result in any significant impact on generation and distribution of electricity, because most of the electric generation facilities are expected to meet most of the rule's requirements in the baseline. Only a small percentage of the total number of facilities in each of the manufacturing sectors will be affected by the final rule. EPA therefore concludes that this rule will not result in a significant impact on industries or the economy.

D. Cost and Economic Impacts of Other Alternatives

In addition to today's final rule, EPA estimated the costs and economic impacts of several alternative regulatory options. The first alternative option that EPA considered would be to apply the Track I requirements of today's final rule only to facilities withdrawing from

[104] The higher-cost electric generators are expected to begin operation in the years 2004, 2005 (two facilities), 2007 (two facilities), 2010, 2013, and 2017.

[105] Three coal facilities would have annualized costs between 3.3 percent and 5.2 percent of revenues. Sixelectric generators would have annualized costs greater than 1 but less than 3 percent of revenues.

estuaries, tidal rivers, Great Lakes, and oceans. Under this option, the definition and number of new facilities subject to the rule would not change, but some facilities would incur less stringent compliance requirements. EPA estimates that the total annualized compliance costs for this alternative would be $36.3 million. The second alternative option considered by EPA would impose more stringent compliance requirements on the electric generating segment of the industry. It is based wholly or in part on a zero intake-flow (or nearly zero, extremely low-flow) requirement, commensurate with levels achievable through the use of dry cooling systems. New manufacturing facilities would not be subject to these stricter requirements but would have to comply with the requirements of today's final rule. EPA estimated costs for this alternative by assuming that the dry cooling standard would apply to electric generators on all waters of the U.S. The costs of this option are estimated to be $490.7 million per year.

The first alternative regulatory option considered by EPA would have lower total costs than today's final rule. A regulatory framework based on dry cooling towers for some or all electric generators is the most expensive option. Compared with today's final rule, this option would impose an additional cost of $443 million, or $6,910 per megawatt of generating capacity, on the electric generating sector.

IX. Potential Benefits Associated With Reducing Impingement and Entrainment

To provide an indication of the potential benefits of adopting best technology for cooling water intake structures, this section presents information from existing sources on impingement and entrainment losses associated with cooling water intake structures and the economic benefits associated with reducing these losses. Benefits of the regulation come from preventing situations such as those discussed below. Examples are drawn from existing sources because the information needed to quantify and value potential reductions in losses at new facilities is not available. The reason the information is unavailable is that the exact location of future facilities is unknown. Also unknown are details of cooling water intake structure characteristics, such as the exact configuration of intake, the species present near an intake, the life stages of the species at the time they are present, and the susceptibility of these species to impingement and entrainment. For some facilities listed in the new NEWGen database, there is some general information about facility locations, but details of intake characteristics and the ecology of the surrounding waterbody are unavailable. For facilities projected into the future, there is no locational information at all. Site-specific information is critical in predicting benefits, because studies at existing facilities demonstrate that benefits are highly variable across facilities and locations. Even similar facilities on the same waterbody can have very different benefits depending on the aquatic ecosystem in the vicinity of the facility and intake-specific characteristics such as location, design, construction, and capacity.

In general, the probability of impingement and entrainment at future cooling water intake structure locations depends on intake and species characteristics that influence the intensity, time, and spatial extent of interactions of aquatic organisms with a facility's cooling water intake structure and the physical, chemical, and biological characteristics of the source waterbody. Flows commensurate with closed-cycle cooling systems (which are one part of the basis for best technology available) withdraw water from a natural waterbody, circulate the water through the condensers, and then send it to a cooling tower or cooling pond before recirculating it back through the condensers. Because cooling water is recirculated, closed-cycle systems generally reduce the water flow from 72 percent to 98 percent, thereby using only 2 percent to 28 percent of the water used by once-through systems. It is generally assumed that this would result in a comparable reduction in impingement mortality and entrainment.

Fish species with free-floating, early life stages are highly susceptible to cooling water intake structure impacts. Such planktonic organisms lack the swimming ability to avoid being drawn into intake flows. Species that spawn in nearshore areas, have planktonic eggs and larvae, and are small as adults experience even greater impacts, because both new recruits and reproducing adults are affected (*e.g.*, bay anchovy in estuaries and oceans). In general, higher impingement and entrainment are observed in estuaries and near coastal waters because of the presence of spawning and nursery areas.

The final regulatory framework also recognizes that for any given species and cooling water intake structure location, the proportion of the sourcewater flow supplied to the cooling water intake structure is a major factor affecting the potential for impingement and entrainment. In general, if the quantity of water withdrawn is large relative to the flow of the source waterbody, water withdrawal would tend to concentrate organisms and increase numbers impinged and entrained. Thus, the final flow requirements seek to reduce impingement and entrainment by limiting the proportion of the waterbody flow that can be withdrawn.

The following five examples from studies at existing facilities offer some indication of the relative magnitude of monetary damages associated with cooling water intake structures. These examples exhibit the magnitude of impingement and entrainment, on a per facility basis, that could be significantly reduced in the future for similar steam electric facilities under this final rule. In the following discussion, the potential benefits of lowering intake flows to a level commensurate with those of a closed-cycle recirculating cooling water system (for the projected 90 percent of facilities not already planning to use such systems) is illustrated by comparisons of once-through and closed-cycle cooling systems (*e.g.*, the Brayton Point and Hudson River facilities). The potential benefits of additional requirements defined by regional permit directors are demonstrated by operational changes implemented to reduce impingement and entrainment (*e.g.*, the Pittsburg and Contra Costa facilities). The Ludington example demonstrates how impingement and entrainment losses of forage species can lead to reductions in economically valuable species. Finally, the potential benefits of implementing additional design and construction technologies to increase survival of organisms impinged or entrained is illustrated by the application of modified intake screens and fish return systems (*e.g.*, the Salem Nuclear Generating Station).

The first example of the potential benefits of minimizing intake flow and associated impingement and entrainment is provided by data for the Brayton Point facility, located on Mt. Hope Bay in Massachusetts. In July 1984, the operation of Unit 4 was changed from closed-cycle cooling and piggyback operation to once-through cooling. Although conversion to once-through cooling increased intake flow by about 41 percent, the facility requested the change because of electrical problems associated with salt contamination from Unit 4's closed-cycle cooling canal equipped with spray modules. The lower losses expected under closed-cycle operation can be estimated by comparing losses before

and after this modification. Based on reports providing predicted [106] or actual [107] losses after the Unit 4 modification, EPA estimates that the average annual reduction in entrainment losses of adult equivalents of catchable fish resulting from closed-cycle operation of a single unit at Brayton Point (reducing the flow of that unit from 1,045 MGD to 703 MGD) would range from 207,254 Atlantic menhaden (Brevoortia tyrannus) [1] and 155,139 winter flounder (Pleuronectes americanus) [2] to 20,198 tautog (Tautoga onitis) [2] and 7,250 weakfish (Cynoscion regalis) [2] per year. Assuming a proportional change in harvest, the lower losses associated with a closed-cycle system would be expected to result in an increase of 330,000 to 2 million pounds per year in commercial landings and 42,000 to 128,000 pounds per year in recreational landings.

The second example of the potential benefits of low intake flow is provided by an analysis of impingement and entrainment losses at five Hudson River power plants. Estimated fishery losses under once-through compared with closed-cycle cooling indicate that an average reduction in intake flow of about 95 percent at the three facilities responsible for the greatest impacts would result in a 30 to 80 percent reduction in fish losses, depending on the species involved.[108] An economic analysis estimated monetary damages under once-through cooling based on the assumption that annual percentage reductions in year-classes of fish result in proportional reductions in fish stocks and harvest rates.[109] A low estimate of damages was based on losses at all five facilities, and a high estimate was based on losses at the three facilities that account for most of the impacts. Damage estimates under once-through cooling ranged from about $1.3 million to $6.1 million annually in 1999 dollars. Over the next 20 years, EPA projects that 9 out of 83 new power plants would be built without recirculating systems in the absence of this rule. Most of the costs projected for the final rule are associated with installing recirculating systems as a result of this final rule.

The third example demonstrates how impingement and entrainment losses of forage species can lead to reductions in economically valued species. A random utility model (RUM) was used to estimate fishery impacts of impingement and entrainment by the Ludington Pumped Storage plant on Lake Michigan.[110] [111] This method estimates changes in demand for beneficial use of the waterbody as a function of changes in catch rates. The Ludington facility is responsible for the loss of about 1 to 3 percent of the total Lake Michigan production of alewife, a forage species that supports valuable trout and salmon fisheries. It was estimated that losses of alewife result in a loss of nearly 6 percent of the angler catch of trout and salmon each year. On the basis of RUM analysis, the study estimated that if Ludington operations ceased, catch rates of trout and salmon species would increase by 3.3 to 13.7 percent annually, amounting to an estimated recreational angling benefit of $0.95 million per year (in 1999 dollars) for these species alone.

The fourth example indicates the potential benefits of technologies that have been required in past section 316(b). Two plants in the San Francisco Bay/Delta, Pittsburg, and Contra Costa in California have made changes to their intake operations to reduce impingement and entrainment of striped bass *Morone saxatilis*). These changes include flow reduction through variable speed pumps. These operational changes have also reduced incidental take of several threatened or endangered fish species, including the delta smelt (*Hypomesus transpacificus*) and several runs of chinook salmon (*Oncorhynchus tshawytscha*) and steelhead trout (*Oncorhynchus mykiss*). According to technical reports by the facilities, use of these technologies reduced striped bass losses by 78 to 94 percent, representing an increase in striped bass recreational landings averaging about 100,000 fish each year.[112] [113] [114] [115] [116] A local study estimated that the consumer surplus of an additional striped bass caught by a recreational angler is $8.87 to $13.77.[117] This implies a benefit to the recreational fishery, from reduced impingement and entrainment of striped bass alone, in the range of $887,000 to $1,377,000 annually. The monetary benefit of reduced impingement and entrainment of threatened or endangered species might be substantially greater.

The final example indicates the potential benefits of technologies that can be applied to reduce impingement. In its 1999 permit renewal application, the Salem Nuclear Generating Station in the Delaware Estuary evaluated the potential benefits of dual-flow, fine mesh traveling screens designed to achieve an approach velocity of 0.5 ft/s.[118] Based on the facility's projections of net increases in recreational fisheries that would occur with this technology, EPA estimates that angler consumer surplus would increase by $531,247, to $1,780,104 annually in 1999 dollars. Assuming that nonuse benefits are at least 50 percent of recreational use benefits, nonuse benefits associated with the screens might be expected to amount to up to $890,052 per year.

A more detailed discussion of cooling water intake structure impacts and potential benefits can be found Chapter 11 of the *Economic Analysis* document.

[106] Marine Research, Inc. and New England Power Company. 1981. Final Environmental Impact Report and Sections 316(a) and 316(b) Demonstrations Made in Connection with the Proposed conversion of Generating Unit No. 4 from Closed-Cycle to Once-through Cooling.

[107] New England Power Company and Marine Research Inc. 1995. Brayton Point Station Annual Biological and Hydrological Report, January-December 1994.

[108] Boreman, J. And C.P. Goodyear. 1988. Estimates of entrainment mortality for striped bass and other fish species inhabiting the Hudson River Estuary. *American Fisheries Society Monograph* 4:152–160.

[109] Rowe, R.D., C.M. Lang, L.G. Chestnut, D.A. Latimer, D.A. Rae, S.M. Bernow, and D.E. White. 1995. *The New York Electricity Externality Study, Volume 1.* Empire State Electric Energy Research Corporation.

[110] Jones, C.A., and Y.D. Sung. 1993. *Valuation of Environmental Quality at Michigan Recreational Fishing Sites: Methodological Issues and Policy Applications.* Prepared under EPA Contract No. CR–816247 for the U.S. EPA, Washington, DC.

[111] Pumped storage facilities do not use cooling water and are therefore not subject to this final rule. However, the concept of economic valuation of losses in forage species is transferable to other types of stressors, including cooling water intake structures.

[112] Pacific Gas & Electric Company. 1996. Best Technology Available: 1995 Technical Report for the Contra Costa and Pittsburg Power Plants. Prepared for Central Valley and San Francisco Bay Regional Water Quality Control Boards.

[113] Pacific Gas & Electric Company. 1997. Best Technology Available: 1996 Technical Report for the Contra Costa and Pittsburg Power Plants. Prepared for Central Valley and San Francisco Bay Regional Water Quality Control Boards.

[114] Pacific Gas & Electric Company. 1998. Best Technology Available: 1997 Technical Report for the Contra Costa and Pittsburg Power Plants. Prepared for Central Valley and San Francisco Bay Regional Water Quality Control Boards.

[115] Pacific Gas & Electric Company. 1999. Best Technology Available: 1998 Technical Report for the Contra Costa and Pittsburg Power Plants. Prepared for Central Valley and San Francisco Bay Regional Water Quality Control Boards.

[116] South Energy California. 2000. Best Technology Available: 1999 Technical Report for the Contra Costa and Pittsburg Power Plants. Prepared for Central Valley and San Francisco Bay Regional Water Quality Control Board.

[117] Huppert, D.H. 1989. Measuring the value of fish to anglers: application to central California anadromous species. *Marine Resource Economics* 6:89–107.

[118] Public Service Electric and Gas Company. 1999. Appendix F, 1999 Permit Renewal Application, NJPDES Permit No. NJ0005622.

X. Regulatory Requirements

A. Executive Order 12866: Regulatory Planning and Review

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

- Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this final rule is a ''significant regulatory action.'' As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2040–0241. The information collection requirements relate to new electric generation and manufacturing facilities collecting information for baseline biological characterization, monitoring of impingement and entrainment, preparing comprehensive demonstrations, verifying compliance, and preparing yearly reports.

Since the proposal, EPA used updated sources and revised the number of facilities that will be subject to this rule (See Section IV.A.1 of this preamble). These new data sources resulted in an increase in the number of facilities projected as subject to this rule from 98 in the proposed rule analysis to 121 in the final rule. As a result, the cost and burden estimates for today's final rule have increased somewhat.

In the final rule, EPA has revised the requirements of the source water baseline biological characterization to allow the use of existing information, which lowers the cost incurred by new facilities. However, today's rule includes a Comprehensive Demonstration requirement for those facilities choosing Track II. Cost and burden estimates for today's final rule were revised accordingly.

Burden is defined as 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.

The total burden of the information collection requirements associated with today's rule is estimated at 121,127 hours. The corresponding estimates of cost other than labor (labor and non-labor costs are included in the total cost of the rule discussed in Section VIII of this preamble) is $5.3 million for 18 facilities and 44 States and one Territory for the first three years after promulgation of the rule. Non-labor costs include activities such as capital costs for remote monitoring devices, laboratory services, photocopying, and the purchase of supplies. The burden and costs are for the information collection, reporting, and recordkeeping requirements for the three-year period beginning with the effective date of today's rule. Additional information collection requirements will occur after this initial three-year period as new facilities continue to be permitted and such requirements will be counted in a subsequent information collection request. EPA does not consider the specific data that would be collected under this final rule to be confidential business information. However, if a respondent does consider this information to be confidential, the respondent may request that such information be treated as confidential. All confidential data will be handled in accordance with 40 CFR 122.7, 40 CFR part 2, and EPA's Security Manual Part III, Chapter 9, dated August 9, 1976.

Compliance with the applicable information collection requirements imposed under this final rule (*see* §§ 122.21(r), 125.86, 125.87, 125.88, and 125.89) is mandatory. Before new facilities can begin operation, they would be required first to perform several data-gathering activities as part of the permit application process. Today's rule would require several distinct types of information collection as part of the NPDES application. In general, the information would be used to identify which of the requirements in today's final rule applies to the new facility, how the new facility would meet those requirements, and whether the new facility's cooling water intake structure reflects the best technology available for minimizing environmental impact. Specific data requirements of today's rule follow:

- Intake structure data, consisting of intake structure design and a facility water balance diagram, to evaluate the potential for impingement and entrainment of aquatic organisms; and
- Information on design and construction technologies implemented to ensure compliance with the applicable requirements set forth in today's rule.

In addition to the information requirements of the permit application, NPDES permits normally specify monitoring and reporting requirements to be met by the permitted entity. New facilities that fall within the scope of this rule would be required to perform biological monitoring of impingement and entrainment, monitoring of the screen or through-screen technology velocity, and visual inspections of the cooling water intake structure and any additional technologies. Additional ambient water quality monitoring may also be required of facilities depending on the specifications of their permits. The facility would be expected to analyze the results from its monitoring efforts and provide these results in an annual status report to the permitting authority. Finally, facilities would be required to maintain records of all submitted documents, supporting materials, and monitoring results for at least three years. (Note that the director may require that records be kept for a longer period to coincide with the life of the NPDES permit.)

All impacted facilities would carry out the specific activities necessary to fulfill the general information collection requirements. The estimated burden includes developing a water balance diagram that can be used to identify the proportion of intake water used for

cooling, make-up, and process water. Some of the facilities (those choosing Track II) would gather performance data to determine the effectiveness of alternative technologies that reduce impingement and entrainment to levels commensurate with reductions achieved through use of recirculating wet cooling towers and document the basis of their determination in a demonstration study. The burden estimates include sampling, assessing the source waterbody, estimating the magnitude of impingement and entrainment, and reporting results in a comprehensive demonstration for certain facilities. The burden also includes conducting a pilot study to show that alternative technologies to be installed are equivalent in performance to the fast track technologies, if data are not publicly available for assessing the performance of certain technologies. Some of the facilities would need to perform additional activities related to velocity and flow reduction requirements. The burden estimates also incorporate the cost of preparing a narrative description of the design, structure, equipment, and operational features required to meet velocity and flow reductions.

In addition to the activities mentioned above, some facilities would need to prepare and submit a plan describing design characteristics of additional technologies to be installed that will reduce impingement and entrainment and maximize survival of aquatic organisms. The estimates for some facilities also incorporate the cost of sampling, analyzing, and reporting the type and number of impinged and entrained organisms; velocity monitoring; and biweekly inspections of installed technologies.

Exhibit 5 presents a summary of the maximum burden estimates for a facility to prepare a permit application and monitor and report on cooling water intake structure operations as required by this rule.

EXHIBIT 5.—MAXIMUM BURDEN AND COSTS PER FACILITY FOR NPDES PERMIT APPLICATION AND MONITORING AND REPORTING ACTIVITIES

Activities	Burden (hr)	Labor cost	Other direct costs (lump sum) [a]
Start-up activities	43	$1,585	$50
Permit application activities	146	4,598	500
Source waterbody flow information	104	3,010	100
Source water baseline biological characterization data	265	8,975	750
CWIS flow reduction requirements (Track I)	108	3,261	400
CWIS velocity requirements (Track I)	138	4,428	1,000
Design and construction technology plan (Track I)	85	2,840	50
Comprehensive demonstration study plan (Track II) [b]	383	13,563	1,000
Source water baseline biological characterization study (Track II)	5,178	274,845	13,000
Evaluation of potential CWIS effects (Track II)	2,577	135,141	500
Subtotal	9,027	452,246	17,350
Maximum Burden and Costs per Facility for Annual Monitoring and Reporting Activities			
Biological monitoring (impingement)	388	20,240	650
Biological monitoring (entrainment)	776	41,035	4,000
Velocity monitoring	163	4,993	100
Visual inspection of installed technology and remote monitoring equipment [c]	253	8,159	100
Verification monitoring (Track II) [d]	122	5,146	500
Yearly Status report activities	348	13,071	750
Subtotal	2,050	92,644	6,100

[a] Cost of supplies, filing cabinets, photocopying, boat renting, etc.
[b] The Comprehensive Demonstration Study also has contracted service costs associated with it.
[c] Remote monitoring equipment also has capital and O&M costs associated with it
[d] The verification monitoring also has contracted services associated with it.

EPA believes that all 44 States and one territory with NPDES permitting authority will undergo start-up activities in preparation for administering the provisions of the new facility rule. As part of these start-up activities, States and Territories are expected to train junior technical staff to review materials submitted by facilities, and then use these materials to evaluate compliance with the specific conditions of each facility's NPDES permit.

Each State's/Territory's actual burden associated with reviewing submitted materials, writing permits, and tracking compliance depends on the number of new in-scope facilities that will be built in the State/Territory during the ICR approval period. EPA expects that State and Territory technical and clerical staff will spend time gathering, preparing, and submitting the various documents. EPA's burden estimates reflect the general staffing and level of expertise that is typical in States/Territories that administer the NPDES permitting program. EPA considered the time and qualifications necessary to complete various tasks such as reviewing submitted documents and supporting materials, verifying data sources, planning responses, determining specific permit requirements, writing the actual permit, and conferring with facilities and the interested public. Exhibit 6 provides a summary of the burden estimates for States/Territories performing various activities associated with the final rule.

EXHIBIT 6.—ESTIMATING STATE/TERRITORY BURDEN AND COSTS FOR ACTIVITIES

Activities	Burden (hrs)	Labor cost	Other direct cost
Start-up activities (per state/territory)	100	$3,514	$50
State/territory permit issuance activities (per facility)	723	29,128	350
Annual state/territory activities (per facility)	50	1,670	50

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. EPA is amending the table in 40 CFR part 9 of currently approved ICR control numbers issued by OMB for various regulations to list the information requirements contained in this final rule.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that might result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that might significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant intergovernmental mandates, and informing, educating, and advising small governments on compliance with regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that might result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Total annualized compliance and implementation costs are estimated to be $47.9 million. Of the total costs, the private sector accounts for $43.8 million and the government sector (includes direct compliance costs for facilities owned by government entities) accounts for $4.1 million. EPA calculated annualized costs by estimating initial and annual expenditures of facilities and regulatory authorities over the 30-year period (2001–2030), calculating the present value of that stream of expenditures using a 7 percent discount rate. EPA estimates that the highest undiscounted cost incurred by the private sector in any one year is approximately $71.2 million and the highest cost incurred by government sector in any one year is approximately $19.0 million. Thus, today's rule is not subject to the requirements of sections 202 and 205 of UMRA.

EPA has determined that this final rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's final rule is not subject to the requirements of section 203 of UMRA. A municipality that owns or operates a new electric generation facility is the primary category of small government operations that might be affected by this rule. Existing data indicate that only four government owned facilities will be constructed in the next twenty years. All four are expected to be owned by large governments. Of these, two are expected to be State owned, one is projected to be owned by a municipality and one by a municipality market. In addition, to minimize cost, this final rule excludes facilities that take in less than two (2) million gallons per day. Details and methodologies used for these estimates are included in the *Economic Analysis* document, which is in the docket.

D. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

Today's rule is intended to minimize the adverse environmental impact from cooling water intake structures and regulates new facilities that use cooling water withdrawn directly from waters of the U.S. The primary impact would be on new steam electric generating facilities (SIC 4911); however, a number of new facilities in other industries likely will also be regulated, including, but not limited to, paper and allied products (primary SIC 26), chemical and allied products (primary SIC 28), petroleum and coal products (primary SIC 29), and primary metals (primary SIC 33).

For the purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business according to the Small Business Administration (SBA) size standards; (2) A small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is a not-for-profit enterprise which is independently owned and operated and is not dominant in its field. After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This rule is expected to regulate only a small number of facilities owned by small entities, representing a very small percentage of all facilities owned by small entities in their respective industries. EPA has estimated that 11 new facilities owned by small entities would be regulated by this final rule. Of

the 11 new facilities owned by small entities, 8 are steam electric generating facilities and 3 are manufacturing facilities. This rule will not regulate any small governments or small organizations.

1. Electric Generation Sector

EPA has described the process by which prospective new steam electricity generating facilities subject to today's rule were identified in Section IV.A of this preamble and in Chapter 5 of the *Economic Analysis* document. As described in Chapter 8 of that document, EPA then identified those facilities subject to the rule whose owner would be defined as a small business. The analysis used the definitions of small businesses established by the Small Business Administration (SBA). (The SBA defines small businesses based on Standard Industrial Classification (SIC) codes and size standards expressed by the number of employees, annual receipts, or electric output.) The SBA defines a small steam electric generator as a firm whose facilities generate 4 million megawatt-hours output or less. EPA has determined that 8 facilities owned by small businesses in the steam electric generating industry are likely to be regulated by today's rule.

The estimated annualized compliance costs that facilities owned by small entities would likely incur represent between 0.11 and 0.44 percent of estimated facility annual sales revenue. All but one electric generating facilities owned by a small firm incur costs less than 0.3 percent of revenues. The results of this screening analysis indicated very low impacts at the facility level. Consequently, the costs to the parent small entity would be even lower.

The absolute number of small entities potentially subject to this rule is low. This is not unexpected since the total number of facilities subject to this rule is also low, even though the electric power industry is currently experiencing a rapid expansion and transition due to deregulation and new Clean Air Act requirements for emissions controls, and a large number of generating plants are under construction or planned for the early years of the final rule. First, there is a trend toward construction of combined-cycle technologies using natural gas, which use substantially less cooling water than other technologies. Second, there has been a decline in the use of surface water as the source of cooling water. An analysis of new combined-cycle facilities, identified from the NEWGen database shows a trend toward less use of surface cooling water. The analysis showed that 66 percent of the analyzed facilities use alternative sources of cooling water (*e.g.,* grey water, ground water, municipal water, or dry cooling). EPA believes this reflects the increased competition for water, an heightened awareness of the need for water conservation, and increased local opposition to the use of surface water for power generation. Taken together, the trend toward combined-cycle generating technologies, which have small cooling water requirements per unit of output, and the movement away from the use of surface cooling water result in a low projected number of regulated facilities, despite the expected expansion in new generating capacity.

2. Manufacturing Sector

Chapter 5 of the *Economic Analysis* document shows that 38 new manufacturing facilities are expected to incur compliance costs under today's rule. Since EPA's estimate of new manufacturing facilities is based on industry growth forecasts and not on specific planned facilities, actual parent firm information was not available. EPA, therefore, developed profiles of representative new facilities based on the characteristics of existing facilities identified in EPA's Industry Survey of existing facilities.

Using SBA size standards for the firm's SIC Code, only 3 of the 38 new manufacturing facilities are projected to be owned by a small entity. One of the 3 facilities is in the chemicals sector and two are in the metals sector (in both sectors, a small entity is defined as a firm with fewer than 1,000 employees). EPA compared annualized costs to annual sales revenue to assess impacts for manufacturing firms. The test was applied at the facility rather than the firm level, which provides a conservative estimate of the impacts because the ratio of costs to revenues were relatively lower at the firm level than at the individual facility level. The impact analysis showed a negligible impact on small entities: very low effects on facility sales revenue (ranging from 0.04 to 0.08 percent).

EPA has conducted extensive outreach to industry associations and organizations representing small government jurisdictions to identify small-entity manufacturing facilities. Based on the outreach effort and a review of the relevant industry trade literature, EPA concludes that, although the exact number of facilities owned by small entities that would be subject to the rule is difficult to quantify, it is evident that for the foreseeable future few, if any, small entities would be affected. EPA estimates that only 2.9 percent of future facilities in the next twenty years owned by small entities will use cooling water at levels that would bring them within the scope of this regulation.

The small number of small entities subject to this rule in the manufacturing sector is not surprising because the facilities likely to be subject to the rule are large industrial facilities that are not generally owned by small entities. There are many reasons for the limited projected number of in-scope new facilities owned by small entities. Depending on which industry sector is considered, these include industry downsizing; expansion of capacity at existing facilities as a means of meeting increased demand; mergers and acquisitions that reduce the overall number of firms; and addition of a significant number of facilities in at least one industry sector as part of a recently completed expansion cycle so that additional new facilities are not expected for the foreseeable future. The segments of the industries that are the primary users of cooling water are mostly large, capital intensive enterprises with few, if any, small businesses within their ranks.

A final reason why this rule does not have a significant economic impact on a substantial number of small entities is that EPA has established a two (2) MGD flow as the level below which facilities would not be subject to the requirements of the rule. This minimum flow level exempts many facilities using small amounts of water, including facilities owned by small entities, while covering approximately 99 percent of the total cooling water withdrawn from the waters of the U.S. Therefore, EPA concludes that there will be a negligible increase in the number of small facilities in these manufacturing industries subject to today's final rule. Exhibit 7 summarizes the results of small entity analysis.

EXHIBIT 7.—SUMMARY OF RFA/SBREFA ANALYSIS

Type of facility	Number of facilities owned by small entities	Annual compliance costs/annual sales revenue
Steam electric generating facilities	8	0.11%–0.44%
Manufacturing facilities	3	0.04%–0.08%
Total	11	0.04% to 0.44%

Although this rule will not have a significant economic impact on a substantial number of entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. In particular, EPA does not require that a facility with intake flows equal to or greater than 2 MGD and less than 10 MGD reduce its intake flow to a level commensurate with use of a closed-cycle recirculating cooling system. Instead, these facilities are required to use the less costly design and construction technologies for minimizing entrainment at all locations. See 125.84(c)(4). EPA believes that the requirements of § 125.84(c) are an economically practicable way for these facilities to reduce impingement mortality and entrainment. EPA consulted many times with the Small Business Administration on matters associated with this rule. Upon invitation, EPA met several times with a mix of small businesses interested in this rule.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 *FR* 43255, August 10, 1999) requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Rather, this final rule would result in minimal administrative costs on States that have an authorized NPDES program. The annualized state implementation cost over the 30-year analysis period (2001 to 2030) is approximately $240,000 total for all States per year. Also, based on meetings and subsequent discussions with local government representatives from municipal utilities, EPA believes that the final new facility rule may affect, at most, only two large municipalities that own steam electric generating facilities. The annual impacts on these facilities is not expected to exceed 1,304 burden hours and $36,106 (non-labor costs) per facility.

The national cooling water intake structure requirements would be implemented through permits issued under the NPDES program. Forty-four States and the Virgin Islands are currently authorized pursuant to section 402(b) of the CWA to implement the NPDES program. In States not authorized to implement the NPDES program, EPA issues NPDES permits. Under the CWA, States are not required to become authorized to administer the NPDES program. Rather, such authorization is available to States if they operate their programs in a manner consistent with section 402(b) and applicable regulations. Generally, these provisions require that State NPDES programs include requirements that are as stringent as Federal program requirements. States retain the ability to implement requirements that are broader in scope or more stringent than Federal requirements. (See section 510 of the CWA)

Today's final rule would not have substantial direct effects on States or on local governments because it would not change how EPA and the States and local governments interact or their respective authority or responsibilities for implementing the NPDES program. Today's final rule establishes national requirements for new facilities with cooling water intake structures. NPDES-authorized States that currently do not comply with the final regulations might need to amend their regulations or statutes to ensure that their NPDES programs are consistent with Federal section 316(b) requirements. See 40 CFR 123.62(e). For purposes of this final rule, the relationship and distribution of power and responsibilities between the Federal government and the States and local governments are established under the CWA (e.g., sections 402(b) and 510); nothing in this final rule would alter that. Thus, Executive Order 13132 does not apply to this rule.

Although section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with State governments and representatives of local governments in developing the rule. During the development of the section 316(b) rule for new facilities, EPA conducted several outreach activities through which State and local officials were informed about the proposed rule and they provided information and comments to the Agency.

EPA also held two public meetings in the summer of 1998 to discuss issues related to the section 316(b) rulemaking effort. Representatives from New York and Maryland attended the meetings and provided input to the Agency. The Agency also contacted Pennsylvania and Virginia to exchange information on this issue. In addition, EPA Regions 1, 3, 4, and 9 served as conduits for transmittal of section 316(b) information between the Agency and several States. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on the proposed rule from State and local officials. More recently, EPA met with industry, environmental, and State and Federal government representatives, during May, June, and July 2001 to discuss regulatory alternatives for the new facility rule. The States that EPA consulted with or received public comment from, in general, supported the technology-based rule which focused on reducing the impingement mortality and entrainment resulting from cooling water intake structures. In particular, many States endorsed the 2 MGD threshold, capacity reduction, and proportional flow restrictions. A few States wanted more flexibility, whereas others wanted more stringent technology-based performance

standards. EPA believes that it has achieved a balance between these two opposite concerns in establishing the two-track approach.

F. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 requires that, to the greatest extent practicable and permitted by law, each Federal agency must make achieving environmental justice part of its mission. Executive Order 12898 provides that each Federal agency must conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under such programs, policies, and activities because of their race, color, or national origin.

Today's final rule would require that the location, design, construction, and capacity of cooling water intake structures at new facilities reflect the best technology available for minimizing adverse environmental impact. For several reasons, EPA does not expect that this final rule would have an exclusionary effect, deny persons the benefits of the NPDES program, or subject persons to discrimination because of their race, color, or national origin. The final rule applies only to new facilities with cooling water intake structures that withdraw waters of the U.S. As discussed previously, EPA anticipates that this final rule would not affect a large number of new facilities; therefore, any impacts of the final rule would be limited. The final rule does include location criteria that would affect siting decisions made by new facilities, these criteria are intended to prevent deterioration of our nation's aquatic resources. EPA expects that this final rule would preserve the health of aquatic ecosystems located in reasonable proximity to new cooling water intake structures and that all populations, including minority and low-income populations, would benefit from such improved environmental conditions. In addition, because the final rule would help prevent decreases in populations of fish and other aquatic species, it is likely to help maintain the welfare of subsistence and other low-income fishermen or minority low-income populations.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 *FR* 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe might have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health and safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This final rule is not an economically significant rule as defined under Executive Order 12866 and does not concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. Therefore, it is not subject to Executive Order 13045.

H. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Given the available data on new facilities and the applicability thresholds in the final rule, EPA estimates that no new facilities subject to this final rule will be owned by tribal governments. This rule does not affect tribes in any way in the foreseeable future. Accordingly, the requirements of Executive Order 13175 do not apply to this rule.

I. Executive Order 13158: Marine Protected Areas

Executive Order 13158 (65 FR 34909, May 31, 2000) requires EPA to ''expeditiously propose new science-based regulations, as necessary, to ensure appropriate levels of protection for the marine environment.'' EPA may take action to enhance or expand protection of existing marine protected areas and to establish or recommend, as appropriate, new marine protected areas. The purpose of the Executive Order is to protect the significant natural and cultural resources within the marine environment, which means ''those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands thereunder, over which the United States exercises jurisdiction, consistent with international law.''

Today's final rule implements section 316(b) of the Clean Water Act (CWA) for new facilities that use water withdrawn from rivers, streams, lakes, reservoirs, estuaries, oceans or other waters of the United States (U.S.) for cooling water purposes. The final rule establishes national technology-based performance requirements applicable to the location, design, construction, and capacity of cooling water intake structures at new facilities. The national requirements establish the best technology available for minimizing adverse environmental impact associated with the use of these structures. It also requires the permit applicant to select and implement design and construction technologies to minimize impingement mortality and entrainment.

EPA expects that this final regulation will reduce impingement and entrainment at new facilities. The rule will afford protection of aquatic organisms at individual, population, community, or ecosystem levels of ecological structures. Therefore, EPA expects today's rule will advance the objective of the Executive Order to protect marine areas.

J. Executive Order 13211 (Energy Effects)

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355; May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Track I of the final section 316(b) new facility rule requires facilities with an intake flow equal to or greater than 10 MGD to install a recirculating system or other technologies that would reduce

the design intake flow to a level commensurate with that of a recirculating system. For the purposes of this Statement of Energy Effects, EPA believes that facilities that do not already plan to install a recirculating system in the baseline will install a recirculating wet cooling tower to achieve compliance with the rule (9 power plants). Installation of a cooling tower imposes an ''energy penalty,'' consisting of two components: (1) A reduction in unit efficiency due to increased turbine back-pressure; and (2) an increase in auxiliary power requirements to operate the recirculating wet cooling tower. EPA estimates that the installation of 9 recirculating wet cooling towers as a result of this rule (that is, those installed at new power plants that would otherwise not utilize recirculating wet cooling in absence of the rule) would reduce available generating capacity by a maximum of 100 megawatts (MW) nationally. EPA also considered the energy requirements of other compliance technologies, such as rotating screens, but found them insignificant and thus excluded them from this analysis.

EPA estimates that 4 new coal-fired power plants and 5 new combined-cycle power plants will install a recirculating wet cooling tower to comply with the final section 316(b) new facility rule. The estimated generating capacity of the four new coal facilities ranges from 63 MW to 3,564 MW. Each of the five combined-cycle facilities has a generating capacity of 1,031 MW. The estimated mean annual energy penalty is 1.65 percent of the generating capacity for coal-fired facilities and 0.40 percent for combined-cycle facilities. As a result, the installation of recirculating wet cooling towers to comply with the final rule is likely to reduce available energy supply by an average of approximately 74 MW per year over the next 20 years (2001 to 2020). The reduction will reach a maximum of 100 MW in 2017, when all 9 facilities are projected to have begun operation (*see* Section IV.A.1 of this preamble for details on the projected number and cooling water characteristics of new electric generators). These reductions are actually an overestimate due to the fact that some facilities may choose to comply with Track II and implement technologies other than recirculating wet cooling towers.

EPA believes that the estimated reduction in available energy supply as a result of the final section 316(b) rule does not constitute a significant energy effect. During the period covered by EPA's new facility projection, 2001 to 2020, the Energy Information Administration (EIA) forecasts total new capacity additions of 370 gigawatts (GW) (1 GW = 1,000 MW) and an average available generating capability of 921 GW. Compared to the EIA forecasts, the estimated energy effect of the final rule is insignificant, comprising only 0.03 percent of total new capacity (100 MW/370 GW) and 0.008 percent of the average available generating capability (74 MW/921 GW) at new facilities. Chapter 9 of the *Economic Analysis* provides more detail about the estimated energy effect of the final section 316(b) new facility rule. Chapter 3 of the *Technical Development Document* further discusses energy penalty estimation.

K. National Technology Transfer and Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, Pub L. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through the Office of Management and Budget (OMB), explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

L. Plain Language Directive

Executive Order 12866 requires each agency to write all rules in plain language. EPA has written this final rule in plain language to make the rule easier to understand. EPA specifically solicited comment on how to make this rule easier to understand. EPA received no comments on the plain language of the proposal or NODA.

M. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not considered a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective January 17, 2002.

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 122

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous substances, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 123

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous substances, Indian-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 124

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous waste, Indians-lands, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 125

Environmental protection, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

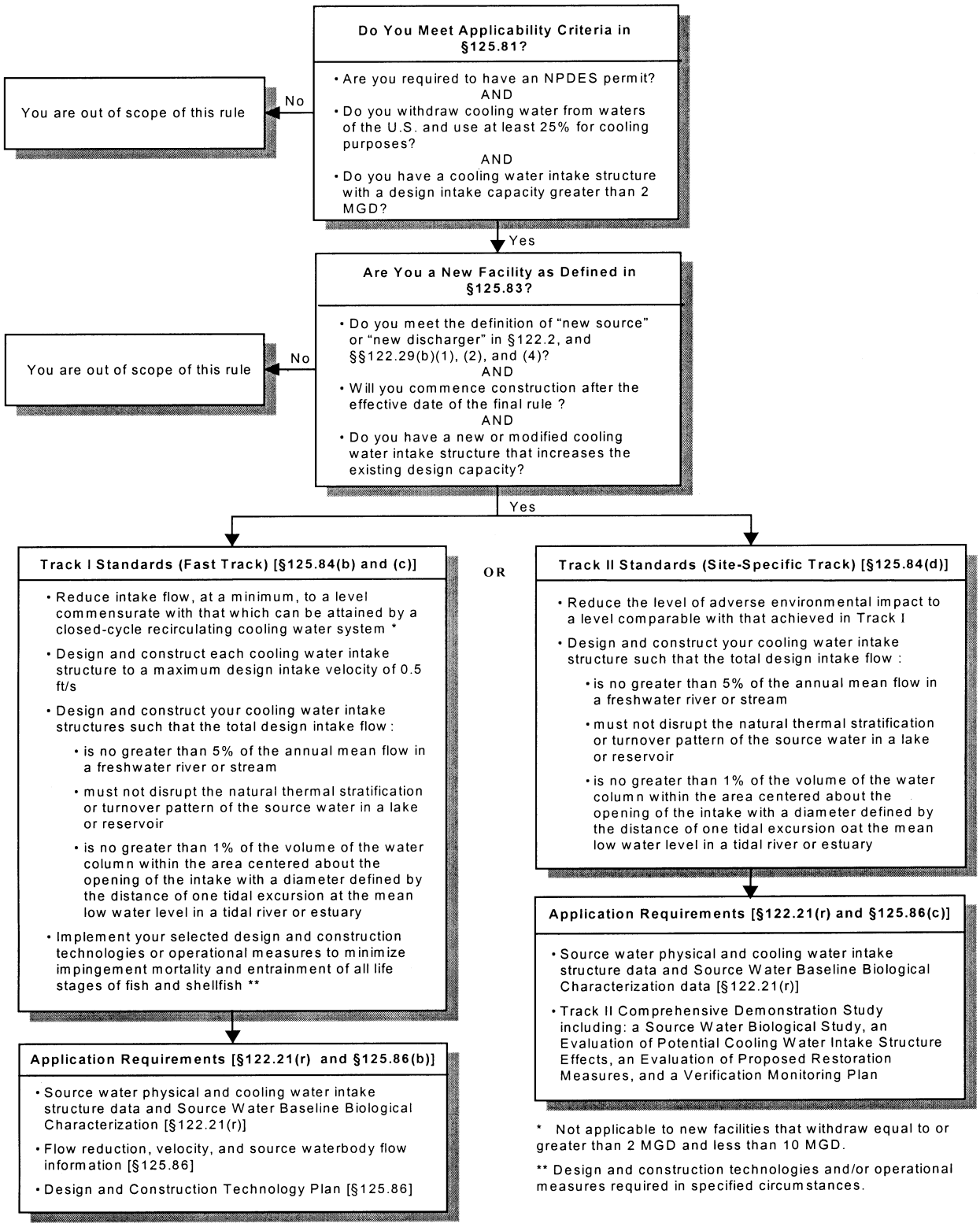
Dated: November 9, 2001.

Christine Todd Whitman,

Administrator.

BILLING CODE 6560–50–P

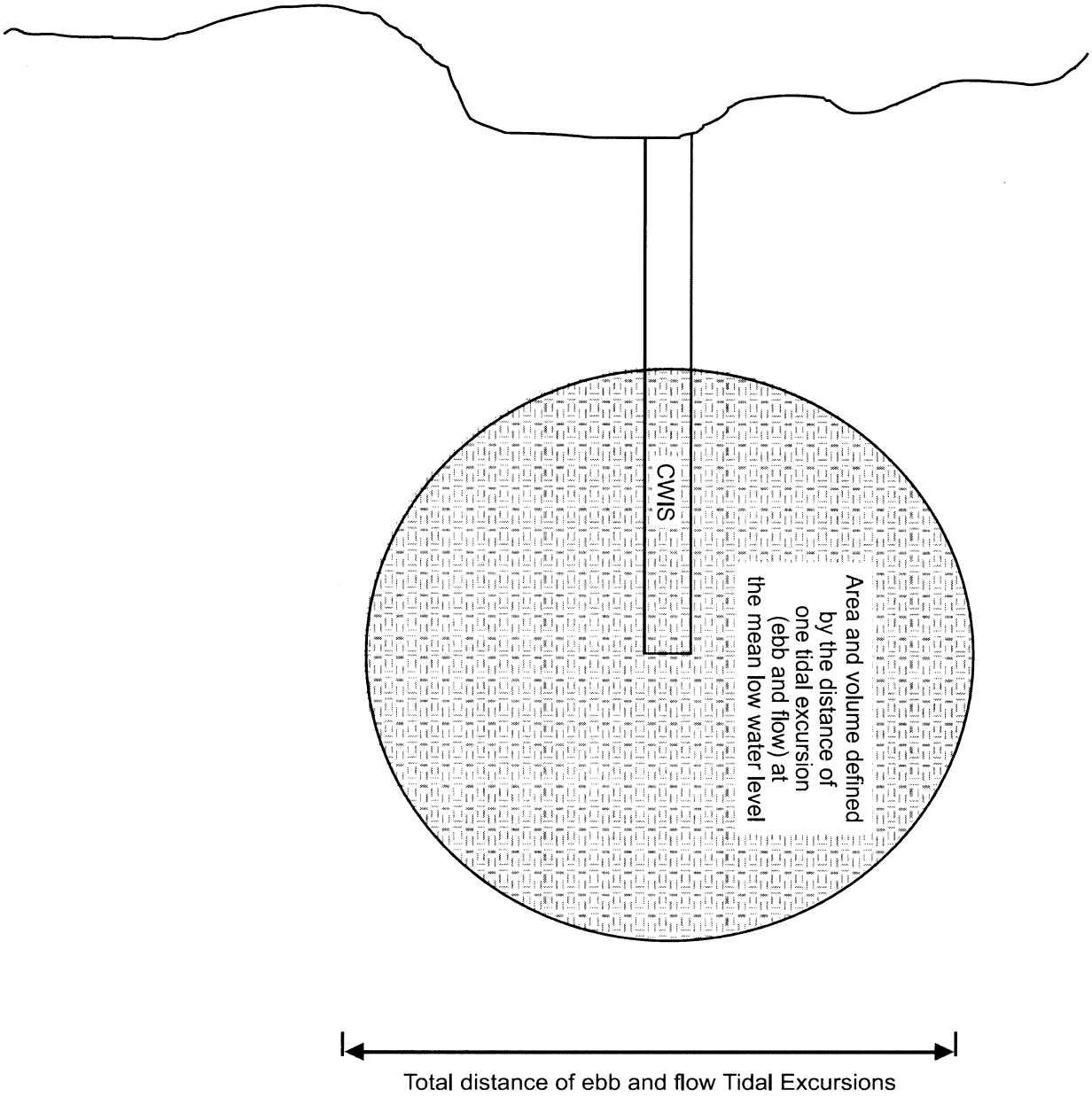
Appendix 1 to The Preamble—Section 316(b) New Facility Rule Framework



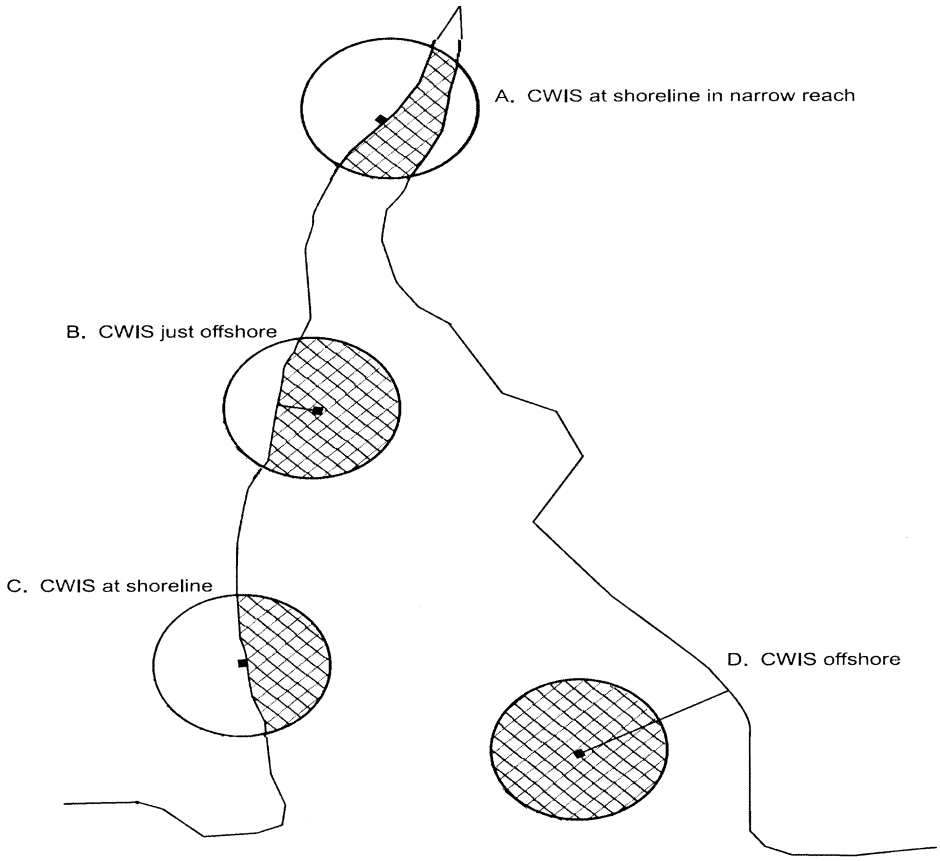
* Not applicable to new facilities that withdraw equal to or greater than 2 MGD and less than 10 MGD.

** Design and construction technologies and/or operational measures required in specified circumstances.

Appendix 2 to The Preamble—Illustration of Flow Requirement for Estuaries and Tidal Rivers



Appendix 3 to The Preamble—Examples of Areas and Volumes Defined in Estuaries or Tidal Rivers By The Tidal Excursion Distance



CWIS = Cooling Water Intake Structure

BILLING CODE 6560–50–C

For the reasons set forth in the preamble, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671, 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. In § 9.1 the table is amended by adding entries in numerical order under the indicated heading to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB Control No.
* * * * *	
EPA Administered Permit Programs: The National Pollutant Discharge Elimination System	
* * * * *	
122.21(r)	2040–0241
* * * * *	
Criteria and Standards for the National Pollutant Discharge Elimination System	
* * * * *	
125.86	2040–0241
125.87	2040–0241
125.88	2040–0241
125.89	2040–0241
* * * * *	

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority citation for part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Section 122.21 is amended by adding a new paragraph (r) to read as follows:

§ 122.21 Application for a permit (applicable to State programs, see § 123.25)

* * * * *

(r) *Applications for facilities with cooling water intake structures*—(1) *New facilities with new or modified cooling water intake structures.* New facilities with cooling water intake structures as defined in part 125, subpart I, of this chapter must report the information required under paragraphs (r)(2), (3), and (4) of this section and § 125.86 of this chapter. Requests for alternative requirements under § 125.85 of this chapter must be submitted with your permit application.

(2) *Source water physical data.* These include:

(i) A narrative description and scaled drawings showing the physical configuration of all source water bodies used by your facility, including areal dimensions, depths, salinity and temperature regimes, and other documentation that supports your determination of the water body type where each cooling water intake structure is located;

(ii) Identification and characterization of the source waterbody's hydrological and geomorphological features, as well as the methods you used to conduct any physical studies to determine your intake's area of influence within the waterbody and the results of such studies; and

(iii) Locational maps.

(3) *Cooling water intake structure data.* These include:

(i) A narrative description of the configuration of each of your cooling water intake structures and where it is located in the water body and in the water column;

(ii) Latitude and longitude in degrees, minutes, and seconds for each of your cooling water intake structures;

(iii) A narrative description of the operation of each of your cooling water intake structures, including design intake flows, daily hours of operation, number of days of the year in operation and seasonal changes, if applicable;

(iv) A flow distribution and water balance diagram that includes all sources of water to the facility, recirculating flows, and discharges; and

(v) Engineering drawings of the cooling water intake structure.

(4) *Source water baseline biological characterization data.* This information is required to characterize the biological community in the vicinity of the cooling water intake structure and to characterize the operation of the cooling water intake structures. The Director may also use this information in subsequent permit renewal proceedings to determine if your Design and Construction Technology Plan as required in § 125.86(b)(4) of this chapter should be revised. This supporting information must include existing data (if they are available). However, you may supplement the data using newly conducted field studies if you choose to do so. The information you submit must include:

(i) A list of the data in paragraphs (r)(4)(ii) through (vi) of this section that are not available and efforts made to identify sources of the data;

(ii) A list of species (or relevant taxa) for all life stages and their relative abundance in the vicinity of the cooling water intake structure;

(iii) Identification of the species and life stages that would be most susceptible to impingement and entrainment. Species evaluated should include the forage base as well as those most important in terms of significance to commercial and recreational fisheries;

(iv) Identification and evaluation of the primary period of reproduction, larval recruitment, and period of peak abundance for relevant taxa;

(v) Data representative of the seasonal and daily activities (e.g., feeding and water column migration) of biological organisms in the vicinity of the cooling water intake structure;

(vi) Identification of all threatened, endangered, and other protected species that might be susceptible to impingement and entrainment at your cooling water intake structures;

(vii) Documentation of any public participation or consultation with Federal or State agencies undertaken in development of the plan; and

(viii) If you supplement the information requested in paragraph (r)(4)(i) of this section with data collected using field studies, supporting documentation for the Source Water Baseline Biological Characterization must include a description of all methods and quality assurance procedures for sampling, and data analysis including a description of the study area; taxonomic identification of sampled and evaluated biological assemblages (including all life stages of fish and shellfish); and sampling and data analysis methods. The sampling and/or data analysis methods you use must be appropriate for a quantitative survey and based on consideration of methods used in other biological studies performed within the same source water body. The study area should include, at a minimum, the area of influence of the cooling water intake structure.

3. Section 122.44 is amended by adding paragraph (b)(3) to read as follows:

§ 122.44 Establishing limitations, standards, and other permit conditions (applicable to State NPDES programs, see § 123.25).

* * * * *

(b) * * *

(3) Requirements applicable to cooling water intake structures at new facilities under section 316(b) of the CWA, in accordance with part 125, subpart I, of this chapter.

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PART 123—STATE PROGRAM REQUIREMENTS

1. The authority citation for part 123 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Section 123.25 is amended by revising paragraph (a)(36) to read as follows:

§ 123.25 Requirements for permitting.

(a) * * *

(36) Subparts A, B, D, H, and I of part 125 of this chapter;

* * * * *

PART 124—PROCEDURES FOR DECISIONMAKING

1. The authority citation for part 124 continues to read as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.;* Safe Drinking Water Act, 42 U.S.C. 300f *et seq.;* Clean Water Act, 33 U.S.C. 1251 *et seq.;* Clean Air Act, 42 U.S.C. 7401 *et seq.*

2. Section 124.10 is amended by redesignating paragraph (d)(1)(ix) as paragraph (d)(1)(x) and adding a new paragraph (d)(1)(ix) to read as follows:

§ 124.10 Public notice of permit actions and public comment period.

* * * * *

(d) * * *

(1) * * *

(ix) Requirements applicable to cooling water intake structures at new facilities under section 316(b) of the CWA, in accordance with part 125, subpart I, of this chapter.

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PART 125—CRITERIA AND STANDARDS FOR THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority citation for part 125 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*, unless otherwise noted.

2. Remove the existing heading for subpart I and add new subpart I to part 125 to read as follows:

Subpart I—Requirements Applicable to Cooling Water Intake Structures for New Facilities Under Section 316(b) of the Act

Sec.

125.80 What are the purpose and scope of this subpart?
125.81 Who is subject to this subpart?
125.82 When must I comply with this subpart?
125.83 What special definitions apply to this subpart?
125.84 As an owner or operator of a new facility, what must I do to comply with this subpart?
125.85 May alternative requirements be authorized?
125.86 As an owner or operator of a new facility, what must I collect and submit when I apply for my new or reissued NPDES permit?
125.87 As an owner or operator of a new facility, must I perform monitoring?
125.88 As an owner or operator of a new facility, must I keep records and report?
125.89 As the Director, what must I do to comply with the requirements of this subpart?

Subpart I—Requirements Applicable to Cooling Water Intake Structures for New Facilities Under Section 316(b) of the Act

§ 125.80 What are the purpose and scope of this subpart?

(a) This subpart establishes requirements that apply to the location, design, construction, and capacity of cooling water intake structures at new facilities. The purpose of these requirements is to establish the best technology available for minimizing adverse environmental impact associated with the use of cooling water intake structures. These requirements are implemented through National Pollutant Discharge Elimination System (NPDES) permits issued under section 402 of the Clean Water Act (CWA).

(b) This subpart implements section 316(b) of the CWA for new facilities. Section 316(b) of the CWA provides that any standard established pursuant to sections 301 or 306 of the CWA and applicable to a point source shall require that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact.

(c) New facilities that do not meet the threshold requirements regarding amount of water withdrawn or percentage of water withdrawn for cooling water purposes in § 125.81(a) must meet requirements determined on a case-by-case, best professional judgement (BPJ) basis.

(d) Nothing in this subpart shall be construed to preclude or deny the right of any State or political subdivision of a State or any interstate agency under section 510 of the CWA to adopt or enforce any requirement with respect to control or abatement of pollution that is more stringent than those required by Federal law.

§ 125.81 Who is subject to this subpart?

(a) This subpart applies to a new facility if it:

(1) Is a point source that uses or proposes to use a cooling water intake structure;

(2) Has at least one cooling water intake structure that uses at least 25 percent of the water it withdraws for cooling purposes as specified in paragraph (c) of this section; and

(3) Has a design intake flow greater than two (2) million gallons per day (MGD).

(b) Use of a cooling water intake structure includes obtaining cooling water by any sort of contract or arrangement with an independent supplier (or multiple suppliers) of cooling water if the supplier or suppliers withdraw(s) water from waters of the United States. Use of cooling water does not include obtaining cooling water from a public water system or the use of treated effluent that otherwise would be discharged to a water of the U.S. This provision is intended to prevent circumvention of these requirements by creating arrangements to receive cooling water from an entity that is not itself a point source.

(c) The threshold requirement that at least 25 percent of water withdrawn be used for cooling purposes must be measured on an average monthly basis. A new facility meets the 25 percent cooling water threshold if, based on the new facility's design, any monthly average over a year for the percentage of cooling water withdrawn is expected to equal or exceed 25 percent of the total water withdrawn.

(d) This subpart does not apply to facilities that employ cooling water intake structures in the offshore and coastal subcategories of the oil and gas extraction point source category as defined under 40 CFR 435.10 and 40 CFR 435.40.

§ 125.82 When must I comply with this subpart?

You must comply with this subpart when an NPDES permit containing requirements consistent with this subpart is issued to you.

§ 125.83 What special definitions apply to this subpart?

The following special definitions apply to this subpart:

Annual mean flow means the average of daily flows over a calendar year.

Historical data (up to 10 years) must be used where available.

Closed-cycle recirculating system means a system designed, using minimized makeup and blowdown flows, to withdraw water from a natural or other water source to support contact and/or noncontact cooling uses within a facility. The water is usually sent to a cooling canal or channel, lake, pond, or tower to allow waste heat to be dissipated to the atmosphere and then is returned to the system. (Some facilities divert the waste heat to other process operations.) New source water (make-up water) is added to the system to replenish losses that have occurred due to blowdown, drift, and evaporation.

Cooling water means water used for contact or noncontact cooling, including water used for equipment cooling, evaporative cooling tower makeup, and dilution of effluent heat content. The intended use of the cooling water is to absorb waste heat rejected from the process or processes used, or from auxiliary operations on the facility's premises. Cooling water that is used in a manufacturing process either before or after it is used for cooling is considered process water for the purposes of calculating the percentage of a new facility's intake flow that is used for cooling purposes in § 125.81(c).

Cooling water intake structure means the total physical structure and any associated constructed waterways used to withdraw cooling water from waters of the U.S. The cooling water intake structure extends from the point at which water is withdrawn from the surface water source up to, and including, the intake pumps.

Design intake flow means the value assigned (during the facility's design) to the total volume of water withdrawn from a source water body over a specific time period.

Design intake velocity means the value assigned (during the design of a cooling water intake structure) to the average speed at which intake water passes through the open area of the intake screen (or other device) against which organisms might be impinged or through which they might be entrained.

Entrainment means the incorporation of all life stages of fish and shellfish with intake water flow entering and passing through a cooling water intake structure and into a cooling water system.

Estuary means a semi-enclosed body of water that has a free connection with open seas and within which the seawater is measurably diluted with fresh water derived from land drainage. The salinity of an estuary exceeds 0.5 parts per thousand (by mass) but is typically less than 30 parts per thousand (by mass).

Existing facility means any facility that is not a new facility.

Freshwater river or stream means a lotic (free-flowing) system that does not receive significant inflows of water from oceans or bays due to tidal action. For the purposes of this rule, a flow-through reservoir with a retention time of 7 days or less will be considered a freshwater river or stream.

Hydraulic zone of influence means that portion of the source waterbody hydraulically affected by the cooling water intake structure withdrawal of water.

Impingement means the entrapment of all life stages of fish and shellfish on the outer part of an intake structure or against a screening device during periods of intake water withdrawal.

Lake or *reservoir* means any inland body of open water with some minimum surface area free of rooted vegetation and with an average hydraulic retention time of more than 7 days. Lakes or reservoirs might be natural water bodies or impounded streams, usually fresh, surrounded by land or by land and a man-made retainer (e.g., a dam). Lakes or reservoirs might be fed by rivers, streams, springs, and/or local precipitation. Flow-through reservoirs with an average hydraulic retention time of 7 days or less should be considered a freshwater river or stream.

Maximize means to increase to the greatest amount, extent, or degree reasonably possible.

Minimum ambient source water surface elevation means the elevation of the 7Q10 flow for freshwater streams or rivers; the conservation pool level for lakes or reservoirs; or the mean low tidal water level for estuaries or oceans. The 7Q10 flow is the lowest average 7 consecutive day low flow with an average frequency of one in 10 years determined hydrologically. The conservation pool is the minimum depth of water needed in a reservoir to ensure proper performance of the system relying upon the reservoir. The mean low tidal water level is the average height of the low water over at least 19 years.

Minimize means to reduce to the smallest amount, extent, or degree reasonably possible.

Natural thermal stratification means the naturally-occurring division of a waterbody into horizontal layers of differing densities as a result of variations in temperature at different depths.

New facility means any building, structure, facility, or installation that meets the definition of a ''new source'' or ''new discharger'' in 40 CFR 122.2 and 122.29(b)(1), (2), and (4) and is a greenfield or stand-alone facility; commences construction after January 17, 2002; and uses either a newly constructed cooling water intake structure, or an existing cooling water intake structure whose design capacity is increased to accommodate the intake of additional cooling water. New facilities include only ''greenfield'' and ''stand-alone'' facilities. A greenfield facility is a facility that is constructed at a site at which no other source is located, or that totally replaces the process or production equipment at an existing facility (*see* 40 CFR 122.29(b)(1)(i) and (ii)). A stand-alone facility is a new, separate facility that is constructed on property where an existing facility is located and whose processes are substantially independent of the existing facility at the same site (*see* 40 CFR 122.29(b)(1)(iii)). New facility does not include new units that are added to a facility for purposes of the same general industrial operation (for example, a new peaking unit at an electrical generating station).

(1) Examples of ''new facilities'' include, but are not limited to: the following scenarios:

(i) A new facility is constructed on a site that has never been used for industrial or commercial activity. It has a new cooling water intake structure for its own use.

(ii) A facility is demolished and another facility is constructed in its place. The newly-constructed facility uses the original facility's cooling water intake structure, but modifies it to increase the design capacity to accommodate the intake of additional cooling water.

(iii) A facility is constructed on the same property as an existing facility, but is a separate and independent industrial operation. The cooling water intake structure used by the original facility is modified by constructing a new intake bay for the use of the newly constructed facility or is otherwise modified to increase the intake capacity for the new facility.

(2) Examples of facilities that would not be considered a ''new facility'' include, but are not limited to, the following scenarios:

(i) A facility in commercial or industrial operation is modified and either continues to use its original cooling water intake structure or uses a new or modified cooling water intake structure.

(ii) A facility has an existing intake structure. Another facility (a separate and independent industrial operation),

is constructed on the same property and connects to the facility's cooling water intake structure behind the intake pumps, and the design capacity of the cooling water intake structure has not been increased. This facility would not be considered a ''new facility'' even if routine maintenance or repairs that do not increase the design capacity were performed on the intake structure.

Ocean means marine open coastal waters with a salinity greater than or equal to 30 parts per thousand (by mass).

*Source wate*r means the water body (waters of the U.S.) from which the cooling water is withdrawn.

Thermocline means the middle layer of a thermally stratified lake or reservoir. In this layer, there is a rapid decrease in temperatures.

Tidal excursion means the horizontal distance along the estuary or tidal river that a particle moves during one tidal cycle of ebb and flow.

Tidal river means the most seaward reach of a river or stream where the salinity is typically less than or equal to 0.5 parts per thousand (by mass) at a time of annual low flow and whose surface elevation responds to the effects of coastal lunar tides.

§ 125.84 As an owner or operator of a new facility, what must I do to comply with this subpart?

(a)(1) The owner or operator of a new facility must comply with either:

(i) Track I in paragraph (b) or (c) of this section; or

(ii) Track II in paragraph (d) of this section.

(2) In addition to meeting the requirements in paragraph (b), (c), or (d) of this section, the owner or operator of a new facility may be required to comply with paragraph (e) of this section.

(b) *Track I requirements for new facilities that withdraw equal to or greater than 10 MGD.* You must comply with all of the following requirements:

(1) You must reduce your intake flow, at a minimum, to a level commensurate with that which can be attained by a closed-cycle recirculating cooling water system;

(2) You must design and construct each cooling water intake structure at your facility to a maximum through-screen design intake velocity of 0.5 ft/s;

(3) You must design and construct your cooling water intake structure such that the total design intake flow from all cooling water intake structures at your facility meets the following requirements:

(i) For cooling water intake structures located in a freshwater river or stream, the total design intake flow must be no greater than five (5) percent of the source water annual mean flow;

(ii) For cooling water intake structures located in a lake or reservoir, the total design intake flow must not disrupt the natural thermal stratification or turnover pattern (where present) of the source water except in cases where the disruption is determined to be beneficial to the management of fisheries for fish and shellfish by any fishery management agency(ies);

(iii) For cooling water intake structures located in an estuary or tidal river, the total design intake flow over one tidal cycle of ebb and flow must be no greater than one (1) percent of the volume of the water column within the area centered about the opening of the intake with a diameter defined by the distance of one tidal excursion at the mean low water level;

(4) You must select and implement design and construction technologies or operational measures for minimizing impingement mortality of fish and shellfish if:

(i) There are threatened or endangered or otherwise protected federal, state, or tribal species, or critical habitat for these species, within the hydraulic zone of influence of the cooling water intake structure; or

(ii) There are migratory and/or sport or commercial species of impingement concern to the Director or any fishery management agency(ies), which pass through the hydraulic zone of influence of the cooling water intake structure; or

(iii) It is determined by the Director or any fishery management agency(ies) that the proposed facility, after meeting the technology-based performance requirements in paragraphs (b)(1), (2), and (3) of this section, would still contribute unacceptable stress to the protected species, critical habitat of those species, or species of concern;

(5) You must select and implement design and construction technologies or operational measures for minimizing entrainment of entrainable life stages of fish and shellfish if:

(i) There are threatened or endangered or otherwise protected federal, state, or tribal species, or critical habitat for these species, within the hydraulic zone of influence of the cooling water intake structure; or

(ii) There are or would be undesirable cumulative stressors affecting entrainable life stages of species of concern to the Director or any fishery management agency(ies), and it is determined by the Director or any fishery management agency(ies) that the proposed facility, after meeting the technology-based performance requirements in paragraphs (b)(1), (2), and (3) of this section, would contribute unacceptable stress to these species of concern;

(6) You must submit the application information required in 40 CFR 122.21(r) and § 125.86(b);

(7) You must implement the monitoring requirements specified in § 125.87;

(8) You must implement the record-keeping requirements specified in § 125.88.

(c) *Track I requirements for new facilities that withdraw equal to or greater than 2 MGD and less than 10 MGD and that choose not to comply with paragraph (b) of this section.* You must comply with all the following requirements:

(1) You must design and construct each cooling water intake structure at your facility to a maximum through-screen design intake velocity of 0.5 ft/s;

(2) You must design and construct your cooling water intake structure such that the total design intake flow from all cooling water intake structures at your facility meets the following requirements:

(i) For cooling water intake structures located in a freshwater river or stream, the total design intake flow must be no greater than five (5) percent of the source water annual mean flow;

(ii) For cooling water intake structures located in a lake or reservoir, the total design intake flow must not disrupt the natural thermal stratification or turnover pattern (where present) of the source water except in cases where the disruption is determined to be beneficial to the management of fisheries for fish and shellfish by any fishery management agency(ies);

(iii) For cooling water intake structures located in an estuary or tidal river, the total design intake flow over one tidal cycle of ebb and flow must be no greater than one (1) percent of the volume of the water column within the area centered about the opening of the intake with a diameter defined by the distance of one tidal excursion at the mean low water level;

(3) You must select and implement design and construction technologies or operational measures for minimizing impingement mortality of fish and shellfish if:

(i) There are threatened or endangered or otherwise protected federal, state, or tribal species, or critical habitat for these species, within the hydraulic zone of influence of the cooling water intake structure; or

(ii) There are migratory and/or sport or commercial species of impingement

concern to the Director or any fishery management agency(ies), which pass through the hydraulic zone of influence of the cooling water intake structure; or

(iii) It is determined by the Director or any fishery management agency(ies) that the proposed facility, after meeting the technology-based performance requirements in paragraphs (c)(1) and (2) of this section, would still contribute unacceptable stress to the protected species, critical habitat of those species, or species of concern;

(4) You must select and implement design and construction technologies or operational measures for minimizing entrainment of entrainable life stages of fish and shellfish;

(5) You must submit the application information required in 40 CFR 122.21(r) and § 125.86(b)(2), (3), and (4);

(6) You must implement the monitoring requirements specified in § 125.87;

(7) You must implement the recordkeeping requirements specified in § 125.88.

(d) *Track II.* The owner or operator of a new facility that chooses to comply under Track II must comply with the following requirements:

(1) You must demonstrate to the Director that the technologies employed will reduce the level of adverse environmental impact from your cooling water intake structures to a comparable level to that which you would achieve were you to implement the requirements of paragraphs (b)(1) and (2) of this section.

(i) Except as specified in paragraph (d)(1)(ii) of this section, this demonstration must include a showing that the impacts to fish and shellfish, including important forage and predator species, within the watershed will be comparable to those which would result if you were to implement the requirements of paragraphs (b)(1) and (2) of this section. This showing may include consideration of impacts other than impingement mortality and entrainment, including measures that will result in increases in fish and shellfish, but it must demonstrate comparable performance for species that the Director, in consultation with national, state or tribal fishery management agencies with responsibility for fisheries potentially affected by your cooling water intake structure, identifies as species of concern.

(ii) In cases where air emissions and/or energy impacts that would result from meeting the requirements of paragraphs (b)(1) and (2) of this section would result in significant adverse impacts on local air quality, significant adverse impact on local water resources not addressed under paragraph (d)(1)(i) of this section, or significant adverse impact on local energy markets, you may request alternative requirements under § 125.85.

(2) You must design and construct your cooling water intake structure such that the total design intake flow from all cooling water intake structures at your facility meet the following requirements:

(i) For cooling water intake structures located in a freshwater river or stream, the total design intake flow must be no greater than five (5) percent of the source water annual mean flow;

(ii) For cooling water intake structures located in a lake or reservoir, the total design intake flow must not disrupt the natural thermal stratification or turnover pattern (where present) of the source water except in cases where the disruption is determined to be beneficial to the management of fisheries for fish and shellfish by any fishery management agency(ies);

(iii) For cooling water intake structures located in an estuary or tidal river, the total design intake flow over one tidal cycle of ebb and flow must be no greater than one (1) percent of the volume of the water column within the area centered about the opening of the intake with a diameter defined by the distance of one tidal excursion at the mean low water level.

(3) You must submit the application information required in 40 CFR 122.21(r) and § 125.86(c).

(4) You must implement the monitoring requirements specified in § 125.87.

(5) You must implement the record-keeping requirements specified in § 125.88.

(e) You must comply with any more stringent requirements relating to the location, design, construction, and capacity of a cooling water intake structure or monitoring requirements at a new facility that the Director deems are reasonably necessary to comply with any provision of state law, including compliance with applicable state water quality standards (including designated uses, criteria, and antidegradation requirements).

§ 125.85 May alternative requirements be authorized?

(a) Any interested person may request that alternative requirements less stringent than those specified in § 125.84(a) through (e) be imposed in the permit. The Director may establish alternative requirements less stringent than the requirements of § 125.84(a) through (e) only if:

(1) There is an applicable requirement under § 125.84(a) through (e);

(2) The Director determines that data specific to the facility indicate that compliance with the requirement at issue would result in compliance costs wholly out of proportion to those EPA considered in establishing the requirement at issue or would result in significant adverse impacts on local air quality, significant adverse impacts on local water resources not addressed under § 125.84(d)(1)(i), or significant adverse impacts on local energy markets;

(3) The alternative requirement requested is no less stringent than justified by the wholly out of proportion cost or the significant adverse impacts on local air quality, significant adverse impacts on local water resources not addressed under § 125.84(d)(1)(i), or significant adverse impacts on local energy markets; and

(4) The alternative requirement will ensure compliance with other applicable provisions of the Clean Water Act and any applicable requirement of state law.

(b) The burden is on the person requesting the alternative requirement to demonstrate that alternative requirements should be authorized.

§ 125.86 As an owner or operator of a new facility, what must I collect and submit when I apply for my new or reissued NPDES permit?

(a)(1) As an owner or operator of a new facility, you must submit to the Director a statement that you intend to comply with either:

(i) The Track I requirements for new facilities that withdraw equal to or greater than 10 MGD in § 125.84(b);

(ii) The Track I requirements for new facilities that withdraw equal to or greater than 2 MGD and less than 10 MGD in § 125.84(c);

(iii) The requirements for Track II in § 125.84 (d).

(2) You must also submit the application information required by 40 CFR 122.21(r) and the information required in either paragraph (b) of this section for Track I or paragraph (c) of this section for Track II when you apply for a new or reissued NPDES permit in accordance with 40 CFR 122.21.

(b) *Track I application requirements.* To demonstrate compliance with Track I requirements in § 125.84(b) or (c), you must collect and submit to the Director the information in paragraphs (b)(1) through (4) of this section.

(1) *Flow reduction information.* If you must comply with the flow reduction requirements in § 125.84(b)(1), you must submit the following information to the

Director to demonstrate that you have reduced your flow to a level commensurate with that which can be attained by a closed-cycle recirculating cooling water system:

(i) A narrative description of your system that has been designed to reduce your intake flow to a level commensurate with that which can be attained by a closed-cycle recirculating cooling water system and any engineering calculations, including documentation demonstrating that your make-up and blowdown flows have been minimized; and

(ii) If the flow reduction requirement is met entirely, or in part, by reusing or recycling water withdrawn for cooling purposes in subsequent industrial processes, you must provide documentation that the amount of cooling water that is not reused or recycled has been minimized.

(2) *Velocity information.* You must submit the following information to the Director to demonstrate that you are complying with the requirement to meet a maximum through-screen design intake velocity of no more than 0.5 ft/s at each cooling water intake structure as required in § 125.84(b)(2) and (c)(1):

(i) A narrative description of the design, structure, equipment, and operation used to meet the velocity requirement; and

(ii) Design calculations showing that the velocity requirement will be met at minimum ambient source water surface elevations (based on best professional judgement using available hydrological data) and maximum head loss across the screens or other device.

(3) *Source waterbody flow information.* You must submit to the Director the following information to demonstrate that your cooling water intake structure meets the flow requirements in § 125.84(b)(3) and (c)(2):

(i) If your cooling water intake structure is located in a freshwater river or stream, you must provide the annual mean flow and any supporting documentation and engineering calculations to show that your cooling water intake structure meets the flow requirements;

(ii) If your cooling water intake structure is located in an estuary or tidal river, you must provide the mean low water tidal excursion distance and any supporting documentation and engineering calculations to show that your cooling water intake structure facility meets the flow requirements; and

(iii) If your cooling water intake structure is located in a lake or reservoir, you must provide a narrative description of the water body thermal stratification, and any supporting documentation and engineering calculations to show that the natural thermal stratification and turnover pattern will not be disrupted by the total design intake flow. In cases where the disruption is determined to be beneficial to the management of fisheries for fish and shellfish you must provide supporting documentation and include a written concurrence from any fisheries management agency(ies) with responsibility for fisheries potentially affected by your cooling water intake structure(s).

(4) *Design and Construction Technology Plan.* To comply with § 125.84(b)(4) and (5), or (c)(3) and (c)(4), you must submit to the Director the following information in a Design and Construction Technology Plan:

(i) Information to demonstrate whether or not you meet the criteria in § 125.84(b)(4) and (b)(5), or (c)(3) and (c)(4);

(ii) Delineation of the hydraulic zone of influence for your cooling water intake structure;

(iii) New facilities required to install design and construction technologies and/or operational measures must develop a plan explaining the technologies and measures you have selected based on information collected for the Source Water Biological Baseline Characterization required by 40 CFR 122.21(r)(3). (Examples of appropriate technologies include, but are not limited to, wedgewire screens, fine mesh screens, fish handling and return systems, barrier nets, aquatic filter barrier systems, etc. Examples of appropriate operational measures include, but are not limited to, seasonal shutdowns or reductions in flow, continuous operations of screens, etc.) The plan must contain the following information:

(A) A narrative description of the design and operation of the design and construction technologies, including fish-handling and return systems, that you will use to maximize the survival of those species expected to be most susceptible to impingement. Provide species-specific information that demonstrates the efficacy of the technology;

(B) A narrative description of the design and operation of the design and construction technologies that you will use to minimize entrainment of those species expected to be the most susceptible to entrainment. Provide species-specific information that demonstrates the efficacy of the technology; and

(C) Design calculations, drawings, and estimates to support the descriptions provided in paragraphs (b)(4)(iii)(A) and (B) of this section.

(c) *Application requirements for Track II.* If you have chosen to comply with the requirements of Track II in § 125.84(d) you must collect and submit the following information:

(1) *Source waterbody flow information.* You must submit to the Director the following information to demonstrate that your cooling water intake structure meets the source water body requirements in § 125.84(d)(2):

(i) If your cooling water intake structure is located in a freshwater river or stream, you must provide the annual mean flow and any supporting documentation and engineering calculations to show that your cooling water intake structure meets the flow requirements;

(ii) If your cooling water intake structure is located in an estuary or tidal river, you must provide the mean low water tidal excursion distance and any supporting documentation and engineering calculations to show that your cooling water intake structure facility meets the flow requirements; and

(iii) If your cooling water intake structure is located in a lake or reservoir, you must provide a narrative description of the water body thermal stratification, and any supporting documentation and engineering calculations to show that the natural thermal stratification and thermal or turnover pattern will not be disrupted by the total design intake flow. In cases where the disruption is determined to be beneficial to the management of fisheries for fish and shellfish you must provide supporting documentation and include a written concurrence from any fisheries management agency(ies) with responsibility for fisheries potentially affected by your cooling water intake structure(s).

(2) *Track II Comprehensive Demonstration Study.* You must perform and submit the results of a Comprehensive Demonstration Study (Study). This information is required to characterize the source water baseline in the vicinity of the cooling water intake structure(s), characterize operation of the cooling water intake(s), and to confirm that the technology(ies) proposed and/or implemented at your cooling water intake structure reduce the impacts to fish and shellfish to levels comparable to those you would achieve were you to implement the requirements in § 125.84(b)(1)and (2) of Track I. To meet the ''comparable level''

requirement, you must demonstrate that:

(i) You have reduced both impingement mortality and entrainment of all life stages of fish and shellfish to 90 percent or greater of the reduction that would be achieved through § 125.84(b)(1) and (2); or

(ii) If your demonstration includes consideration of impacts other than impingement mortality and entrainment, that the measures taken will maintain the fish and shellfish in the waterbody at a substantially similar level to that which would be achieved through § 125.84(b)(1) and (2); and

(iii) You must develop and submit a plan to the Director containing a proposal for how information will be collected to support the study. The plan must include:

(A) A description of the proposed and/or implemented technology(ies) to be evaluated in the Study;

(B) A list and description of any historical studies characterizing the physical and biological conditions in the vicinity of the proposed or actual intakes and their relevancy to the proposed Study. If you propose to rely on existing source water body data, it must be no more than 5 years old, you must demonstrate that the existing data are sufficient to develop a scientifically valid estimate of potential impingement and entrainment impacts, and provide documentation showing that the data were collected using appropriate quality assurance/quality control procedures;

(C) Any public participation or consultation with Federal or State agencies undertaken in developing the plan; and

(D) A sampling plan for data that will be collected using actual field studies in the source water body. The sampling plan must document all methods and quality assurance procedures for sampling, and data analysis. The sampling and data analysis methods you propose must be appropriate for a quantitative survey and based on consideration of methods used in other studies performed in the source water body. The sampling plan must include a description of the study area (including the area of influence of the cooling water intake structure and at least 100 meters beyond); taxonomic identification of the sampled or evaluated biological assemblages (including all life stages of fish and shellfish); and sampling and data analysis methods; and

(iv) You must submit documentation of the results of the Study to the Director. Documentation of the results of the Study must include:

(A) *Source Water Biological Study.* The Source Water Biological Study must include:

(*1*) A taxonomic identification and characterization of aquatic biological resources including: a summary of historical and contemporary aquatic biological resources; determination and description of the target populations of concern (those species of fish and shellfish and all life stages that are most susceptible to impingement and entrainment); and a description of the abundance and temporal/spatial characterization of the target populations based on the collection of multiple years of data to capture the seasonal and daily activities (e.g., spawning, feeding and water column migration) of all life stages of fish and shellfish found in the vicinity of the cooling water intake structure;

(*2*) An identification of all threatened or endangered species that might be susceptible to impingement and entrainment by the proposed cooling water intake structure(s); and

(*3*) A description of additional chemical, water quality, and other anthropogenic stresses on the source waterbody.

(B) *Evaluation of potential cooling water intake structure effects.* This evaluation will include:

(*1*) Calculations of the reduction in impingement mortality and entrainment of all life stages of fish and shellfish that would need to be achieved by the technologies you have selected to implement to meet requirements under Track II. To do this, you must determine the reduction in impingement mortality and entrainment that would be achieved by implementing the requirements of § 125.84(b)(1) and (2) of Track I at your site.

(*2*) An engineering estimate of efficacy for the proposed and/or implemented technologies used to minimize impingement mortality and entrainment of all life stages of fish and shellfish and maximize survival of impinged life stages of fish and shellfish. You must demonstrate that the technologies reduce impingement mortality and entrainment of all life stages of fish and shellfish to a comparable level to that which you would achieve were you to implement the requirements in § 125.84(b)(1) and (2) of Track I. The efficacy projection must include a site-specific evaluation of technology(ies) suitability for reducing impingement mortality and entrainment based on the results of the Source Water Biological Study in paragraph (c)(2)(iv)(A) of this section. Efficacy estimates may be determined based on case studies that have been conducted in the vicinity of the cooling water intake structure and/or site-specific technology prototype studies.

(C) *Evaluation of proposed restoration measures.* If you propose to use restoration measures to maintain the fish and shellfish as allowed in § 125.84(d)(1)(i), you must provide the following information to the Director:

(*1*) Information and data to show that you have coordinated with the appropriate fishery management agency(ies); and

(*2*) A plan that provides a list of the measures you plan to implement and how you will demonstrate and continue to ensure that your restoration measures will maintain the fish and shellfish in the waterbody to a substantially similar level to that which would be achieved through § 125.84(b)(1) and (2).

(D) *Verification monitoring plan.* You must include in the Study the following:

(*1*) A plan to conduct, at a minimum, two years of monitoring to verify the full-scale performance of the proposed or implemented technologies, operational measures. The verification study must begin at the start of operations of the cooling water intake structure and continue for a sufficient period of time to demonstrate that the facility is reducing the level of impingement and entrainment to the level documented in paragraph (c)(2)(iv)(B) of this section. The plan must describe the frequency of monitoring and the parameters to be monitored. The Director will use the verification monitoring to confirm that you are meeting the level of impingement mortality and entrainment reduction required in § 125.84(d), and that the operation of the technology has been optimized.

(*2*) A plan to conduct monitoring to verify that the restoration measures will maintain the fish and shellfish in the waterbody to a substantially similar level as that which would be achieved through § 125.84(b)(1) and (2).

§ 125.87 As an owner or operator of a new facility, must I perform monitoring?

As an owner or operator of a new facility, you will be required to perform monitoring to demonstrate your compliance with the requirements specified in § 125.84.

(a) *Biological monitoring.* You must monitor both impingement and entrainment of the commercial, recreational, and forage base fish and shellfish species identified in either the Source Water Baseline Biological Characterization data required by 40 CFR 122.21(r)(3) or the Comprehensive Demonstration Study required by § 125.86(c)(2), depending on whether

you chose to comply with Track I or Track II. The monitoring methods used must be consistent with those used for the Source Water Baseline Biological Characterization data required in 40 CFR 122.21(r)(3) or the Comprehensive Demonstration Study required by § 125.86(c)(2). You must follow the monitoring frequencies identified below for at least two (2) years after the initial permit issuance. After that time, the Director may approve a request for less frequent sampling in the remaining years of the permit term and when the permit is reissued, if supporting data show that less frequent monitoring would still allow for the detection of any seasonal and daily variations in the species and numbers of individuals that are impinged or entrained.

(1) *Impingement sampling.* You must collect samples to monitor impingement rates (simple enumeration) for each species over a 24-hour period and no less than once per month when the cooling water intake structure is in operation.

(2) *Entrainment sampling.* You must collect samples to monitor entrainment rates (simple enumeration) for each species over a 24-hour period and no less than biweekly during the primary period of reproduction, larval recruitment, and peak abundance identified during the Source Water Baseline Biological Characterization required by 40 CFR 122.21(r)(3) or the Comprehensive Demonstration Study required in § 125.86(c)(2). You must collect samples only when the cooling water intake structure is in operation.

(b) *Velocity monitoring.* If your facility uses surface intake screen systems, you must monitor head loss across the screens and correlate the measured value with the design intake velocity. The head loss across the intake screen must be measured at the minimum ambient source water surface elevation (best professional judgment based on available hydrological data). The maximum head loss across the screen for each cooling water intake structure must be used to determine compliance with the velocity requirement in § 125.84(b)(2) or (c)(1). If your facility uses devices other than surface intake screens, you must monitor velocity at the point of entry through the device. You must monitor head loss or velocity during initial facility startup, and thereafter, at the frequency specified in your NPDES permit, but no less than once per quarter.

(c) *Visual or remote inspections.* You must either conduct visual inspections or employ remote monitoring devices during the period the cooling water intake structure is in operation. You must conduct visual inspections at least weekly to ensure that any design and construction technologies required in § 125.84(b)(4) and (5), or (c)(3) and (4) are maintained and operated to ensure that they will continue to function as designed. Alternatively, you must inspect via remote monitoring devices to ensure that the impingement and entrainment technologies are functioning as designed.

§ 125.88 As an owner or operator of a new facility, must I keep records and report?

As an owner or operator of a new facility you are required to keep records and report information and data to the Director as follows:

(a) You must keep records of all the data used to complete the permit application and show compliance with the requirements, any supplemental information developed under § 125.86, and any compliance monitoring data submitted under § 125.87, for a period of at least three (3) years from the date of permit issuance. The Director may require that these records be kept for a longer period.

(b) You must provide the following to the Director in a yearly status report:

(1) Biological monitoring records for each cooling water intake structure as required by § 125.87(a);

(2) Velocity and head loss monitoring records for each cooling water intake structure as required by § 125.87(b); and

(3) Records of visual or remote inspections as required in § 125.87(c).

§ 125.89 As the Director, what must I do to comply with the requirements of this subpart?

(a) *Permit application.* As the Director, you must review materials submitted by the applicant under 40 CFR 122.21(r)(3) and § 125.86 at the time of the initial permit application and before each permit renewal or reissuance.

(1) After receiving the initial permit application from the owner or operator of a new facility, the Director must determine applicable standards in § 125.84 to apply to the new facility. In addition, the Director must review materials to determine compliance with the applicable standards.

(2) For each subsequent permit renewal, the Director must review the application materials and monitoring data to determine whether requirements, or additional requirements, for design and construction technologies or operational measures should be included in the permit.

(3) For Track II facilities, the Director may review the information collection proposal plan required by § 125.86(c)(2)(iii). The facility may initiate sampling and data collection activities prior to receiving comment from the Director.

(b) *Permitting requirements.* Section 316(b) requirements are implemented for a facility through an NPDES permit. As the Director, you must determine, based on the information submitted by the new facility in its permit application, the appropriate requirements and conditions to include in the permit based on the track (Track I or Track II) the new facility has chosen to comply with. The following requirements must be included in each permit:

(1) *Cooling water intake structure requirements.* At a minimum, the permit conditions must include the performance standards that implement the requirements of § 125.84(b)(1), (2), (3), (4) and (5); § 125.84(c)(1), (2), (3) and (4); or § 125.84(d)(1) and (2). In determining compliance with proportional flow requirement in §§ 125.84(b)(3)(ii); (c)(2)(ii); and (d)(2)(ii), the director must consider anthropogenic factors (those not considered ''natural'') unrelated to the new facility's cooling water intake structure that can influence the occurrence and location of a thermocline. These include source water inflows, other water withdrawals, managed water uses, wastewater discharges, and flow/level management practices (e.g., some reservoirs release water from below the surface, close to the deepest areas).

(i) For a facility that chooses Track I, you must review the Design and Construction Technology Plan required in § 125.86(b)(4) to evaluate the suitability and feasibility of the technology proposed to minimize impingement mortality and entrainment of all life stages of fish and shellfish. In the first permit issued, you must put a condition requiring the facility to reduce impingement mortality and entrainment commensurate with the implementation of the technologies in the permit. Under subsequent permits, the Director must review the performance of the technologies implemented and require additional or different design and construction technologies, if needed to minimize impingement mortality and entrainment of all life stages of fish and shellfish. In addition, you must consider whether more stringent conditions are reasonably necessary in accordance with § 125.84(e).

(ii) For a facility that chooses Track II, you must review the information submitted with the Comprehensive

Demonstration Study information required in § 125.86(c)(2), evaluate the suitability of the proposed design and construction technologies and operational measures to determine whether they will reduce both impingement mortality and entrainment of all life stages of fish and shellfish to 90 percent or greater of the reduction that could be achieved through Track I. If you determine that restoration measures are appropriate at the new facility for consideration of impacts other than impingement mortality and entrainment, you must review the Evaluation of Proposed Restoration Measures and evaluate whether the proposed measures will maintain the fish and shellfish in the waterbody at a substantially similar level to that which would be achieved through § 125.84(b)(1) and (2). In addition, you must review the Verification Monitoring Plan in § 125.86(c)(2)(iv)(D) and require that the proposed monitoring begin at the start of operations of the cooling water intake structure and continue for a sufficient period of time to demonstrate that the technologies, operational measures and restoration measures meet the requirements in § 125.84(d)(1). Under subsequent permits, the Director must review the performance of the additional and /or different technologies or measures used and determine that they reduce the level of adverse environmental impact from the cooling water intake structures to a comparable level that the facility would achieve were it to implement the requirements of § 125.84(b)(1) and (2).

(2) *Monitoring conditions.* At a minimum, the permit must require the permittee to perform the monitoring required in § 125.87. You may modify the monitoring program when the permit is reissued and during the term of the permit based on changes in physical or biological conditions in the vicinity of the cooling water intake structure. The Director may require continued monitoring based on the results of the Verification Monitoring Plan in § 125.86(c)(2)(iv)(D).

(3) *Record keeping and reporting.* At a minimum, the permit must require the permittee to report and keep records as required by § 125.88.

[FR Doc. 01–28968 Filed 12–17–01; 8:45 am]

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Federal Register

Tuesday,
December 18, 2001

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter 1 et al.

Federal Acquisition Circular 2001-02; Introduction and Federal Acquisition Regulation; Energy-Efficiency of Supplies and Services and Prompt Payment and the Recovery of Overpayment, et al.; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 2001–02; Introduction

AGENCIES: Department of Defense (DoD), General ServicesAdministration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2001–02. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.arnet.gov/far.*

DATES: For effective dates and comment dates, see separate documents that follow.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules.

For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 2001–02 and specific FAR case number(s). Interested parties may also visit our web site at *http://www.arnet.gov/far.*

Item	Subject	FAR case	Analyst
I	Definitions of ''Component'' and ''End Product''	2000–015	Davis
II	Energy Efficiency of Supplies and Services	1999–011	Smith
III	Prompt Payment and the Recovery of Overpayment	1999–023	Olson
IV	Javits-Wagner-O'Day Act Subcontract Preference Under Service Contracts	1999–017	Nelson
V	Discussion Requirements	1999–022	DeStefano
VI	Definition of Subcontract in FAR Subpart 15.4	2000–017	Olson
VII	North American Industry Classification System	2000–604	Cundiff
VIII	Iceland—Newly Designated Country under Trade Agreements Act	2001–025	Davis
IX	Contractor Personnel in the Procurement of Information Technology Services	2000–609	Nelson

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries. FAC 2001–02 amends the FAR as specified below:

Item I—Definitions of ''Component'' and ''End Product'' (FAR Case 2000–015)

This final rule amends the FAR to restore the unique Part 25 definitions of ''component'' and ''end product'' for acquisition of supplies. In addition, the Councils have made minor revisions to the definitions of ''component'' and ''cost of components'' for acquisition of construction. These definitions are used by offerors to determine whether offered end products or construction material meet the requirements of the Buy American Act and Balance of Payments Program or trade agreements.

Item II—Energy Efficiency of Supplies and Services (FAR Case 1999–011)

This final rule amends the FAR to implement Executive Order 13123, Greening the Government through Efficient Energy Management. The rule—

- Requires contracting officers, when acquiring energy-using products, to buy energy-efficient products if life-cycle cost-effective and available;
- Directs contracting officers to Internet sources for more detailed information on ENERGY STAR and other energy-efficient products; and
- Provides guidance on energy-savings performance contracts (ESPCs), including—
- An explanation of what they are and when they should be used; and
- Procedures for the solicitation and award of ESPCs, and the evaluation of unsolicited proposals for ESPCs.

The rule will only affect contracting officers that—

- Acquire energy-using products or services;
- Contract for design, construction, renovation, or maintenance of a public building that will include energy-using products; or
- Use an energy-savings performance contract to reduce energy use and cost in an agency's facilities or operations.

Item III—Prompt Payment and the Recovery of Overpayment (FAR Case 1999–023)

This final rule revises prompt payment policies at FAR part 32, Contract Financing, and related contract provisions at FAR part 52. The rule is applicable to—

- Government payment offices and contractors since it revises the information that must be on an invoice for the document to be considered a proper invoice with respect to the prompt payment provisions of the FAR;
- Contracting officers and contractors since it establishes the requirement in the prompt payment clauses for contractors to notify the contracting officer if the contractor becomes aware of an overpayment of an invoice; and
- All Government contracts (including contracts at or below the simplified acquisition threshold) except contracts with payment terms and late payment penalties established by other governmental authority (*e.g.,* tariffs).

Item IV—Javits-Wagner-O'Day Act Subcontract Preference under Service Contracts (FAR Case 1999–017)

This final rule amends the FAR to add a new preference for award of subcontracts under service contracts to nonprofit workshops designated by the Committee for Purchase From People Who Are Blind or Severely Disabled (Javits-Wagner-O'Day Act (JWOD) (41 U.S.C. 48)). The final rule applies to all service contracts. The rule—

- Requires that contractors that provide services for the Government's use and subcontract for those services must give preference in awarding subcontracts to nonprofit workshops, if the services are on the Committee for Purchase From People Who Are Blind or Severely Disabled procurement list;
- Requires that contracting officers must consider the preference for subcontracting with nonprofit workshops when reviewing a subcontract for services that is subject to the procedures at FAR Subpart 44.2, Consent to Subcontracts; and
- Amends the clause at FAR 52.208–9, Contractor Use of Mandatory Sources of Supply, to inform offerors and contractors that certain services to be

provided for use by the Government are required by law to be obtained from the Committee for Purchase From People Who Are Blind or Severely Disabled.

Item V—Discussion Requirements (FAR Case 1999–022)

The rule amends FAR 15.306(d) to clarify that, although the contracting officer must discuss deficiencies, significant weaknesses, and adverse past performance information to which the offeror has not yet had an opportunity to respond and is encouraged to discuss other aspects of the offeror's proposal, the contracting officer is not required to discuss every area where the proposal could be improved. This clarifies the existing policy that any discussions beyond the minimum elements stated in the FAR are a matter of contracting officer judgment.

Item VI—Definition of Subcontract in FAR Subpart 15.4 (FAR Case 2000–017)

This final rule amends FAR 15.401 to exclude section 15.407–2, Make-or-buy programs, from application of the expanded definition of ''subcontract'' at FAR 15.401. This rule is a clarification and does not change any policy in Subpart 15.4, Contract Pricing.

Item VII—North American Industry Classification System (FAR Case 2000–604)

This rule finalizes, with minor changes, the interim rule which amended the FAR to convert size standards and other programs in the FAR that were based on the Standard Industrial Classification (SIC) system to the North American Industry Classification System (NAICS). NAICS is a new system that classifies establishments according to how they conduct their economic activity. It is a significant improvement over the SIC system because it more accurately identifies industries. Since October 1, 2000, NAICS is to be used to establish the size standards for acquisitions. In addition, the designated industry groups in FAR 19.1005 have been converted to NAICS and contract actions will be reported using the NAICS code rather than the SIC code.

Item VIII—Iceland Newly Designated Country under Trade Agreements Act (FAR Case 2001–025)

This final rule amends the definition of ''Designated country'' at FAR 25.003, and the clause at 52.225–5, Trade Agreements, and the clause at 52.225–11, Buy American Act—Balance of Payments Program—Construction Materials under Trade Agreements, to add Iceland to the list of designated countries under the Trade Agreements Act (TAA). Contracting officers may now consider offers of end products or construction materials from Iceland in acquisitions subject to the TAA. The current TAA threshold for acquisition of supplies is $177,000 and for acquisition of construction is $6,806,000.

In addition, if the TAA applies, Executive Order 13126 of June 12, 1999, Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor, does not apply to contracts for the acquisition of products from foreign countries that are party to the Agreement on Government Procurement. Therefore, this final rule also adds Iceland to the list of excepted countries of origin at 22.1503(b)(4) and the associated clause at 52.222–19, Child Labor—Cooperation with Authorities and Remedies.

Item IX—Contractor Personnel in the Procurement of Information Technology Services (FAR Case 2000–609)

This final rule converts the interim rule published in FAC 97–25, in the **Federal Register** at 66 FR 22084, May 2, 2001, to a final rule without change. The rule added a new section to subpart 39.1 to implement section 813 of the Floyd D. Spence National Defense Authorization Act for fiscal year 2001 (Pub. L. 106–398). Section 813 prohibits the use of minimum experience or education requirements for contractor personnel in solicitations for the acquisition of information technology services, unless (1) the contracting officer first determines that the needs of the agency cannot be met without such requirement; or (2) the needs of the agency require the use of a type of contract other than a performance-based contract.

Dated: December 5, 2001.

Al Matera,

Director, Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2001–02 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2001–02 is effective February 19, 2002, except for Items VII through IX, which are effective December 18, 2001.

Dated: December 5, 2001.

Carolyn M. Balven,

Deputy Director, Defense Procurement.

Patricia A. Brooks,

Acting Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Tom Luedtke,

Associate Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 01–30537 Filed 12–17–01; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 25, and 52

[FAC 2001–02; FAR Case 2000–015; Item I]

RIN 9000–AJ24

Federal Acquisition Regulation; Definitions of ''Component'' and ''End Product''

AGENCIES: Department of Defense (DoD), General ServicesAdministration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to restore the unique (Part 25) definitions of ''component'' and ''end product'' for acquisition of supplies. In addition, the Councils have made minor revisions to the definitions of ''component'' and ''cost of components'' for acquisition of construction.

DATES: Effective Date: February 19, 2002.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Cecelia L. Davis, Procurement Analyst, at (202) 219–0202. Please cite FAC 2001–02, FAR case 2000–015.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule restores unique definitions of ''component'' and ''end

product'' at FAR 25.003, and amends the definitions at FAR 2.101 and associated clauses 52.225–1, Buy American Act—Balance of Payments Program—Supplies; 52.225–3, Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program; and 52.225–5, Trade Agreements, to comply with these definitions. The final rule under FAR case 97–024, Foreign Acquisition (Part 25 Rewrite), published in the **Federal Register** at 64 FR 72416, December 27, 1999, removed the unique Part 25 definitions of ''component'' and ''end product,'' applying standard definitions in Part 2 to Part 25 and associated clauses (other than clauses for construction). The Councils did not intend to make any substantive change to the FAR by these amendments. Because the Councils received comments addressing potential unintended substantive changes to the FAR that might result from these amendments, the Councils are reverting to the original definitions, with minor editorial corrections.

In addition, this rule revises the definition of ''components'' in FAR clauses 52.225–9, Buy American Act—Balance of Payments Program—Construction Materials, and 52.225–11, Buy American Act—Balance of Payments Program—Construction Materials under Trade Agreements, to a definition of the singular term ''component'' and revises the definition of ''cost of components'' in these clauses to address components of construction material, rather than components of an end product (which is not applicable to construction).

This is not a significant regulatory action, and therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR parts 2, 25, and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2001–02, FAR case 2000–015), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 2, 25, and 52

Government procurement.

Dated: December 5, 2001.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 25, and 52 as set forth below:

1. The authority citation for 48 CFR parts 2, 25, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101 by revising the definitions ''Component'' and ''End product'' to read as follows:

2.101 Definitions.

* * * * *

Component means any item supplied to the Government as part of an end item or of another component, except that for use in—

(1) Part 25, see the definition in 25.003;

(2) 52.225–1 and 52.225–3, see the definition in 52.225–1(a) and 52.225–3(a); and

(3) 52.225–9 and 52.225–11, see the definition in 52.225–9(a) and 52.225–11(a).

* * * * *

End product means supplies delivered under a line item of a Government contract, except for use in part 25 and the associated clauses at 52.225–1, 52.225–3, and 52.225–5, see the definitions in 25.003, 52.225–1(a), 52.225–3(a), and 52.225–5(a).

* * * * *

PART 25—FOREIGN ACQUISITION

3. In section 25.003 add, in alphabetical order, the definitions ''Component'' and ''End product''; and amend paragraph (1) of the definition ''Cost of components'' by removing ''product'' and adding ''product or construction material'' in its place. The added text reads as follows:

25.003 Definitions.

* * * * *

Component means an article, material, or supply incorporated directly into an end product or construction material.

* * * * *

End product means those articles, materials, and supplies to be acquired for public use.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Amend section 52.225–1 by revising the date of the clause and the definitions ''Component'' and ''End product'' to read as follows:

52.225–1 Buy American Act—Balance of Payments Program—Supplies.

* * * * *

Buy American Act—Balance of Payments Program—Supplies (Feb 2002)

(a) * * *

Component means an article, material, or supply incorporated directly into an end product.

* * * * *

End product means those articles, materials, and supplies to be acquired under the contract for public use.

* * * * *

5. Amend section 52.225–3 by revising the date of the clause and the definitions ''Component'' and ''End product'' to read as follows:

52.225–3 Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program.

* * * * *

Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program (Feb 2002)

(a) * * *

Component means an article, material, or supply incorporated directly into an end product.

* * * * *

End product means those articles, materials, and supplies to be acquired under the contract for public use.

* * * * *

6. Amend section 52.225–5 by revising the date of the clause and the definition ''End product'' to read as follows:

52.225–5 Trade Agreements.

* * * * *

Trade Agreements (Feb 2002)

(a) * * *

End product means those articles, materials, and supplies to be acquired under the contract for public use.

* * * * *

7. Amend section 52.225–9 by revising the date of the clause and the definition ''Component''; and by

amending the definition ''Cost of components'' in paragraph (1) by removing ''end product'' and adding ''construction material'' in its place. The revised text reads as follows:

52.225–9 Buy American Act—Balance of Payments Program—Construction Materials.

* * * * *

Buy American Act—Balance of Payments Program—Construction Materials (Feb 2002)

(a) * * *

Component means an article, material, or supply incorporated directly into a construction material.

* * * * *

8. Amend section 52.225–11 by revising the date of the clause and the definition ''Component''; and by amending the definition ''Cost of components'' in paragraph (1) by removing ''end product'' and adding ''construction material'' in its place. The revised text reads as follows:

52.225–11 Buy American Act—Balance of Payments Program—Construction Materials under Trade Agreements.

* * * * *

Buy American Act—Balance of Payments Program—Construction Materials Under Trade Agreements (Feb 2002)

(a) * * *

Component means an article, material, or supply incorporated directly into a construction material.

* * * * *

[FR Doc. 01–30538 Filed 12–17–01; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 11, 15, 23, and 42

[FAC 2001–02; FAR Case 1999–011; Item II]

RIN 9000–AI71

Federal Acquisition Regulation; Energy-Efficiency of Supplies and Services

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement Executive Order (E.O.) 13123 of June 3, 1999, Greening the Government through Efficient Energy Management.

DATES: *Effective Date:* February 19, 2002.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Laura Smith, Procurement Analyst, at (202) 208–7279. Please cite FAC 2001–02, FAR case 1999–011.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 65 FR 30310, May 10, 2000. The proposed rule—

1. Defined in Subpart 2.1, Definitions—

a. ''Energy-efficient product'' (relocated and revised from FAR 23.704);

b. ''Energy-savings performance contract'' (ESPC); and

c. ''Renewable energy'' and ''renewable energy technology'';

2. Revised the policies and sources of authority in Part 11;

3. Revised Part 15 to alert agencies to the special procedures at 10 CFR 436.33(b) that agencies must use when evaluating unsolicited proposals for ESPCs;

4. Revised and relocated guidance on energy-efficient products and services from Subpart 23.7 to Subpart 23.2 so that Subpart 23.7 would focus on environmentally preferably products and services;

5. Revised Subpart 23.2 by—

a. Renaming the subpart ''Energy and Water Efficiency and Renewable Energy'' to reflect its expanded subject area;

b. Deleting outdated definitions and guidance;

c. Adding guidance on energy- and water-efficient products (*e.g.,* ENERGY STAR®) and services, and ESPCs; and

d. Directing contracting officers to sources for more detailed guidance and information; and

6. Made a number of editorial changes. Seven respondents submitted public comments on the proposed rule. The Councils considered all comments when developing this final rule. The major changes between the final rule and the proposed rule are that the final rule—

a. Provides additional emphasis on water conservation at FAR 11.002(d)(2), 23.000(d), and 23.703;

b. Deletes E.O. 12902 of March 8, 1994, Energy Efficiency and Water Conservation at Federal Facilities, at FAR 23.702(e) since this E.O. was revoked by Section 604 of E.O. 13123; and

c. Revises 42.302(a)(68) to better reflect the current practices of the contract administration office.

This is not a significant regulatory action, and therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because this rule simply provides additional guidance to Government contracting and technical personnel with respect to the Government's preference, currently set forth in FAR Subpart 23.7, for buying environmentally preferable and energy-efficient products and services. This rule requires a contracting officer, when acquiring an energy-using product, to purchase an energy-efficient product (where life-cycle cost-effective and available), *i.e.,* a product that is in the upper 25 percent of energy efficiency as designated by the Department of Energy's (DOE's) Federal Energy Management Program or that meets DOE and Environmental Protection Agency (EPA) criteria for use of the ''ENERGY STAR®'' trademark label. The 25 percent benchmark for determining energy efficiency is currently addressed at FAR 23.704. Small entities that offer products to the Government may use the ENERGY STAR® label, if the product meets DOE and EPA criteria. The rule also provides guidance to contracting officers on the use of energy-savings performance contracts as alternatives to the traditional method of financing energy efficiency improvements.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management

and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 2, 11, 15, 23, and 42

Government procurement.

Dated: December 5, 2001.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 11, 15, 23, and 42 as set forth below:

1. The authority citation for 48 CFR parts 2, 11, 15, 23, and 42 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. In section 2.101, revise the definition ''Energy-efficient product,'' and add, in alphabetical order, the definitions, ''Energy-savings performance contract,'' ''Renewable energy,'' and ''Renewable energy technology'' to read as follows:

2.101 Definitions.

* * * * *

Energy-efficient product means a product that—

(1) Meets Department of Energy and Environmental Protection Agency criteria for use of the Energy Star trademark label; or

(2) Is in the upper 25 percent of efficiency for all similar products as designated by the Department of Energy's Federal Energy Management Program.

Energy-savings performance contract means a contract that requires the contractor to—

(1) Perform services for the design, acquisition, financing, installation, testing, operation, and where appropriate, maintenance and repair, of an identified energy conservation measure or series of measures at one or more locations;

(2) Incur the costs of implementing the energy savings measures, including at least the cost (if any) incurred in making energy audits, acquiring and installing equipment, and training personnel in exchange for a predetermined share of the value of the energy savings directly resulting from implementation of such measures during the term of the contract; and

(3) Guarantee future energy and cost savings to the Government.

* * * * *

Renewable energy means energy produced by solar, wind, geothermal, and biomass power.

Renewable energy technology means—

(1) Technologies that use renewable energy to provide light, heat, cooling, or mechanical or electrical energy for use in facilities or other activities; or

(2) The use of integrated whole-building designs that rely upon renewable energy resources, including passive solar design.

* * * * *

PART 11—DESCRIBING AGENCY NEEDS

3. In section 11.002, revise paragraph (d) to read as follows:

11.002 Policy.

* * * * *

(d)(1) The Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901, *et seq.*), Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, and Executive Order 13123 of June 3, 1999, Greening the Government through Efficient Energy Management, establish requirements for acquiring

(i) Products containing recovered materials;

(ii) Environmentally preferable products and services;

(iii) Energy-efficient products and services; and

(iv) Products and services that utilize renewable energy technologies.

(2) Executive agencies must consider use of recovered materials, energy- and water-efficient products and services, environmentally preferable purchasing criteria developed by the EPA, and environmental objectives (see subparts 23.2 and 23.4 and 23.703(b)) when

(i) Developing, reviewing, or revising Federal and military specifications, product descriptions (including commercial item descriptions) and standards;

(ii) Describing Government requirements for supplies and services; and

(iii) Developing source-selection factors.

* * * * *

4. In section 11.101, revise paragraph (b) to read as follows:

11.101 Order of precedence for requirements documents.

* * * * *

(b) Agencies must prepare requirements documents to achieve maximum practicable—

(1) Energy efficiency, including using renewable energy technologies; and

(2) Use of recovered material, other materials that are environmentally preferable, energy- and water-efficient products, and renewable energy technologies (see subparts 23.2, 23.4, and 23.7).

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

5. In section 15.603, add paragraph (e) to read as follows:

15.603 General.

* * * * *

(e) Agencies must evaluate unsolicited proposals for energy-savings performance contracts in accordance with the procedures in 10 CFR 436.33(b).

PART 23—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLEENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREEWORKPLACE

6. Revise the heading of Part 23 to read as set forth above.

7. Revise the heading and text of section 23.000 to read as follows:

23.000 Scope.

This part prescribes acquisition policies and procedures supporting the Government's program for ensuring a drug-free workplace and for protecting and improving the quality of the environment by

(a) Controlling pollution;

(b) Managing energy and water use in Government facilities efficiently;

(c) Using renewable energy and renewable energy technologies;

(d) Acquiring energy- and water-efficient products and services, environmentally preferable products, and products that use recovered materials; and

(e) Requiring contractors to identify hazardous materials.

8. Revise the heading and text of Subpart 23.2 to read as follows:

Subpart 23.2—Energy and Water Efficiency and Renewable Energy

Sec.
23.200 Scope.
23.201 Authorities.
23.202 Policy.
23.203 Energy-efficient products.
23.204 Energy-savings performance contracts.

23.200 Scope.

(a) This subpart prescribes policies and procedures for—

(1) Acquiring energy- and water-efficient products and services, and products that use renewable energy technology; and

(2) Using an energy-savings performance contract to obtain energy-efficient technologies at Government facilities without Government capital expense.

(b) This subpart applies to acquisitions in the UnitedStates, its possessions and territories, Puerto Rico, and the Northern Mariana Islands. Agencies conducting acquisitions outside of these areas must use their best efforts to comply with this subpart.

23.201 Authorities.

(a) Energy Policy and Conservation Act (42 U.S.C.

6361(a)(1)) and Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901, *et seq.*).

(b) National Energy Conservation Policy Act (42 U.S.C. 8253, 8262g, and 8287).

(c) Executive Order 11912 of April 13, 1976, Delegations of Authority under the Energy Policy and Conservation Act.

(d) Executive Order 13123 of June 3, 1999, Greening the Government through Efficient Energy Management.

23.202 Policy.

The Government's policy is to acquire supplies and services that promote energy and water efficiency, advance the use of renewable energy products, and help foster markets for emerging technologies. This policy extends to all acquisitions, including those below the simplified acquisition threshold.

23.203 Energy-efficient products.

(a) If life-cycle cost-effective and available—

(1) When acquiring energy-using products, contracting officers must purchase ENERGY STAR® or other energy-efficient products designated by the Department of Energy'sFederal Energy Management Program (FEMP); or

(2) When contracting for services that will include the provision of energy-using products, including contracts for design, construction, renovation, or maintenance of a public building, the specifications must require that the contractor provide ENERGY STAR or other energy-efficient products.

(b) Information is available via the Internet on—

(1) ENERGY STAR® at *http://www.energystar.gov/;* and

(2) FEMP at *http://www.eren.doe.gov/femp/procurement.*

23.204 Energy-savings performance contracts.

(a) Section 403 of Executive Order 13123 of June 3, 1999, Greening the Government through Efficient EnergyManagement, requires an agency to make maximum use of the authority provided in the National Energy Conservation Policy Act (42 U.S.C. 8287) to use an energy-savings performance contract (ESPC), when life-cycle cost-effective, to reduce energy use and cost in the agency's facilities and operations.

(b)(1) Under an ESPC, an agency can contract with an energy service company for a period not to exceed 25 years to improve energy efficiency in one or more agency facilities at no direct capital cost to the United States Treasury. The energy service company finances the capital costs of implementing energy conservation measures and receives, in return, a contractually determined share of the cost savings that result.

(2) Except as provided in 10 CFR 436.34, ESPC's are subject to subpart 17.1.

(c) To solicit and award an ESPC, the contracting officer—

(1) Must use the procedures, selection method, and terms and conditions provided in 10 CFR part 436, subpart B; at *http://www.eren.doe.gov/femp/resources/legislation.html;* and

(2) May use the ''Qualified List'' of energy service companies established by the Department of Energy and other agencies.

Subpart 23.7—Contracting for Environmentally Preferable Products and Services

9. Revise the heading of subpart 23.7 to read as set forth above.

10. Revise section 23.700 to read as follows:

23.700 Scope.

This subpart prescribes policies for acquiring environmentally preferable products and services.

11. Amend section 23.702 by removing paragraph (e), redesignating (f) as (e), and adding a new paragraph (f) to read as follows:

23.702 Authorities.

* * * * *

(f) Executive Order 13123 of June 3, 1999, Greening the Government through Efficient Energy Management.

12. Amend section 23.703 by revising paragraphs (a) and (b)(2) to read as follows:

23.703 Policy

* * * * *

(a) Implement cost-effective contracting preference programs promoting energy-efficiency, water conservation, and the acquisition of environmentally preferable products and services; and

(b) * * *

(2) Promote energy-efficiency and water conservation.

* * * * *

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

13. In section 42.302, revise paragraph (a)(68) to read as follows:

42.302 Contract administration functions.

(a) * * *

(68) Monitor the contractor's environmental practices for adverse impact on contract performance or contract cost, and for compliance with environmental requirements specified in the contract. ACO responsibilities include—

(i) Requesting environmental technical assistance, if needed;

(ii) Monitoring contractor compliance with specifications requiring the use of environmentally preferable products, energy-efficient products, and materials or delivery of end products with specified recovered material content. This must occur as part of the quality assurance procedures set forth in Part 46; and

(iii) As required in the contract, ensuring that the contractor complies with the reporting requirements relating to recovered material content utilized in contract performance (see subpart 23.4).

* * * * *

[FR Doc. 01–30539 Filed 12–17–01; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 32, and 52

[FAC 2001–02; FAR Case 1999–023; Item III]

RIN 9000–AI89

Federal Acquisition Regulation; Prompt Payment and the Recovery of Overpayment

AGENCIES: Department of Defense (DoD), General ServicesAdministration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule

amending the Federal Acquisition Regulation (FAR) to reflect changes to the Office of Management and Budget (OMB) prompt payment requirements, to simplify and clarify the prompt payment coverage currently in the FAR, to require the contractor to notify the contracting officer if the contractor becomes aware of an overpayment, and to write all new and revised text using plain language.

DATES: *Effective Date:* February 19, 2002.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson at (202) 501–3221. Please cite FAC 2001–02, FAR case 1999–023.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 65 FR 52244 on August 28, 2000. The proposed rule—

- *Conformed the prompt payment coverage to OMB regulations.* The rule revises the FAR to conform the prompt payment coverage with an OMB final rule published in the **Federal Register** at 65 FR 52580 on September 29, 1999.
- *Implemented a General Accounting Office (GAO) recommendation.* In July 1999, the GAO published a report (GAO/NSIAD–99–131) entitled Greater Attention Needed to Identify and Recover Overpayments. After examining the process for identifying and collecting overpayments, GAO concluded in their report that ''Under current law, there is no requirement for contractors who have been overpaid to notify the Government of overpayments or to return overpayments prior to the Government issuing a demand letter'' (*i.e.*, formal notification to the contractor to pay money owed to the Government). One of the recommendations of the report was that DoD require contractors to promptly notify the Government of overpayments made to them. Accordingly, the FAR rule adds a paragraph to the prompt payment clauses that requires the contractor to notify the contracting officer if the contractor becomes aware of an overpayment.
- Wrote all new and revised text using plain language.

Eleven respondents submitted public comments to the proposed rule. One of the respondents recommended that the requirement to notify the contracting officer of a duplicate payment or overpayment not be limited to just invoice payments, and expand the coverage to include financing payments (*e.g.*, progress payments based on cost). The Councils agree with this comment and have opened a new FAR case (reference FAR case 2001–005), to consider adding the requirement to notify the contracting officer of a duplicate payment or overpayment to the financing payment clauses (*e.g.*, FAR 52.216–7, Allowable Cost and Payment; 52.216–13, Allowable Cost and Payment-Facilities; 52.232–7, Payments under Time-and-Material and Labor-Hour Contracts; and 52.232–16, Progress Payments).

The Councils considered all comments when developing the final rule, which differs from the proposed rule by—

- Requiring that the contractor include an invoice number on the invoice, to be consistent with the OMB regulations at 5 CFR 1316.9(b);
- Clarifying that, when a proper invoice is rejected in error, the payment office will use the original date the invoice was received for the purposes of computing any interest penalties that may be due the contractor; and
- Making several editorial changes.

This is not a significant regulatory action, and therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* since the changes are primarily editorial in nature. For example, FAR 32.905(b) adds the stipulation that a proper invoice must include the taxpayer identification number (TIN) and electronic funds transfer (EFT) banking information, if required by agency procedures. This is not new policy as the current FAR authorizes agencies to collect TIN (FAR 4.203) and EFT banking information (FAR 32.1109) in any manner they choose, such as requiring it to be provided on each invoice.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies because this final rule contains information collection requirements. The final rule requires contractors to notify the contracting officer if the contractor becomes aware that the Government has overpaid on an invoice payment. The FAR Secretariat submitted a request for approval of a revised information collection, and the collection was approved by the Office of Management and Budget under OMB Control Number 9000–0070.

List of Subjects in 48 CFR Parts 2, 32, and 52

Government procurement.

Dated: December 15, 2001.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 32, and 52 as set forth below:

1. The authority citation for 48 CFR parts 2, 32, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101 by revising the definition ''Proper invoice''; and adding, in alphabetical order, the definition ''Receiving report'' to read as follows:

2.101 Definitions.

* * * * *

Proper invoice means an invoice that meets the minimum standards specified in 32.905(b).

* * * * *

Receiving report means written evidence that indicates Government acceptance of supplies delivered or services performed (see subpart 46.6). Receiving reports must meet the requirements of 32.905(c).

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

15.407 [AMENDED]

3. Amend 15.407–1(b)(7)(i) by removing ''32.902'' and adding ''32.001'' in its place.

PART 32—CONTRACT FINANCING

4. Amend section 32.001 by adding, in alphabetical order, the definitions ''Contract financing payment'', ''Designated billing office'', ''Designated payment office'', and ''Invoice payment'' to read as follows:

32.001 Definitions.

* * * * *

Contract financing payment means an authorized Government disbursement of

monies to a contractor prior to acceptance of supplies or services by the Government.

(1) Contract financing payments include—

(i) Advance payments;

(ii) Performance-based payments;

(iii) Commercial advance and interim payments;

(iv) Progress payments based on cost under the clause at 52.232–16, Progress Payments;

(v) Progress payments based on a percentage or stage of completion (see 32.102(e)), except those made under the clause at 52.232–5, Payments Under Fixed-Price Construction Contracts, or the clause at 52.232–10, Payments Under Fixed-Price Architect-Engineer Contracts; and

(vi) Interim payments under a cost reimbursement contract, except for a cost reimbursement contract for services when Alternate I of the clause at 52.232–25, Prompt Payment, is used.

(2) Contract financing payments do not include—

(i) Invoice payments;

(ii) Payments for partial deliveries; or

(iii) Lease and rental payments.

* * * * *

Designated billing office means the office or person (governmental or nongovernmental) designated in the contract where the contractor first submits invoices and contract financing requests. The contract might designate different offices to receive invoices and contract financing requests. The designated billing office might be—

(1) The Government disbursing office;

(2) The contract administration office;

(3) The office accepting the supplies delivered or services performed by the contractor;

(4) The contract audit office; or

(5) A nongovernmental agent.

Designated payment office means the office designated in the contract to make invoice payments or contract financing payments. Normally, this will be the Government disbursing office.

* * * * *

Invoice payment means a Government disbursement of monies to a contractor under a contract or other authorization for supplies or services accepted by the Government.

(1) Invoice payments include—

(i) Payments for partial deliveries that have been accepted by the Government;

(ii) Final cost or fee payments where amounts owed have been settled between the Government and the contractor;

(iii) For purposes of subpart 32.9 only, all payments made under the clause at 52.232–5, Payments Under Fixed-Price Construction Contracts, and the clause at 52.232–10, Payments Under Fixed-Price Architect-Engineer Contracts; and

(iv) Interim payments under a cost-reimbursement contract for services when Alternate I of the clause at 52.232–25, Prompt Payment, is used.

(2) Invoice payments do not include contract financing payments.

* * * * *

5. Add section 32.007 to read as follows:

32.007 Contract financing payments.

(a)(1) Unless otherwise prescribed in agency policies and procedures or otherwise specified in paragraph (b) of this section, the due date for making contract financing payments by the designated payment office is the 30th day after the designated billing office receives a proper contract financing request.

(2) If an audit or other review of a specific financing request is required to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date.

(3) Agency heads may prescribe shorter periods for payment based on contract pricing or administrative considerations. For example, a shorter period may be justified by an agency if the nature and extent of contract financing arrangements are integrated with agency contract pricing policies.

(4) Agency heads must not prescribe a period shorter than 7 days or longer than 30 days.

(b) For advance payments, loans, or other arrangements that do not involve recurrent submission of contract financing requests, the designated payment office will make payment in accordance with the applicable contract financing terms or as directed by the contracting officer.

(c) A proper contract financing request must comply with the terms and conditions specified by the contract. The contractor must correct any defects in requests submitted in the manner specified in the contract or as directed by the contracting officer.

(d) The designated billing office and designated payment office must annotate each contract financing request with the date their respective offices received the request.

(e) The Government will not pay an interest penalty to the contractor as a result of delayed contract financing payments.

6. Amend section 32.102 by revising paragraph (d) to read as follows:

32.102 Description of contract financing methods.

* * * * *

(d) Payments for accepted supplies and services that are only a part of the contract requirements (*i.e.*, partial deliveries) are authorized under 41 U.S.C. 255 and 10 U.S.C. 2307. In accordance with 5 CFR 1315.4(k), agencies must pay for partial delivery of supplies or partial performance of services unless specifically prohibited by the contract. Although payments for partial deliveries generally are treated as a method of payment and not as a method of contract financing, using partial delivery payments can assist contractors to participate in contracts without, or with minimal, contract financing. When appropriate, contract statements of work and pricing arrangements must permit acceptance and payment for discrete portions of the work, as soon as accepted (see 32.906(c)).

* * * * *

7. Amend Subpart 32.9 by—

a. Revising sections 32.900, 32.901, and 32.902;

b. Removing section 32.903;

c. Redesignating sections 32.904, 32.905, and 32.906 as sections 32.903, 32.904, and 32.905, respectively, and revising;

d. Adding section 32.906;

e. Revising sections 32.907, 32.908, and 32.909; and

f. Removing sections 32.907–1 and 32.907–2.

The revised and added text reads as follows:

Sec.

Subpart 32.9—Prompt Payment

32.900 Scope of subpart.
32.901 Applicability.
32.902 Definitions.
32.903 Responsibilities.
32.904 Determining payment due dates.
32.905 Payment documentation and process.
32.906 Making payments.
32.907 Interest penalties.
32.908 Contract clauses.
32.909 Contractor inquiries.

32.900 Scope of subpart.

This subpart prescribes policies, procedures, and clauses for implementing Office of Management and Budget (OMB) prompt payment regulations at 5 CFR part 1315.

32.901 Applicability.

(a) This subpart applies to invoice payments on all contracts, except contracts with payment terms and late payment penalties established by other governmental authority (*e.g.*, tariffs).

(b) This subpart does not apply to contract financing payments (see definition at 32.001).

32.902 Definitions.

As used in this subpart—

Discount for prompt payment means an invoice payment reduction offered by the contractor for payment prior to the due date.

Mixed invoice means an invoice that contains items with different payment due dates.

Payment date means the date on which a check for payment is dated or, for an electronic funds transfer (EFT), the settlement date.

Settlement date, as it applies to electronic funds transfer, means the date on which an electronic funds transfer payment is credited to the contractor's financial institution.

32.903 Responsibilities.

(a) Agency heads—

(1) Must establish the policies and procedures necessary to implement this subpart;

(2) May prescribe additional standards for establishing invoice payment due dates (see 32.904) necessary to support agency programs and foster prompt payment to contractors;

(3) May adopt different payment procedures in order to accommodate unique circumstances, provided that such procedures are consistent with the policies in this subpart;

(4) Must inform contractors of points of contact within their cognizant payment offices to enable contractors to obtain status of invoices; and

(5) May authorize the use of the accelerated payment methods specified at 5 CFR 1315.5.

(b) When drafting solicitations and contracts, contracting officers must identify for each contract line item number, subline item number, or exhibit line item number—

(1) The applicable Prompt Payment clauses that apply to each item when the solicitation or contract contains items that will be subject to different payment terms; and

(2) The applicable Prompt Payment food category (*e.g.*, which item numbers are meat or meat food products, which are perishable agricultural commodities), when the solicitation or contract contains multiple payment terms for various classes of foods and edible products.

32.904 Determining payment due dates.

(a) *General.* Agency procedures must ensure that, when specifying due dates, contracting officers give full consideration to the time reasonably required by Government officials to fulfill their administrative responsibilities under the contract.

(b) *Payment due dates.* Except as prescribed in paragraphs (c) through (f) of this section, or as authorized in 32.908(a)(2) or (c)(2), the due date for making an invoice payment is as follows:

(1) The later of the following two events:

(i) The 30th day after the designated billing office receives a proper invoice from the contractor (except as provided in paragraph (b)(3) of this section).

(ii) The 30th day after Government acceptance of supplies delivered or services performed.

(A) For a final invoice, when the payment amount is subject to contract settlement actions, acceptance is deemed to occur on the effective date of the contract settlement.

(B) For the sole purpose of computing an interest penalty that might be due the contractor—

(*1*) Government acceptance is deemed to occur constructively on the 7th day after the contractor delivers supplies or performs services in accordance with the terms and conditions of the contract, unless there is a disagreement over quantity, quality, or contractor compliance with a contract requirement;

(*2*) If actual acceptance occurs within the constructive acceptance period, the Government must base the determination of an interest penalty on the actual date of acceptance;

(*3*) The constructive acceptance requirement does not compel Government officials to accept supplies or services, perform contract administration functions, or make payment prior to fulfilling their responsibilities; and

(*4*) Except for a contract for the purchase of a commercial item, including a brand-name commercial item for authorized resale (*e.g.*, commissary items), the contracting officer may specify a longer period for constructive acceptance in the solicitation and resulting contract, if required to afford the Government a reasonable opportunity to inspect and test the supplies furnished or to evaluate the services performed. The contracting officer must document in the contract file the justification for extending the constructive acceptance period beyond 7 days. Extended acceptance periods must not be a routine agency practice and must be used only when necessary to permit proper Government inspection and testing of the supplies delivered or services performed.

(2) If the contract does not require submission of an invoice for payment (*e.g.*, periodic lease payments), the contracting officer must specify the due date in the contract.

(3) If the designated billing office fails to annotate the invoice with the actual date of receipt at the time of receipt, the invoice payment due date is the 30th day after the date of the contractor's invoice, provided the designated billing office receives a proper invoice and there is no disagreement over quantity, quality, or contractor compliance with contract requirements.

(c) *Architect-engineer contracts.* (1) The due date for making payments on contracts that contain the clause at 52.232–10, Payments Under Fixed-Price Architect-EngineerContracts, is as follows:

(i) The due date for work or services completed by the contractor is the later of the following two events:

(A) The 30th day after the designated billing office receives a proper invoice from the contractor.

(B) The 30th day after Government acceptance of the work or services completed by the contractor.

(*1*) For a final invoice, when the payment amount is subject to contract settlement actions (e.g., release of claims), acceptance is deemed to occur on the effective date of the settlement.

(*2*) For the sole purpose of computing an interest penalty that might be due the contractor, Government acceptance is deemed to occur constructively on the 7th day after the contractor completes the work or services in accordance with the terms and conditions of the contract (see also paragraph (c)(2) of this section). If actual acceptance occurs within the constructive acceptance period, the Government must base the determination of an interest penalty on the actual date of acceptance.

(ii) The due date for progress payments is the 30th day after Government approval of contractor estimates of work or services accomplished. For the sole purpose of computing an interest penalty that might be due the contractor—

(A) Government approval is deemed to occur constructively on the 7th day after the designated billing office receives the contractor estimates (see also paragraph (c)(2) of this section).

(B) If actual approval occurs within the constructive approval period, the Government must base the determination of an interest penalty on the actual date of approval.

(iii) If the designated billing office fails to annotate the invoice or payment request with the actual date of receipt at the time of receipt, the payment due

date is the 30th day after the date of the contractor's invoice or payment request, provided the designated billing office receives a proper invoice or payment request and there is no disagreement over quantity, quality, or contractor compliance with contract requirements.

(2) The constructive acceptance and constructive approval requirements described in paragraphs (c)(1)(i) and (ii) of this section are conditioned upon receipt of a proper payment request and no disagreement over quantity, quality, contractor compliance with contract requirements, or the requested progress payment amount. These requirements do not compel Government officials to accept work or services, approve contractor estimates, perform contract administration functions, or make payment prior to fulfilling their responsibilities. The contracting officer may specify a longer period for constructive acceptance or constructive approval, if required to afford the Government a reasonable opportunity to inspect and test the supplies furnished or to evaluate the services performed. The contracting officer must document in the contract file the justification for extending the constructive acceptance or approval period beyond 7 days.

(d) *Construction contracts.* (1) The due date for making payments on construction contracts is as follows:

(i) The due date for making progress payments based on contracting officer approval of the estimated amount and value of work or services performed, including payments for reaching milestones in any project, is 14 days after the designated billing office receives a proper payment request.

(A) If the designated billing office fails to annotate the payment request with the actual date of receipt at the time of receipt, the payment due date is the 14th day after the date of the contractor's payment request, provided the designated billing office receives a proper payment request and there is no disagreement over quantity, quality, or contractor compliance with contract requirements.

(B) The contracting officer may specify a longer period in the solicitation and resulting contract if required to afford the Government a reasonable opportunity to adequately inspect the work and to determine the adequacy of the contractor's performance under the contract. The contracting officer must document in the contract file the justification for extending the due date beyond 14 days.

(C) The contracting officer must not approve progress payment requests unless the certification and substantiation of amounts requested are provided as required by the clause at 52.232–5, Payments Under Fixed-PriceConstruction Contracts.

(ii) The due date for payment of any amounts retained by the contracting officer in accordance with the clause at 52.232–5, Payments Under Fixed-Price Construction Contracts, will be as specified in the contract or, if not specified, 30 days after approval by the contracting officer for release to the contractor. The contracting officer must base the release of retained amounts on the contracting officer's determination that satisfactory progress has been made.

(iii) The due date for final payments based on completion and acceptance of all work (including any retained amounts), and payments for partial deliveries that have been accepted by the Government (*e.g.*, each separate building, public work, or other division of the contract for which the price is stated separately in the contract) is as follows:

(A) The later of the following two events:

(*1*) The 30th day after the designated billing office receives a proper invoice from the contractor.

(*2*) The 30th day after Government acceptance of the work or services completed by the contractor. For a final invoice, when the payment amount is subject to contract settlement actions (*e.g.*, release of contractor claims), acceptance is deemed to occur on the effective date of the contract settlement.

(B) If the designated billing office fails to annotate the invoice with the actual date of receipt at the time of receipt, the invoice payment due date is the 30th day after the date of the contractor's invoice, provided the designated billing office receives a proper invoice and there is no disagreement over quantity, quality, or contractor compliance with contract requirements.

(2) For the sole purpose of computing an interest penalty that might be due the contractor for payments described in paragraph (d)(1)(iii) of this section—

(i) Government acceptance or approval is deemed to occur constructively on the 7th day after the contractor completes the work or services in accordance with the terms and conditions of the contract, unless there is a disagreement over quantity, quality, contractor compliance with a contract requirement, or the requested amount;

(ii) If actual acceptance occurs within the constructive acceptance period, the Government must base the determination of an interest penalty on the actual date of acceptance;

(iii) The constructive acceptance requirement does not compel Government officials to accept work or services, approve contractor estimates, perform contract administration functions, or make payment prior to fulfilling their responsibilities; and

(iv) The contracting officer may specify a longer period for constructive acceptance or constructive approval in the solicitation and resulting contract, if required to afford the Government a reasonable opportunity to adequately inspect the work and to determine the adequacy of the contractor's performance under the contract. The contracting officer must document in the contract file the justification for extending the constructive acceptance or approval beyond 7 days.

(3) Construction contracts contain special provisions concerning contractor payments to subcontractors, along with special contractor certification requirements. The Office of Management and Budget has determined that these certifications must not be construed as final acceptance of the subcontractor's performance. The certification in 52.232–5(c) implements this determination; however, certificates are still acceptable if the contractor deletes paragraph (c)(4) of 52.232–5 from the certificate.

(4)(i) Paragraph (d) of the clause at 52.232–5, Payments under Fixed-Price Construction Contracts, and paragraph (e)(6) of the clause at 52.232–27, Prompt Payment for Construction Contracts, provide for the contractor to pay interest on unearned amounts in certain circumstances. The Government must recover this interest from subsequent payments to the contractor. Therefore, contracting officers normally must make no demand for payment. Contracting officers must—

(A) Compute the amount in accordance with the clause;

(B) Provide the contractor with a final decision; and

(C) Notify the payment office of the amount to be withheld.

(ii) The payment office is responsible for making the deduction of interest. Amounts collected in accordance with these provisions revert to the United States Treasury.

(e) *Cost-reimbursement contracts for services.* For purposes of computing late payment interest penalties that may apply, the due date for making interim payments on cost-reimbursement contracts for services is 30 days after the date of receipt of a proper invoice.

(f) *Food and specified items.*

If the items delivered are:	Payment must be made as close as possible to, but not later than:
(1) *Meat or meat food products.* As defined in section 2(a)(3) of the Packers and Stockyard Act of 1921 (7 U.S.C. 182(3)), and as further defined in Public Law 98–181, including any edible fresh or frozen poultry meat, any perishable poultry meat food product, fresh eggs, and any perishable egg product.	7th day after product delivery.
(2) *Fresh or frozen fish.* As defined in section 204(3) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4003(3)).	7th day after product delivery.
(3) *Perishable agricultural commodities.* As defined in section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(4)).	10th day after product delivery, unless another date is specified in the contract.
(4) *Dairy products.* As defined in section 111(e) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4502(e)), edible fats or oils, and food products prepared from edible fats or oils. Liquid milk, cheese, certain processed cheese products, butter, yogurt, ice cream, mayonnaise, salad dressings, and other similar products fall within this classification. Nothing in the Act limits this classification to refrigerated products. If questions arise regarding the proper classification of a specific product, the contracting officer must follow prevailing industry practices in specifying a contract payment due date. The burden of proof that a classification of a specific product is, in fact, prevailing industry practice is upon the contractor making the representation.	10th day after a proper invoice has been received.

(g) *Multiple payment due dates.* Contracting officers may encourage, but not require, contractors to submit separate invoices for products with different payment due dates under the same contract or order. When an invoice contains items with different payment due dates (*i.e.*, a mixed invoice), the payment office will, subject to agency policy—

(1) Pay the entire invoice on the earliest due date; or

(2) Split invoice payments, making payments by the applicable due dates.

32.905 Payment documentation and process.

(a) *General*. Payment will be based on receipt of a proper invoice and satisfactory contract performance.

(b) *Content of invoices*. (1) A proper invoice must include the following items (except for interim payments on cost reimbursement contracts for services):

(i) Name and address of the contractor.

(ii) Invoice date and invoice number. (Contractors should date invoices as close as possible to the date of mailing or transmission.)

(iii) Contract number or other authorization for supplies delivered or services performed (including order number and contract line item number).

(iv) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.

(v) Shipping and payment terms (*e.g.*, shipment number and date of shipment, discount for prompt payment terms). Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading.

(vi) Name and address of contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to notify in the event of a defective invoice.

(viii) Taxpayer Identification Number (TIN). The contractor must include its TIN on the invoice only if required by agency procedures. (See 4.9 TIN requirements.)

(ix) Electronic funds transfer (EFT) banking information.

(A) The contractor must include EFT banking information on the invoice only if required by agency procedures.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the contractor must have submitted correct EFT banking information in accordance with the applicable solicitation provision (*e.g.,* 52.232–38, Submission of Electronic Funds Transfer Information with Offer), contract clause (*e.g.,* 52.232–33, Payment by Electronic Funds Transfer—Central Contractor Registration, or 52.232–34, Payment by Electronic Funds Transfer—Other Than Central Contractor Registration), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(x) Any other information or documentation required by the contract (*e.g.,* evidence of shipment).

(2) An interim payment request under a cost-reimbursement contract for services constitutes a proper invoice for purposes of this subsection if it includes all of the information required by the contract.

(3) If the invoice does not comply with these requirements, the designated billing office must return it within 7 days after receipt (3 days on contracts for meat, meat food products, or fish; 5 days on contracts for perishable agricultural commodities, dairy products, edible fats or oils, and food products prepared from edible fats or oils), with the reasons why it is not a proper invoice. If such notice is not timely, then the designated billing office must adjust the due date for the purpose of determining an interest penalty, if any.

(c) *Authorization to pay.* All invoice payments, with the exception of interim payments on cost-reimbursement contracts for services, must be supported by a receiving report or other Government documentation authorizing payment (*e.g.,* Government certified voucher). The agency receiving official should forward the receiving report or other Government documentation to the designated payment office by the 5th working day after Government acceptance or approval, unless other arrangements have been made. This period of time does not extend the due dates prescribed in this section. Acceptance should be completed as expeditiously as possible. The receiving report or other Government documentation authorizing payment must, as a minimum, include the following:

(1) Contract number or other authorization for supplies delivered or services performed.

(2) Description of supplies delivered or services performed.

(3) Quantities of supplies received and accepted or services performed, if applicable.

(4) Date supplies delivered or services performed.

(5) Date that the designated Government official—

(i) Accepted the supplies or services; or

(ii) Approved the progress payment request, if the request is being made under the clause at 52.232–5, Payments Under Fixed-Price Construction Contracts, or the clause at 52.232–10,

Payments Under Fixed-Price Architect-Engineer Contracts.

(6) Signature, printed name, title, mailing address, and telephone number of the designated Government official responsible for acceptance or approval functions.

(d) *Billing office.* The designated billing office must immediately annotate each invoice with the actual date it receives the invoice.

(e) *Payment office.* The designated payment office will annotate each invoice and receiving report with the actual date it receives the invoice.

32.906 Making payments.

(a) *General.* The Government will not make invoice payments earlier than 7 days prior to the due dates specified in the contract unless the agency head determines—

(1) To make earlier payment on a case-by-case basis; or

(2) That the use of accelerated payment methods are necessary (see 32.903(a)(5)).

(b) *Payment office.* The designated payment office—

(1) Will mail checks on the same day they are dated;

(2) For payments made by EFT, will specify a date on or before the established due date for settlement of the payment at a Federal Reserve Bank;

(3) When the due date falls on a Saturday, Sunday, or legal holiday when Government offices are closed, may make payment on the following working day without incurring a late payment interest penalty.

(4) When it is determined that the designated billing office erroneously rejected a proper invoice and upon resubmission of the invoice, will enter in the payment system the original date the invoice was received by the designated billing office for the purpose of calculating the correct payment due date and any interest penalties that may be due.

(c) *Partial deliveries.* (1) Contracting officers must, where the nature of the work permits, write contract statements of work and pricing arrangements that allow contractors to deliver and receive invoice payments for discrete portions of the work as soon as completed and found acceptable by the Government (see 32.102(d)).

(2) Unless specifically prohibited by the contract, the clause at 52.232–1, Payments, provides that the contractor is entitled to payment for accepted partial deliveries of supplies or partial performance of services that comply with all applicable contract requirements and for which prices can be calculated from the contract terms.

(d) *Contractor identifier.* Each payment or remittance advice will use the contractor invoice number in addition to any Government or contract information in describing any payment made.

(e) *Discounts.* When a discount for prompt payment is taken, the designated payment office will make payment to the contractor as close as possible to, but not later than, the end of the discount period. The discount period is specified by the contractor and is calculated from the date of the contractor's proper invoice. If the contractor has not placed a date on the invoice, the due date is calculated from the date the designated billing office receives a proper invoice, provided the agency annotates such invoice with the date of receipt at the time of receipt. When the discount date falls on a Saturday, Sunday, or legal holiday when Government offices are closed, the designated payment office may make payment on the following working day and take a discount. Payment terms are specified in the clause at 52.232–8, Discounts for Prompt Payment.

32.907 Interest penalties.

(a) *Late payment.* The designated payment office will pay an interest penalty automatically, without request from the contractor, when all of the following conditions, if applicable, have been met:

(1) The designated billing office received a proper invoice.

(2) The Government processed a receiving report or other Government documentation authorizing payment, and there was no disagreement over quantity, quality, or contractor compliance with any contract requirement.

(3) In the case of a final invoice, the payment amount is not subject to further contract settlement actions between the Government and the contractor.

(4) The designated payment office paid the contractor after the due date.

(5) In the case of interim payments on cost-reimbursement contracts for services, when payment is made more than 30 days after the designated billing office receives a proper invoice.

(b) *Improperly taken discount.* The designated payment office will pay an interest penalty automatically, without request from the contractor, if the Government takes a discount for prompt payment improperly. The interest penalty is calculated on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when the contractor is paid.

(c) *Failure to pay interest.* (1) The designated payment office will pay a penalty amount, in addition to the interest penalty amount, only if—

(i) The Government owes an interest penalty of $1 or more;

(ii) The designated payment office does not pay the interest penalty within 10 days after the date the invoice amount is paid; and

(iii) The contractor makes a written demand to the designated payment office for additional penalty payment in accordance with paragraph (c)(2) of this section, postmarked not later than 40 days after the date the invoice amount is paid.

(2)(i) Contractors must support written demands for additional penalty payments with the following data. The Government must not request additional data. Contractors must—

(A) Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;

(B) Attach a copy of the invoice on which the unpaid late payment interest is due; and

(C) State that payment of the principal has been received, including the date of receipt.

(ii) If there is no postmark or the postmark is illegible—

(A) The designated payment office that receives the demand will annotate it with the date of receipt, provided the demand is received on or before the 40th day after payment was made; or

(B) If the designated payment office fails to make the required annotation, the Government will determine the demand's validity based on the date the contractor has placed on the demand; provided such date is no later than the 40th day after payment was made.

(d) *Disagreements.* (1) The payment office will not pay interest penalties if payment delays are due to disagreement between the Government and contractor concerning—

(i) The payment amount;

(ii) Contract compliance; or

(iii) Amounts temporarily withheld or retained in accordance with the terms of the contract.

(2) The Government and the contractor must resolve claims involving disputes, and any interest that may be payable in accordance with the Disputes clause.

(e) *Computation of interest penalties.* The Government will compute interest penalties in accordance with OMB prompt payment regulations at 5 CFR part 1315. These regulations are available via the Internet at *http://www.fms.treas.gov/prompt/.*

(f) *Unavailability of funds.* The temporary unavailability of funds to make a timely payment does not relieve an agency from the obligation to pay interest penalties.

32.908 Contract clauses.

(a) Insert the clause at 52.232–26, Prompt Payment for Fixed-Price Architect-Engineer Contracts, in solicitations and contracts that contain the clause at 52.232–10, Payments Under Fixed-Price Architect-Engineer Contracts.

(1) As authorized in 32.904(c)(2), the contracting officer may modify the date in paragraph (a)(4)(i) of the clause to specify a period longer than 7 days for constructive acceptance or constructive approval, if required to afford the Government a practicable opportunity to inspect and test the supplies furnished or evaluate the services performed.

(2) As provided in 32.903, agency policies and procedures may authorize amendment of paragraphs (a)(1)(i) and (ii) of the clause to insert a period shorter than 30 days (but not less than 7 days) for making contract invoice payments.

(b) Insert the clause at 52.232–27, Prompt Payment for Construction Contracts, in all solicitations and contracts for construction (see part 36).

(1) As authorized in 32.904(d)(1)(i)(B), the contracting officer may modify the date in paragraph (a)(1)(i)(A) of the clause to specify a period longer than 14 days if required to afford the Government a reasonable opportunity to adequately inspect the work and to determine the adequacy of the Contractor's performance under the contract.

(2) As authorized in 32.904(d)(2)(iv), the contracting officer may modify the date in paragraph (a)(4)(i) of the clause to specify a period longer than 7 days for constructive acceptance or constructive approval if required to afford the Government a reasonable opportunity to inspect and test the supplies furnished or evaluate the services performed.

(c) Insert the clause at 52.232–25, Prompt Payment, in all other solicitations and contracts, except when the clause at 52.212–4, Contract Terms and Conditions—Commercial Items, applies, or when payment terms and late payment penalties are established by other governmental authority (*e.g.,* tariffs).

(1) As authorized in 32.904(b)(1)(ii)(B)(*4*), the contracting officer may modify the date in paragraph (a)(5)(i) of the clause to specify a period longer than 7 days for constructive acceptance, if required to afford the Government a reasonable opportunity to inspect and test the supplies furnished or to evaluate the services performed, except in the case of a contract for the purchase of a commercial item, including a brand-name commercial item for authorized resale (*e.g.,* commissary items).

(2) As provided in 32.903, agency policies and procedures may authorize amendment of paragraphs (a)(1)(i) and (ii) of the clause to insert a period shorter than 30 days (but not less than 7 days) for making contract invoice payments.

(3) If the contract is a cost-reimbursement contract for services, use the clause with its Alternate I.

32.909 Contractor inquiries.

(a) Direct questions involving—

(1) Delinquent payments to the designated billing office or designated payment office; and

(2) Disagreements in payment amount or timing to the contracting officer for resolution. The contracting officer must coordinate within appropriate contracting channels and seek the advice of other offices as necessary to resolve disagreements.

(b) Small business concerns may contact the agency's local small business specialist or representative from the Office of Small and Disadvantaged Business Utilization to obtain additional assistance related to payment issues, late payment interest penalties, and information on the Prompt Payment Act.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. Amend section 52.212–4 by—

a. Revising the date of the clause;

b. Revising paragraph (g) (and removing the undesignated paragraph that follows) of the clause; and

c. Revising the second sentence of paragraph (i) of the clause to read as follows:

52.212–4 Contract terms and conditions—commercial items.

* * * * *

Contract Terms and Conditions—Commercial Items (Feb 2002)

* * * * *

(g) *Invoice.* (1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include—

(i) Name and address of the Contractor;

(ii) Invoice date and number;

(iii) Contract number, contract line item number and, if applicable, the order number;

(iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;

(v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;

(vi) Terms of any discount for prompt payment offered;

(vii) Name and address of official to whom payment is to be sent;

(viii) Name, title, and phone number of person to notify in event of defective invoice; and

(ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (*e.g.,* 52.232–33, Payment by Electronic Funds Transfer—Central Contractor Registration, or 52.232–34, Payment by Electronic Funds Transfer—Other Than Central Contractor Registration), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(2) Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR part 1315.

* * * * *

(i) *Payment.* * * * The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and OMB prompt payment regulations at 5 CFR part 1315. * * *

* * * * *

(End of clause)

52.213–4 [Amended]

9. In section 52.213–4, amend the clause heading by removing ''(May 2001)'' and adding ''(Feb 2002)'' in its place; and in paragraph (a)(2)(ii) by removing ''(May 1997)'' and in paragraph (a)(2)(iv) by removing ''(June 1997)'' and adding ''(FEB 2002)'' in their places, respectively.

10. Amend section 52.216–7 by revising the date of the clause and paragraph (a) to read as follows:

52.216–7 Allowable Cost and Payment.

* * * * *

Allowable Cost and Payment (Feb 2002)

(a) *Invoicing.* (1) The Government will make payments to the Contractor when requested as work progresses, but (except for small business concerns) not more often than

once every 2 weeks, in amounts determined to be allowable by the Contracting Officer in accordance with Federal Acquisition Regulation (FAR) subpart 31.2 in effect on the date of this contract and the terms of this contract. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.

(2) Contract financing payments are not subject to the interest penalty provisions of the Prompt Payment Act. Interim payments made prior to the final payment under the contract are contract financing payments, except interim payments if this contract contains Alternate I to the clause at 52.232–25.

(3) The designated payment office will make interim payments for contract financing on the _____[Contracting Officer insert day as prescribed by agency head; if not prescribed, insert ''30th''] day after the designated billing office receives a proper payment request.

In the event that the Government requires an audit or other review of a specific payment request to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date.

* * * * *

(End of clause)

11. Amend section 52.216–13 by revising the date of the clause and paragraph (b) to read as follows:

52.216–13 Allowable Cost and Payment—Facilities.

* * * * *

Allowable Cost and Payment—Facilities (Feb 2002)

* * * * *

(b) *Invoicing.* (1) The Government will make payments to the Contractor when requested once each month. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for the performance of this contract.

(2) Contract financing payments are not subject to the interest penalty provisions of the Prompt Payment Act. Interim payments made prior to the final payment under the contract are contract financing payments, except interim payments if this contract contains Alternate I to the clause at 52.232–25.

(3) The designated payment office will make interim payments for contract financing on the _____[*Contracting Officer insert day as prescribed by agency head; if not prescribed, insert ''30th''*] day after the designated billing office receives a proper payment request. In the event that the Government requires an audit or other review of a specific payment request to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date.

* * * * *

(End of clause)

12. Amend section 52.232–7 by revising the date of the clause; by adding paragraph (h); and by revising Alternate II to read as follows:

52.232–7 Payments under time-and-materials and labor-hour contracts.

* * * * *

Payments Under Time-and-Materials and Labor-Hour Contracts (Feb 2002)

* * * * *

(h) *Interim payments.* (1) Interim payments made prior to the final payment under the contract are contract financing payments. Contract financing payments are not subject to the interest penalty provisions of the Prompt Payment Act.

(2) The designated payment office will make interim payments for contract financing on the _____[*Contracting Officer insert day as prescribed by agency head; if not prescribed, insert ''30th''*] day after the designated billing office receives a proper payment request. In the event that the Government requires an audit or other review of a specific payment request to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date.

(End of clause)

* * * * *

Alternate II (Feb 2002). If a labor-hour contract is contemplated, and if no specific reimbursement for materials furnished is intended, the Contracting Officer may add the following paragraph (i) to the basic clause:

(i) The terms of this clause that govern reimbursement for materials furnished are considered to have been deleted.

13. Amend section 52.232–8 by revising the date of the clause and the last sentence of paragraph (a) to read as follows:

52.232–8 Discounts for prompt payment.

* * * * *

Discounts for Prompt Payment (Feb 2002)

(a) * * * As an alternative to offering a discount for prompt payment in conjunction with the offer, offerors awarded contracts may include discounts for prompt payment on individual invoices.

* * * * *

14. Amend section 52.232–16 by revising the date of the clause; by adding paragraph (l) to the end of the clause; by revising Alternate II; and by revising the introductory text of Alternate III and redesignating Alternate III paragraph (l) as (m). The added and revised text reads as follows:

52.232–16 Progress payments.

* * * * *

Progress Payments (Feb 2002)

* * * * *

(l) *Due date.* The designated payment office will make progress payments on the _____ [*Contracting Officer insert date as prescribed by agency head; if not prescribed, insert ''30th''*] day after the designated billing office receives a proper progress payment request. In the event that the Government requires an audit or other review of a specific progress payment request to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date. Progress payments are considered contract financing and are not subject to the interest penalty provisions of the Prompt Payment Act.

(End of clause)

* * * * *

Alternate II (Feb 2002). If the contract is a letter contract, add paragraphs (m) and (n). The amount specified in paragraph (n) must not exceed 80 percent applied to the maximum liability of the Government under the letter contract. Separate limits may be specified for separate parts of the work.

(m) Progress payments made under this letter contract shall, unless previously liquidated under paragraph (b) of this clause, be liquidated under the following procedures:

(1) If this letter contract is superseded by a definitive contract, unliquidated progress payments made under this letter contract shall be liquidated by deducting the amount from the first progress or other payments made under the definitive contract.

(2) If this letter contract is not superseded by a definitive contract calling for the furnishing of all or part of the articles or services covered under the letter contract, unliquidated progress payments made under the letter contract shall be liquidated by deduction from the amount payable under the Termination clause.

(3) If this letter contract is partly terminated and partly superseded by a contract, the Government will allocate the unliquidated progress payments to the terminated and unterminated portions as the Government deems equitable, and will liquidate each portion under the relevant procedure in paragraphs (m)(1) and (m)(2) of this clause.

(4) If the method of liquidating progress payments provided in this clause does not result in full liquidation, the Contractor shall immediately pay the unliquidated balance to the Government on demand.

(n) The amount of unliquidated progress payments shall not exceed _____ [*Contracting Officer specify dollar amount*].

Alternate III (Feb 2002). As prescribed in 35.502–4(d), add the following paragraph (m) to the basic clause. If Alternate II is also being used, redesignate the following paragraph as paragraph (o):

15. Revise sections 52.232–25, 52.232–26, and 52.232–27 to read as follows:

52.232–25 Prompt payment.

As prescribed in 32.908(c), insert the following clause:

Prompt Payment (Feb 2002)

Notwithstanding any other payment clause in this contract, the Government will make invoice payments under the terms and conditions specified in this clause. The Government considers payment as being made on the day a check is dated or the date of an electronic funds transfer (EFT). Definitions of pertinent terms are set forth in sections 2.101, 32.001, and 32.902 of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see paragraph (a)(4) of this clause concerning payments due on Saturdays, Sundays, and legal holidays.)

(a) *Invoice payments*—(1) *Due date.* (i) Except as indicated in paragraphs (a)(2) and (c) of this clause, the due date for making invoice payments by the designated payment office is the later of the following two events:

(A) The 30th day after the designated billing office receives a proper invoice from the Contractor (except as provided in paragraph (a)(1)(ii) of this clause).

(B) The 30th day after Government acceptance of supplies delivered or services performed. For a final invoice, when the payment amount is subject to contract settlement actions, acceptance is deemed to occur on the effective date of the contract settlement.

(ii) If the designated billing office fails to annotate the invoice with the actual date of receipt at the time of receipt, the invoice payment due date is the 30th day after the date of the Contractor's invoice, provided the designated billing office receives a proper invoice and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(2) *Certain food products and other payments.* (i) Due dates on Contractor invoices for meat, meat food products, or fish; perishable agricultural commodities; and dairy products, edible fats or oils, and food products prepared from edible fats or oils are—

(A) For meat or meat food products, as defined in section 2(a)(3) of the Packers and Stockyard Act of 1921 (7 U.S.C. 182(3)), and as further defined in Pub. L. 98–181, including any edible fresh or frozen poultry meat, any perishable poultry meat food product, fresh eggs, and any perishable egg product, as close as possible to, but not later than, the 7th day after product delivery.

(B) For fresh or frozen fish, as defined in section 204(3) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4003(3)), as close as possible to, but not later than, the 7th day after product delivery.

(C) For perishable agricultural commodities, as defined in section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(4)), as close as possible to, but not later than, the 10th day after product delivery, unless another date is specified in the contract.

(D) For dairy products, as defined in section 111(e) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4502(e)), edible fats or oils, and food products prepared from edible fats or oils, as close as possible to, but not later than, the 10th day after the date on which a proper invoice has been received. Liquid milk, cheese, certain processed cheese products, butter, yogurt, ice cream, mayonnaise, salad dressings, and other similar products, fall within this classification. Nothing in the Act limits this classification to refrigerated products. When questions arise regarding the proper classification of a specific product, prevailing industry practices will be followed in specifying a contract payment due date. The burden of proof that a classification of a specific product is, in fact, prevailing industry practice is upon the Contractor making the representation.

(ii) If the contract does not require submission of an invoice for payment (*e.g.*, periodic lease payments), the due date will be as specified in the contract.

(3) *Contractor's invoice.* The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in paragraphs (a)(3)(i) through (a)(3)(x) of this clause. If the invoice does not comply with these requirements, the designated billing office will return it within 7 days after receipt (3 days for meat, meat food products, or fish; 5 days for perishable agricultural commodities, dairy products, edible fats or oils, and food products prepared from edible fats or oils), with the reasons why it is not a proper invoice. The Government will take into account untimely notification when computing any interest penalty owed the Contractor.

(i) Name and address of the Contractor.

(ii) Invoice date and invoice number. (The Contractor should date invoices as close as possible to the date of the mailing or transmission.)

(iii) Contract number or other authorization for supplies delivered or services performed (including order number and contract line item number).

(iv) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.

(v) Shipping and payment terms (*e.g.,* shipment number and date of shipment, discount for prompt payment terms). Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading.

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to notify in the event of a defective invoice.

(viii) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(ix) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision (*e.g.,* 52.232–38, Submission of Electronic Funds Transfer Information with Offer), contract clause (*e.g.,* 52.232–33, Payment by Electronic Funds Transfer—Central Contractor Registration, or 52.232–34, Payment by Electronic Funds Transfer—Other Than Central Contractor Registration), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(x) Any other information or documentation required by the contract (*e.g.,* evidence of shipment).

(4) *Interest penalty.* The designated payment office will pay an interest penalty automatically, without request from the Contractor, if payment is not made by the due date and the conditions listed in paragraphs (a)(4)(i) through (a)(4)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday, the designated payment office may make payment on the following working day without incurring a late payment interest penalty.

(i) The designated billing office received a proper invoice.

(ii) The Government processed a receiving report or other Government documentation authorizing payment, and there was no disagreement over quantity, quality, or Contractor compliance with any contract term or condition.

(iii) In the case of a final invoice for any balance of funds due the Contractor for supplies delivered or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(5) *Computing penalty amount.* The Government will compute the interest penalty in accordance with the Office of Management and Budget prompt payment regulations at 5 CFR part 1315.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor, Government acceptance is deemed to occur constructively on the 7th day (unless otherwise specified in this contract) after the Contractor delivers the supplies or performs the services in accordance with the terms and conditions of the contract, unless there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. If actual acceptance occurs within the constructive acceptance period, the Government will base the determination of an interest penalty on the actual date of acceptance. The constructive acceptance requirement does not, however, compel Government officials to accept supplies or services, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(ii) The prompt payment regulations at 5 CFR 1315.10(c) do not require the Government to pay interest penalties if payment delays are due to disagreement between the Government and the Contractor over the payment amount or other issues involving contract compliance, or on

amounts temporarily withheld or retained in accordance with the terms of the contract. The Government and the Contractor shall resolve claims involving disputes and any interest that may be payable in accordance with the clause at FAR 52.233–1, Disputes.

(6) *Discounts for prompt payment.* The designated payment office will pay an interest penalty automatically, without request from the Contractor, if the Government takes a discount for prompt payment improperly. The Government will calculate the interest penalty in accordance with the prompt payment regulations at 5 CFR part 1315.

(7) *Additional interest penalty.* (i) The designated payment office will pay a penalty amount, calculated in accordance with the prompt payment regulations at 5 CFR part 1315 in addition to the interest penalty amount only if—

(A) The Government owes an interest penalty of $1 or more;

(B) The designated payment office does not pay the interest penalty within 10 days after the date the invoice amount is paid; and

(C) The Contractor makes a written demand to the designated payment office for additional penalty payment, in accordance with paragraph (a)(7)(ii) of this clause, postmarked not later than 40 days after the invoice amount is paid.

(ii)(A) The Contractor shall support written demands for additional penalty payments with the following data. The Government will not request any additional data. The Contractor shall—

(*1*) Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;

(*2*) Attach a copy of the invoice on which the unpaid late payment interest is due; and

(*3*) State that payment of the principal has been received, including the date of receipt.

(B) If there is no postmark or the postmark is illegible—

(*1*) The designated payment office that receives the demand will annotate it with the date of receipt, provided the demand is received on or before the 40th day after payment was made; or

(*2*) If the designated payment office fails to make the required annotation, the Government will determine the demand's validity based on the date the Contractor has placed on the demand, provided such date is no later than the 40th day after payment was made.

(iii) The additional penalty does not apply to payments regulated by other Government regulations (*e.g.,* payments under utility contracts subject to tariffs and regulation).

(b) *Contract financing payment.* If this contract provides for contract financing, the Government will make contract financing payments in accordance with the applicable contract financing clause.

(c) *Fast payment procedure due dates.* If this contract contains the clause at 52.213–1, Fast Payment Procedure, payments will be made within 15 days after the date of receipt of the invoice.

(d) *Overpayments.* If the Contractor becomes aware of a duplicate payment or that the Government has otherwise overpaid on an invoice payment, the Contractor shall immediately notify the Contracting Officer and request instructions for disposition of the overpayment.

(End of clause)

Alternate I (Feb 2002). As prescribed in 32.908(c)(3), add the following paragraph (e) to the basic clause:

(e) *Invoices for interim payments.* For interim payments under this cost-reimbursement contract for services—

(1) Paragraphs (a)(2), (a)(3), (a)(4)(ii), (a)(4)(iii), and (a)(5)(i) do not apply;

(2) For purposes of computing late payment interest penalties that may apply, the due date for payment is the 30th day after the designated billing office receives a proper invoice; and

(3) The contractor shall submit invoices for interim payments in accordance with paragraph (a) of FAR 52.216–7, Allowable Cost and Payment. If the invoice does not comply with contract requirements, it will be returned within 7 days after the date the designated billing office received the invoice.

52.232–26 Prompt payment for fixed-price architect-engineer contracts.

As prescribed in 32.908(a), insert the following clause:

Prompt Payment for Fixed-Price Architect-Engineer Contracts (FEB 2002)

Notwithstanding any other payment terms in this contract, the Government will make invoice payments under the terms and conditions specified in this clause. The Government considers payment as being made on the day a check is dated or the date of an electronic funds transfer. Definitions of pertinent terms are set forth in sections 2.101, 32.001, and 32.902 of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see paragraph (a)(3) of this clause concerning payments due on Saturdays, Sundays, and legal holidays.)

(a) *Invoice payments*—(1) *Due date.* The due date for making invoice payments is—

(i) For work or services completed by the Contractor, the later of the following two events:

(A) The 30th day after the designated billing office receives a proper invoice from the Contractor (except as provided in paragraph (a)(1)(iii) of this clause).

(B) The 30th day after Government acceptance of the work or services completed by the Contractor. For a final invoice, when the payment amount is subject to contract settlement actions (*e.g.,* release of claims), acceptance is deemed to occur on the effective date of the settlement.

(ii) The due date for progress payments is the 30th day after Government approval of Contractor estimates of work or services accomplished.

(iii) If the designated billing office fails to annotate the invoice or payment request with the actual date of receipt at the time of receipt, the payment due date is the 30th day after the date of the Contractor's invoice or payment request, provided the designated billing office receives a proper invoice or payment request and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(2) *Contractor's invoice.* The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in paragraphs (a)(2)(i) through (a)(2)(x) of this clause. If the invoice does not comply with these requirements, the designated billing office will return it within 7 days after receipt, with the reasons why it is not a proper invoice. When computing any interest penalty owed the Contractor, the Government will take into account if the Government notifies the Contractor of an improper invoice in an untimely manner.

(i) Name and address of the Contractor.

(ii) Invoice date and invoice number. (The Contractor should date invoices as close as possible to the date of mailing or transmission.)

(iii) Contract number or other authorization for work or services performed (including order number and contract line item number).

(iv) Description of work or services performed.

(v) Delivery and payment terms (*e.g.,* discount for prompt payment terms).

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to notify in the event of a defective invoice.

(viii) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(ix) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision (*e.g.,* 52.232–38, Submission of Electronic Funds Transfer Information with Offer), contract clause (*e.g.,* 52.232–33, Payment by Electronic Funds Transfer—Central Contractor Registration, or 52.232–34,Payment by Electronic Funds Transfer—Other Than Central Contractor Registration), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(x) Any other information or documentation required by the contract.

(3) *Interest penalty.* The designated payment office will pay an interest penalty automatically, without request from the Contractor, if payment is not made by the due date and the conditions listed in paragraphs (a)(3)(i) through (a)(3)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday, the designated payment office may make payment on the following working day without incurring a late payment interest penalty.

(i) The designated billing office received a proper invoice.

(ii) The Government processed a receiving report or other Government documentation authorizing payment and there was no disagreement over quantity, quality, Contractor compliance with any contract term or condition, or requested progress payment amount.

(iii) In the case of a final invoice for any balance of funds due the Contractor for work or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(4) *Computing penalty amount.* The Government will compute the interest penalty in accordance with the Office of Management and Budget prompt payment regulations at 5 CFR part 1315.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor, Government acceptance or approval is deemed to occur constructively as shown in paragraphs (a)(4)(i)(A) and (B) of this clause. If actual acceptance or approval occurs within the constructive acceptance or approval period, the Government will base the determination of an interest penalty on the actual date of acceptance or approval. Constructive acceptance or constructive approval requirements do not apply if there is a disagreement over quantity, quality, Contractor compliance with a contract provision, or requested progress payment amounts. These requirements also do not compel Government officials to accept work or services, approve Contractor estimates, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(A) For work or services completed by the Contractor, Government acceptance is deemed to occur constructively on the 7th day after the Contractor completes the work or services in accordance with the terms and conditions of the contract.

(B) For progress payments, Government approval is deemed to occur on the 7th day after the designated billing office receives the Contractor estimates.

(ii) The prompt payment regulations at 5 CFR 1315.10(c) do not require the Government to pay interest penalties if payment delays are due to disagreement between the Government and the Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. The Government and the Contractor shall resolve claims involving disputes, and any interest that may be payable in accordance with the clause at FAR 52.233–1, Disputes.

(5) *Discounts for prompt payment.* The designated payment office will pay an interest penalty automatically, without request from the Contractor, if the Government takes a discount for prompt payment improperly. The Government will calculate the interest penalty in accordance with 5 CFR part 1315.

(6) *Additional interest penalty.* (i) The designated payment office will pay a penalty amount, calculated in accordance with the prompt payment regulations at 5 CFR part 1315, in addition to the interest penalty amount only if—

(A) The Government owes an interest penalty of $1 or more;

(B) The designated payment office does not pay the interest penalty within 10 days after the date the invoice amount is paid; and

(C) The contractor makes a written demand to the designated payment office for additional penalty payment, in accordance with paragraph (a)(6)(ii) of this clause, postmarked not later than 40 days after the date the invoice amount is paid.

(ii)(A) The Contractor shall support written demands for additional penalty payments with the following data. The Government will not request any additional data. The Contractor shall—

(*1*) Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;

(*2*) Attach a copy of the invoice on which the unpaid late payment interest is due; and

(*3*) State that payment of the principal has been received, including the date of receipt.

(B) If there is no postmark or the postmark is illegible—

(*1*) The designated payment office that receives the demand will annotate it with the date of receipt, provided the demand is received on or before the 40th day after payment was made; or

(*2*) If the designated payment office fails to make the required annotation, the Government will determine the demand's validity based on the date the Contractor has placed on the demand, provided such date is no later than the 40th day after payment was made.

(iii) The additional penalty does not apply to payments regulated by other Government regulations (*e.g.,* payments under utility contracts subject to tariffs and regulation).

(b) *Contract financing payments.* If this contract provides for contract financing, the Government will make contract financing payments in accordance with the applicable contract financing clause.

(c) *Overpayments.* If the Contractor becomes aware of a duplicate payment or that the Government has otherwise overpaid on an invoice payment, the Contractor shall immediately notify the Contracting Officer and request instructions for disposition of the overpayment.

(End of clause)

52.232–27 Prompt payment for construction contracts.

As prescribed in 32.908(b), insert the following clause:

Prompt Payment for Construction Contracts (Feb 2002)

Notwithstanding any other payment terms in this contract, the Government will make invoice payments under the terms and conditions specified in this clause. The Government considers payment as being made on the day a check is dated or the date of an electronic funds transfer.Definitions of pertinent terms are set forth in sections 2.101, 32.001, and 32.902 of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see paragraph (a)(3) concerning payments due on Saturdays, Sundays, and legal holidays.)

(a) *Invoice payments*—(1) *Types of invoice payments.* For purposes of this clause, there are several types of invoice payments that may occur under this contract, as follows:

(i) Progress payments, if provided for elsewhere in this contract, based on Contracting Officer approval of the estimated amount and value of work or services performed, including payments for reaching milestones in any project.

(A) The due date for making such payments is 14 days after the designated billing office receives a proper payment request. If the designated billing office fails to annotate the payment request with the actual date of receipt at the time of receipt, the payment due date is the 14th day after the date of the Contractor's payment request, provided the designated billing office receives a proper payment request and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(B) The due date for payment of any amounts retained by the Contracting Officer in accordance with the clause at 52.232–5, Payments Under Fixed-Price Construction Contracts, is as specified in the contract or, if not specified, 30 days after approval by the Contracting Officer for release to the Contractor.

(ii) Final payments based on completion and acceptance of all work and presentation of release of all claims against the Government arising by virtue of the contract, and payments for partial deliveries that have been accepted by the Government (*e.g.,* each separate building, public work, or other division of the contract for which the price is stated separately in the contract).

(A) The due date for making such payments is the later of the following two events:

(*1*) The 30th day after the designated billing office receives a proper invoice from the Contractor.

(*2*) The 30th day after Government acceptance of the work or services completed by the Contractor. For a final invoice when the payment amount is subject to contract settlement actions (*e.g.,* release of claims), acceptance is deemed to occur on the effective date of the contract settlement.

(B) If the designated billing office fails to annotate the invoice with the date of actual receipt at the time of receipt, the invoice payment due date is the 30th day after the date of the Contractor's invoice, provided the designated billing office receives a proper invoice and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(2) *Contractor's invoice.* The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in paragraphs (a)(2)(i) through (a)(2)(xi) of this clause. If the invoice does not comply with these requirements, the designated billing office must return it within 7 days after receipt, with the reasons why it is not a proper invoice. When computing any interest penalty owed the Contractor, the Government will take into account if the

Government notifies the Contractor of an improper invoice in an untimely manner.

(i) Name and address of the Contractor.

(ii) Invoice date and invoice number. (The Contractor should date invoices as close as possible to the date of mailing or transmission.)

(iii) Contract number or other authorization for work or services performed (including order number and contract line item number).

(iv) Description of work or services performed.

(v) Delivery and payment terms (*e.g.,* discount for prompt payment terms).

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to notify in the event of a defective invoice.

(viii) For payments described in paragraph (a)(1)(i) of this clause, substantiation of the amounts requested and certification in accordance with the requirements of the clause at 52.232–5, Payments Under Fixed-Price Construction Contracts.

(ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision (*e.g.,* 52.232–38, Submission of Electronic Funds Transfer Information with Offer), contract clause (*e.g.,* 52.232–33, Payment by Electronic Funds Transfer—Central Contractor Registration, or 52.232–34, Payment by Electronic Funds Transfer—Other Than Central Contractor Registration), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(xi) Any other information or documentation required by the contract.

(3) *Interest penalty.* The designated payment office will pay an interest penalty automatically, without request from the Contractor, if payment is not made by the due date and the conditions listed in paragraphs (a)(3)(i) through (a)(3)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday, the designated payment office may make payment on the following working day without incurring a late payment interest penalty.

(i) The designated billing office received a proper invoice.

(ii) The Government processed a receiving report or other Government documentation authorizing payment and there was no disagreement over quantity, quality, Contractor compliance with any contract term or condition, or requested progress payment amount.

(iii) In the case of a final invoice for any balance of funds due the Contractor for work or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(4) *Computing penalty amount.* The Government will compute the interest penalty in accordance with the Office of Management and Budget prompt payment regulations at 5 CFR part 1315.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor for payments described in paragraph (a)(1)(ii) of this clause, Government acceptance or approval is deemed to occur constructively on the 7th day after the Contractor has completed the work or services in accordance with the terms and conditions of the contract. If actual acceptance or approval occurs within the constructive acceptance or approval period, the Government will base the determination of an interest penalty on the actual date of acceptance or approval. Constructive acceptance or constructive approval requirements do not apply if there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. These requirements also do not compel Government officials to accept work or services, approve Contractor estimates, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(ii) The prompt payment regulations at 5 CFR 1315.10(c) do not require the Government to pay interest penalties if payment delays are due to disagreement between the Government and the Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. The Government and the Contractor shall resolve claims involving disputes, and any interest that may be payable in accordance with the clause at FAR 52.233–1, Disputes.

(5) *Discounts for prompt payment.* The designated payment office will pay an interest penalty automatically, without request from the Contractor, if the Government takes a discount for prompt payment improperly. The Government will calculate the interest penalty in accordance with the prompt payment regulations at 5 CFR part 1315.

(6) *Additional interest penalty.* (i) The designated payment office will pay a penalty amount, calculated in accordance with the prompt payment regulations at 5 CFR part 1315 in addition to the interest penalty amount only if—

(A) The Government owes an interest penalty of $1 or more;

(B) The designated payment office does not pay the interest penalty within 10 days after the date the invoice amount is paid; and

(C) The Contractor makes a written demand to the designated payment office for additional penalty payment, in accordance with paragraph (a)(6)(ii) of this clause, postmarked not later than 40 days after the date the invoice amount is paid.

(ii)(A) The Contractor shall support written demands for additional penalty payments with the following data. The Government will not request any additional data. The Contractor shall—

(*1*) Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;

(*2*) Attach a copy of the invoice on which the unpaid late payment interest was due; and

(*3*) State that payment of the principal has been received, including the date of receipt.

(B) If there is no postmark or the postmark is illegible—

(1) The designated payment office that receives the demand will annotate it with the date of receipt provided the demand is received on or before the 40th day after payment was made; or

(*2*) If the designated payment office fails to make the required annotation, the Government will determine the demand's validity based on the date the Contractor has placed on the demand, provided such date is no later than the 40th day after payment was made.

(b) *Contract financing payments.* If this contract provides for contract financing, the Government will make contract financing payments in accordance with the applicable contract financing clause.

(c) *Subcontract clause requirements.* The Contractor shall include in each subcontract for property or services (including a material supplier) for the purpose of performing this contract the following:

(1) *Prompt payment for subcontractors.* A payment clause that obligates the Contractor to pay the subcontractor for satisfactory performance under its subcontract not later than 7 days from receipt of payment out of such amounts as are paid to the Contractor under this contract.

(2) *Interest for subcontractors.* An interest penalty clause that obligates the Contractor to pay to the subcontractor an interest penalty for each payment not made in accordance with the payment clause—

(i) For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and

(ii) Computed at the rate of interest established by the Secretary of the Treasury, and published in the **Federal Register,** for interest payments under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(3) *Subcontractor clause flowdown.* A clause requiring each subcontractor tou

(i) Include a payment clause and an interest penalty clause conforming to the standards set forth in paragraphs (c)(1) and (c)(2) of this clause in each of its subcontracts; and

(ii) Require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

(d) *Subcontract clause interpretation.* The clauses required by paragraph (c) of this clause shall not be construed to impair the right of the Contractor or a subcontractor at any tier to negotiate, and to include in their subcontract, provisions that—

(1) *Retainage permitted.* Permit the Contractor or a subcontractor to retain (without cause) a specified percentage of each progress payment otherwise due to a subcontractor for satisfactory performance under the subcontract without incurring any obligation to pay a late payment interest penalty, in accordance with terms and conditions agreed to by the parties to the subcontract, giving such recognition as the parties deem appropriate to the ability of a subcontractor to furnish a performance bond and a payment bond;

(2) *Withholding permitted.* Permit the Contractor or subcontractor to make a determination that part or all of the subcontractor's request for payment may be withheld in accordance with the subcontract agreement; and

(3) *Withholding requirements.* Permit such withholding without incurring any obligation to pay a late payment penalty if—

(i) A notice conforming to the standards of paragraph (g) of this clause previously has been furnished to the subcontractor; and

(ii) The Contractor furnishes to the Contracting Officer a copy of any notice issued by a Contractor pursuant to paragraph (d)(3)(i) of this clause.

(e) *Subcontractor withholding procedures.* If a Contractor, after making a request for payment to the Government but before making a payment to a subcontractor for the subcontractor's performance covered by the payment request, discovers that all or a portion of the payment otherwise due such subcontractor is subject to withholding from the subcontractor in accordance with the subcontract agreement, then the Contractor shall—

(1) *Subcontractor notice.* Furnish to the subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon ascertaining the cause giving rise to a withholding, but prior to the due date for subcontractor payment;

(2) *Contracting Officer notice.* Furnish to the Contracting Officer, as soon as practicable, a copy of the notice furnished to the subcontractor pursuant to paragraph (e)(1) of this clause;

(3) *Subcontractor progress payment reduction.* Reduce the subcontractor's progress payment by an amount not to exceed the amount specified in the notice of withholding furnished under paragraph (e)(1) of this clause;

(4) *Subsequent subcontractor payment.* Pay the subcontractor as soon as practicable after the correction of the identified subcontract performance deficiency, and—

(i) Make such payment within—

(A) Seven days after correction of the identified subcontract performance deficiency (unless the funds therefor must be recovered from the Government because of a reduction under paragraph (e)(5)(i)) of this clause; or

(B) Seven days after the Contractor recovers such funds from the Government; or

(ii) Incur an obligation to pay a late payment interest penalty computed at the rate of interest established by the Secretary of the Treasury, and published in the **Federal Register**, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty;

(5) *Notice to Contracting Officer.* Notify the Contracting Officer upon—

(i) Reduction of the amount of any subsequent certified application for payment; or

(ii) Payment to the subcontractor of any withheld amounts of a progress payment, specifying—

(A) The amounts withheld under paragraph (e)(1) of this clause; and

(B) The dates that such withholding began and ended; and

(6) *Interest to Government.* Be obligated to pay to the Government an amount equal to interest on the withheld payments (computed in the manner provided in 31 U.S.C. 3903(c)(1)), from the 8th day after receipt of the withheld amounts from the Government until—

(i) The day the identified subcontractor performance deficiency is corrected; or

(ii) The date that any subsequent payment is reduced under paragraph (e)(5)(i) of this clause.

(f) *Third-party deficiency reports*—(1) *Withholding from subcontractor.* If a Contractor, after making payment to a first-tier subcontractor, receives from a supplier or subcontractor of the first-tier subcontractor (hereafter referred to as a ''second-tier subcontractor'') a written notice in accordance with section 2 of the Act of August 24, 1935 (40 U.S.C. 270b, Miller Act), asserting a deficiency in such first-tier subcontractor's performance under the contract for which the Contractor may be ultimately liable, and the Contractor determines that all or a portion of future payments otherwise due such first-tier subcontractor is subject to withholding in accordance with the subcontract agreement, the Contractor may, without incurring an obligation to pay an interest penalty under paragraph (e)(6) of this clause—

(i) Furnish to the first-tier subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon making such determination; and

(ii) Withhold from the first-tier subcontractor's next available progress payment or payments an amount not to exceed the amount specified in the notice of withholding furnished under paragraph (f)(1)(i) of this clause.

(2) *Subsequent payment or interest charge.* As soon as practicable, but not later than 7 days after receipt of satisfactory written notification that the identified subcontract performance deficiency has been corrected, the Contractor shall—

(i) Pay the amount withheld under paragraph (f)(1)(ii) of this clause to such first-tier subcontractor; or

(ii) Incur an obligation to pay a late payment interest penalty to such first-tier subcontractor computed at the rate of interest established by the Secretary of the Treasury, and published in the **Federal Register**, for interest payments under section 12 of the Contracts DisputesAct of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(g) *Written notice of subcontractor withholding.* The Contractor shall issue a written notice of any withholding to a subcontractor (with a copy furnished to the Contracting Officer), specifying—

(1) The amount to be withheld;

(2) The specific causes for the withholding under the terms of the subcontract; and

(3) The remedial actions to be taken by the subcontractor in order to receive payment of the amounts withheld.

(h) *Subcontractor payment entitlement.* The Contractor may not request payment from the Government of any amount withheld or retained in accordance with paragraph (d) of this clause until such time as the Contractor has determined and certified to the Contracting Officer that the subcontractor is entitled to the payment of such amount.

(i) *Prime-subcontractor disputes.* A dispute between the Contractor and subcontractor relating to the amount or entitlement of a subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract pursuant to paragraph (c) of this clause does not constitute a dispute to which the Government is a party. The Government may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

(j) *Preservation of prime-subcontractor rights.* Except as provided in paragraph (i) of this clause, this clause shall not limit or impair any contractual, administrative, or judicial remedies otherwise available to the Contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by the Contractor or deficient subcontract performance or nonperformance by a subcontractor.

(k) *Non-recourse for prime contractor interest penalty.* The Contractor's obligation to pay an interest penalty to a subcontractor pursuant to the clauses included in a subcontract under paragraph (c) of this clause shall not be construed to be an obligation of the Government for such interest penalty. A cost-reimbursement claim may not include any amount for reimbursement of such interest penalty.

(l) *Overpayments.* If the Contractor becomes aware of a duplicate payment or that the Government has otherwise overpaid on an invoice payment, the Contractor shall immediately notify the Contracting Officer and request instructions for disposition of the overpayment.

(End of clause)

16. Amend section 52.232–29 by revising the date of the clause; by redesignating paragraph (g) as paragraph (h); by adding a new paragraph (g); and by revising the newly designated paragraph (h) to read as follows:

52.232–29 Terms for financing of purchases of commercial items.

* * * * *

Terms for Financing of Purchases of Commercial Items (Feb 2002)

* * * * *

(g) *Dates for payment.* A payment under this clause is a contract financing payment

and not subject to the interest penalty provisions of the Prompt Payment Act. The designated payment office will pay approved payment requests within 30 days of submittal of a proper request for payment.

(h) *Conflict between terms of offeror and clause.* In the event of any conflict between the terms proposed by the offeror in response to an invitation to propose financing terms (52.232–31) and the terms in this clause, the terms of this clause shall govern.

(End of clause)

17. Amend section 52.232–32 by revising the date of the clause and paragraph (c)(2) to read as follows:

52.232–32 Performance-based payments.

* * * * *

Performance-Based Payments (Feb 2002)

* * * * *

(c) * * *

(2) A payment under this performance-based payment clause is a contract financing payment under the Prompt Payment clause of this contract and not subject to the interest penalty provisions of the Prompt Payment Act. The designated payment office will pay approved requests on the _____ [*Contracting Officer insert day as prescribed by agency head; if not prescribed, insert "30th"*] day after receipt of the request for performance-based payment. However, the designated payment office is not required to provide payment if the Contracting Officer requires substantiation as provided in paragraph (c)(1) of this clause, or inquires into the status of an event or performance criterion, or into any of the conditions listed in paragraph (e) of this clause, or into the Contractor certification. The payment period will not begin until the Contracting Officer approves the request.

* * * * *

[FR Doc. 01–30540 Filed 12–17–01; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 8, 44, and 52

[FAC 2001–02; FAR Case 1999–017; Item IV]

RIN 9000–AI82

Federal Acquisition Regulation; Javits-Wagner-O'Day Act Subcontract Preference Under Service Contracts

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation to implement changes in 41 CFR 51–5.2(e) relating to preferences for award of subcontracts under service contracts to nonprofit workshops designated by the Committee for Purchase From People Who Are Blind or Severely Disabled (Javits-Wagner-O'Day Act (JWOD) (41 U.S.C. 48)).

DATES: Effective Date: February 19, 2002.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAC 2001–02, FAR case 1999–017.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 65 FR 41266 on July 3, 2000. This final rule amends FAR Part 8 to extend the priority for award of service contracts that will satisfy agency requirements that are available from the Committee for Purchase From People Who Are Blind or Severely Disabled to subcontracts when contractors purchase the services for Government use. The rule also amends FAR Part 44 to add purchase from nonprofit workshops designated by the Committee for Purchase From People Who Are Blind or Severely Disabled to the list of items a contracting officer must consider when reviewing a subcontract that is subject to the procedures at FAR Subpart 44.2, Consent to Subcontracts. The rule also amends the clause at FAR 52.208–9, Contractor Use of Mandatory Sources of Supply, to inform offerors and contractors that certain services to be provided for use by the Government are required by law to be obtained from the Committee for Purchase From People Who Are Blind or Severely Disabled. We received comments from three respondents in response to publication of the proposed rule. All comments were considered in the development of the final rule.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, applies to this final rule. The Councils prepared a Final Regulatory Flexibility Analysis (FRFA), and it is summarized as follows:

The rule implements 41 CFR 51–5.2(e) relating to preferences for award of subcontracts under service contracts to nonprofit workshops designated by the Committee for Purchase From People Who Are Blind or Severely Disabled (Javits-Wagner-O'Day Act (JWOD) (41 U.S.C. 48)). The rule will apply to all large and small entities that seek award of a subcontract under Government services contract. Although awards of subcontracts to certain small entities may decrease as a result of the rule, the decrease will be offset by an increase in awards to nonprofit workshops. Nonprofit workshops meet the size standards for most acquisitions. Therefore, we do not expect the total number of subcontract awards to small entities to change as a result of this rule.

Interested parties may obtain a copy of the FRFA from the FAR Secretariat. The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget approval under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 8, 44, and 52

Government procurement.

Dated: December 5, 2001.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 8, 44, and 52 as set forth below:

1. The authority citation for 48 CFR parts 8, 44, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and42 U.S.C. 2473(c).

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

2. Amend section 8.001 by revising paragraph (c) to read as follows:

8.001 Priorities for use of Government supply sources.

* * * * *

(c) The statutory obligation for Government agencies to satisfy their requirements for supplies or services available from the Committee for

Purchase From People Who Are Blind or Severely Disabled also applies when contractors purchase the supplies or services for Government use.

3. Revise section 8.003 to read as follows:

8.003 Contract clause.

Insert the clause at 52.208–9, Contractor Use of Mandatory Sources of Supply and Services, in solicitations and contracts that require a contractor to provide supplies or services for Government use that are available from the Committee for Purchase From People Who Are Blind or Severely Disabled. The contracting officer must identify in the contract schedule the supplies or services that must be purchased from a mandatory source and the specific source.

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

4. Amend section 44.202–2 by removing from the introductory text of paragraph (a) ''shall'' and adding ''must'' in its place; and by revising paragraph (a)(4) to read as follows:

44.202–2 Considerations.

(a) * * *

(4) Has the contractor complied with the prime contract requirements regarding—

(i) Small business subcontracting, including, if applicable, its plan for subcontracting with small, veteran-owned, service-disabled veteran-owned, HUBZone, small disadvantaged and women-owned small business concerns (seepart 19); and

(ii) Purchase from nonprofit agencies designated by the Committee for Purchase From People Who Are Blind or Severely Disabled (Javits-Wagner-O'Day Act (JWOD) (41 U.S.C. 48))(see part 8)?

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. In section 52.208–9, revise the section and clause headings, paragraphs (a) and (b), and the second sentence in paragraph (c) to read as follows:

52.208–9 Contractor Use of Mandatory Sources of Supply or Services.

* * * * *

Contractor Use of Mandatory Sources of Supply or Services (Feb 2002)

(a) Certain supplies or services to be provided under this contract for use by the Government are required by law to be obtained from the Committee for Purchase From People Who Are Blind or Severely Disabled (the Committee) under the Javits-Wagner-O'Day Act (JWOD) (41 U.S.C. 48). Additionally, certain of these supplies are available from the Defense Logistics Agency (DLA), the General Services Administration (GSA), or the Department of Veterans Affairs (VA). The Contractor shall obtain mandatory supplies or services to be provided for Government use under this contract from the specific sources indicated in the contract schedule.

(b) The Contractor shall immediately notify the Contracting Officer if a mandatory source is unable to provide the supplies or services by the time required, or if the quality of supplies or services provided by the mandatory source is unsatisfactory. The Contractor shall not purchase the supplies or services from other sources until the Contracting Officer has notified the Contractor that the Committee or a JWOD central nonprofit agency has authorized purchase from other sources.

(c) * * * For mandatory supplies or services that are not available from DLA/GSA/VA, price and delivery information is available from the appropriate central nonprofit agency. * * *

* * * * *

(End of clause)

[FR Doc. 01–30541 Filed 12–17–01; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 15

[FAC 2001–02; FAR Case 1999–022; Item V]

RIN 9000–AI68

Federal Acquisition Regulation; Discussion Requirements

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed to amend the Federal Acquisition Regulation (FAR) to clarify the scope of discussions in competitive negotiated acquisitions.

DATES: *Effective Date:* February 19, 2002.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph DeStefano, Procurement Analyst, at (202) 501–1758. Please cite FAC 2001–02, FAR case 1999–022.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR 15.306(d) to clarify that the contracting officer is not required to discuss every area where the proposal could be improved. The rule explains that discussions of offerors' proposals beyond deficiencies and significant weaknesses are a matter of contracting officer judgment. GAO has already interpreted the previous FAR language consistently with this clarification in MRC Federal, Inc. (B–280969, December 14, 1998), and Du & Associates (B–280283.3, December 22, 1998). The rule encourages the contracting officer to discuss other aspects of an offerors' proposal that have the potential, if changed, to materially increase the value of the proposal to the Government (B–280283.3). However, the rule makes clear that whether these discussions would be worthwhile is within the contracting officer's discretion.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 65 FR 17582, April 3, 2000. Five respondents submitted comments on the proposed rule. The Councils considered all comments in the development of the final rule.

This is not a significant regulatory action, and therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only clarifies existing policy that the scope and extent of discussions beyond the stated minimums are a matter of contracting officer judgment. We did not receive any comments regarding this determination as a result of publication of the proposed rule in the **Federal Register** at 65 FR 17582, April 3, 2000.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the

approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 15

Government procurement.

Dated: December 5, 2001.

Al Matera,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR part 15 as set forth below:

PART 15—CONTRACTING BY NEGOTIATION

1. The authority citation for 48 CFR part 15 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Amend section 15.306 in paragraph (d)(1) by removing ''shall'' and inserting ''must'' in its place; by revising paragraph (d)(3); and by redesignating paragraph (d)(4) as (d)(5) and adding a new (d)(4) to read as follows:

15.306 Exchanges with offerors after receipt of proposals.

* * * * *

(d) * * *

(3) At a minimum, the contracting officer must, subject to paragraphs (d)(5) and (e) of this section and 15.307(a), indicate to, or discuss with, each offeror still being considered for award, deficiencies, significant weaknesses, and adverse past performance information to which the offeror has not yet had an opportunity to respond. The contracting officer also is encouraged to discuss other aspects of the offeror's proposal that could, in the opinion of the contracting officer, be altered or explained to enhance materially the proposal's potential for award. However, the contracting officer is not required to discuss every area where the proposal could be improved. The scope and extent of discussions are a matter of contracting officer judgment.

(4) In discussing other aspects of the proposal, the Government may, in situations where the solicitation stated that evaluation credit would be given for technical solutions exceeding any mandatory minimums, negotiate with offerors for increased performance beyond any mandatory minimums, and the Government may suggest to offerors that have exceeded any mandatory minimums (in ways that are not integral to the design), that their proposals would be more competitive if the excesses were removed and the offered price decreased.

* * * * *

[FR Doc. 01–30542 Filed 12–17–01; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 15

[FAC 2001–02; FAR Case 2000–017; Item VI]

RIN 9000–AJ25

Federal Acquisition Regulation; Definition of Subcontract in FAR Subpart 15.4

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to exclude section 15.407–2 from application of the expanded definition of ''subcontract'' at FAR 15.401.

DATES: *Effective Date:* February 19, 2002.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson, at (202) 501–3221. Please cite FAC 2001–02, FAR case 2000–017.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule excludes section 15.407–2 from application of the expanded definition of ''subcontract'' at FAR 15.401. This definition of ''subcontract'' is derived from the Truth in Negotiations Act (10 U.S.C. 2306a(h)(2) and 41 U.S.C. 254b(h)(2)). Prior to the rewrite of Part 15, this definition applied only to Subpart 15.8, Price Negotiation, and did not apply to Subpart 15.7, Make-or-Buy Programs, or Subpart 15.9, Profit. The rewrite combined these three subparts into the new Subpart 15.4, Contract Pricing. However, application of the expanded definition creates a conflict with the definitions of ''buy item'' and ''make item'' in section 15.407–2, Make-or-buy programs. As defined in section 15.407–2, ''buy item'' means an item or work effort to be produced or performed by a subcontractor. ''Make item'' means an item or work effort to be produced or performed by the prime contractor or its affiliates, subsidiaries, or divisions. In this context, a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor is not considered to be a ''subcontract.'' This is not a significant regulatory action and, therefore, was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comment is not required.

However, the Councils will consider comments from small entities concerning the affected FAR part 15 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2001–02, FAR case 2000–017), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 15

Government procurement.

Dated: December 5, 2001.

Al Matera,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR part 15 as set forth below:

PART 15—CONTRACTING BY NEGOTIATION

1. The authority citation for 48 CFR part 15 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

15.401 [Amended]

2. Amend section 15.401 in the definition of ''Subcontract'' by adding the parenthetical ''(except as used in

15.407–2)'' following the word ''Subcontract''.

[FR Doc. 01–30543 Filed 12–17–01; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 5, 12, 19, 23, 52, and 53

[FAC 2001–02; FAR Case 2000–604; Item VII]

RIN 9000–AI75

Federal Acquisition Regulation; North American Industry Classification System

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are finalizing, with minor changes, the interim rule concerning the North American Industry Classification System (NAICS), that was published in the **Federal Register** at 65 FR 46055, July 26, 2000. The rule converts size standards and other programs in the Federal Acquisition Regulation (FAR) based on the Standard Industrial Classification (SIC) system to NAICS.

DATES: *Effective Date:* December 18, 2001.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Rhonda Cundiff, Procurement Analyst, at (202) 501–0044. Please cite FAC 2001–02, FAR case 2000–604.

SUPPLEMENTARY INFORMATION:

A. Background

NAICS is a new system that classifies establishments according to how they conduct their economic activity. It is a significant improvement over the SIC. On May 15, 2000, the Small Business Administration (SBA) published a final rule basing small business size standards on NAICS rather than SIC codes effective the start of the Federal Government's fiscal year 2001.

In addition, this rule includes two technical amendments. FAR 19.102(h) updates the Internet address for the industry size standards published by the Small Business Administration. FAR 19.1005(a) reinstates language omitted inadvertently.

An interim rule was published in FAC 97–19 in the **Federal Register** at 65 FR 46055, July 26, 2000, to conform the FAR to the changes issued by SBA to the size standards and convert other programs in the FAR currently based on SIC codes to NAICS. Two comments were received in response to the interim rule. Those comments were considered in formulation of the final rule.

This is not a significant regulatory action, and therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the coding changes are primarily internal to the Federal Government. External uses of the codes under the small business subcontracting program and small disadvantaged business participation programs are primarily limited to large businesses and involve only use of NAICS rather than SIC tables.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 5, 12, 19, 23, 52, and 53

Government procurement.

Dated: December 5, 2001.

Al Matera,

Director, Acquisition Policy Division.

Interim Rule Adopted as Final With Minor Changes

Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR parts 5, 12, 19, 23, 52, and 53, which was published in the **Federal Register** at 65 FR 46055, July 26, 2000, as a final rule with the following changes:

PART 19—SMALL BUSINESS PROGRAMS

1. The authority citation for 48 CFR part 19 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and42 U.S.C. 2473(c).

2. In section 19.102, revise paragraph (h) to read as follows:

19.102 Size standards.

* * * * *

(h) The industry size standards are published by the Small Business Administration and are available via the Internet at *http://www.sba.gov/size.*

19.1005 [Amended]

3. Amend section 19.1005 in the heading of the table in paragraph (a) by removing ''Construction'' and adding ''Construction (except dredging)'' in its place.

[FR Doc. 01–30544 Filed 12–17–01; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22, 25, and 52

[FAC 2001–02; FAR Case 2001–025; Item VIII]

RIN 9000–AJ26

Federal Acquisition Regulation; Iceland—Newly Designated Country Under the Trade Agreements Act

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement the accession of Iceland to the Agreement on Government Procurement, by adding Iceland as a designated country under the Trade Agreements Act.

DATES: *Effective Date:* December 18, 2001.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For

clarification of content, contact Ms. Cecelia Davis, Procurement Analyst, at (202) 219–0202. Please cite FAC 2001–02, FAR case 2001–025.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR 25.003, the clause at FAR 52.225–5, Trade Agreements, and the clause at 52.225–11, Buy American Act—Balance of Payments Program—Construction Materials under Trade Agreements, to add Iceland to the list of designated countries under the Trade Agreements Act (TAA).

In addition, if the TAA applies, Executive Order 13126 of June 12, 1999, Prohibition of Acquisition of ProductsProduced by Forced or Indentured Child Labor, does not apply to contracts for the acquisition of products from foreign countries that are party to the Agreement on Government Procurement. Therefore, this final rule also adds Iceland to the list of excepted countries of origin at 22.1503(b)(4) and the associated clause at 52.222–19, Child Labor—Cooperation with Authorities and Remedies.

This is not a significant regulatory action, and therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comment is not required. However, the Councils will consider comments from small entities concerning the affected FAR part 25 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2001–02, FAR case 2001–025), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 22, 25, and 52

Government procurement.

Dated: December 5, 2001.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 22, 25, and 52 as set forth below:

1. The authority citation for 48 CFR parts 22, 25, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.1503 [Amended]

2. In section 22.1503, amend paragraph (b)(4) by adding ''Iceland,'' after ''Hong Kong,''.

PART 25—FOREIGN ACQUISITION

25.003 [Amended]

3. In section 25.003, amend the definition ''Designated country'' by adding, in alphabetical order, the word ''Iceland''.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.222–19 [Amended]

4. In section 52.222–19, revise the date of the clause by removing ''(FEB 2001)'' and adding ''(DEC 2001)'' in its place; and in paragraph (a)(4) remove ''Hong Kong,'' and add ''Hong Kong, Iceland,'' in its place.

52.225–5 [Amended]

5. In section 52.225–5, revise the date of the clause by removing ''(APR 2000)'' and adding ''(DEC 2001)'' in its place; and in paragraph (a) in the definition ''Designated country'' add, in alphabetical order, the word ''Iceland''.

52.225–11 [Amended]

6. In section 52.225–11, revise the date of the clause by removing ''(FEB 2000)'' and adding ''(DEC 2001)'' in its place; and in paragraph (a) in the definition ''Designated country,'' add, in alphabetical order, the word ''Iceland''.

[FR Doc. 01–30545 Filed 12–17–01; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 39

[FAC 2001–02; FAR Case 2000–609; Item IX]

RIN 9000–AJ11

Federal Acquisition Regulation; Contractor Personnel in the Procurement of Information Technology Services

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed to adopt as final, without change, the interim rule published as Item II of Federal Acquisition Circular 97–25 published in the **Federal Register** on May 2, 2001. The rule amends the Federal Acquisition Regulation (FAR) to implement Section 813 of the Floyd D. Spence National Defense Authorization Act for fiscal year 2001 (Pub. L. 106–398). The Act requires that the FAR be amended to address the use, in the procurement of information technology services, of requirements regarding the experience and education of contractor personnel.

DATES: Effective Date: December 18, 2001.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAC 2001–02, FAR case 2000–609.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 66 FR 22084, May 2, 2001, adding a new subsection to Subpart 39.1 to implement Section 813 of the Floyd D. Spence National Defense Authorization Act for fiscal year 2001 (Pub. L. 106–398). Section 813 prohibits the use of minimum experience or education requirements for contractor personnel in solicitations for the acquisition of

information technology services, unless—

1. The contracting officer first determines that the needs of the agency cannot be met without such requirement; or

2. The needs of the agency require the use of a type of contract other than a performance-based contract.

Public comments were received from two sources. The comments were considered in developing the final rule. The interim rule is converted to a final rule without change.

This is not a significant regulatory action, and therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, applies to this final rule. The Councils prepared a Final Regulatory Flexibility Analysis (FRFA) and it is summarized as follows

This rule amends Part 39 of the Federal Acquisition Regulation to implement Section 813 of the Floyd D. Spence National Defense Authorization Act for fiscal year 2001 (Pub. L. 106–398). The objective of this rule is to revise the FAR to address the use of requirements regarding the experience and education of contractor personnel when acquiring information technology services. The rule prohibits the use of minimum experience or education requirements for contractor personnel in solicitations for the acquisition of information technology services, unless the contracting officer first determines the needs of the agency cannot be met without that requirement; or the needs of the agency require the use of a type of contract other than a performance-based contract.

The rule will apply to all large and small entities that seek award of Federal information service contracts. In fiscal year 2000, we estimated that Federal agencies awarded approximately 14,578 contracts totaling approximately $3.4 billion to small entities for information technology services. The rule should have a positive economic impact on small businesses because it will make it easier for them to hire employees to work on information technology service contracts, as well as increase their business opportunities in obtaining Federal contracts.

Interested parties may obtain a copy of the FRFA from the FAR Secretariat. The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 39

Government procurement.

Dated: December 5, 2001.

Al Matera,

Director, Acquisition Policy Division.

Interim Rule Adopted as Final Without Change

Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR part 39, which was published in the **Federal Register** on May 2, 2001 (66 FR 22084), as a final rule without change.

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and42 U.S.C. 2473(c).

[FR Doc. 01–30546 Filed 12–17–01; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121). It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2001–02 which amend the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Interested parties may obtain further information regarding these rules by referring to FAC 2001–02 which precedes this document. These documents are also available via the Internet at *http://www.arnet.gov/far*.

FOR FURTHER INFORMATION CONTACT: Laurie Duarte, FAR Secretariat, (202) 501–4225. For clarification of content, contact the analyst whose name appears in the table below.

LIST OF RULES IN FAC 2001–02

Item	Subject	FAR case	Analyst
I	Definitions of ''Component'' and ''End Product''	2000–015	Davis.
II	Energy Efficiency of Supplies and Services	1999–011	Smith.
III	Prompt Payment and the Recovery of Overpayment	1999–023	Olson.
IV *	Javits-Wagner-O'Day Act Subcontract Preference Under Service Contracts.	1999–017	Nelson.
V	Discussion Requirements	1999–022	DeStefano.
VI	Definition of Subcontract in FAR Subpart 15.4	2000–017	Olson.
VII	North American Industry Classification System	2000–604	Cundiff.
VIII	Iceland—Newly Designated Country under Trade Agreements Act	2001–025	Davis.
IX *	Contractor Personnel in the Procurement of Information Technology Services.	2000–609	Nelson.

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

Federal Acquisition Circular 2001–02 amends the FAR as specified below:

Item I—Definitions of ''Component'' and ''End Product'' (FAR Case 2000–015)

This final rule amends the FAR to restore the unique Part 25 definitions of ''component'' and ''end product'' for acquisition of supplies. In addition, the Councils have made minor revisions to the definitions of ''component'' and ''cost of components'' for acquisition of construction. These definitions are used by offerors to determine whether offered end products or construction material meet the requirements of the Buy American Act and Balance of Payments Program or trade agreements.

Item II—Energy Efficiency of Supplies and Services (FAR Case 1999–011)

This final rule amends the FAR to implement Executive Order 13123, Greening the Government through Efficient Energy Management. The rule—

- Requires contracting officers, when acquiring energy-using products, to buy energy-efficient products if life-cycle cost-effective and available;
- Directs contracting officers to Internet sources for more detailed information on ENERGY STAR and other energy-efficient products; and
- Provides guidance on energy-savings performance contracts (ESPCs), including—
- An explanation of what they are and when they should be used; and
- Procedures for the solicitation and award of ESPCs, and the evaluation of unsolicited proposals for ESPCs.

The rule will only affect contracting officers that—

- Acquire energy-using products or services;—Contract for design, construction, renovation, or maintenance of a public building that will include energy-using products; or
- Use an energy-savings performance contract to reduce energy use and cost in an agency's facilities or operations.

Item III—Prompt Payment and the Recovery of Overpayment (FAR Case 1999–023)

This final rule revises prompt payment policies at FAR Part 32, Contract Financing, and related contract provisions at FAR Part 52. The rule is applicable to—

- Government payment offices and contractors since it revises the information that must be on an invoice for the document to be considered a proper invoice with respect to the prompt payment provisions of the FAR;
- Contracting officers and contractors since it establishes the requirement in the prompt payment clauses for contractors to notify the contracting officer if the contractor becomes aware of an overpayment of an invoice; and
- All Government contracts (including contracts at or below the simplified acquisition threshold) except contracts with payment terms and late payment penalties established by other governmental authority (*e.g.,* tariffs).

Item IV—Javits-Wagner-O'Day Act Subcontract Preference Under Service Contracts (FAR Case 1999–017)

This final rule amends the FAR to add a new preference for award of subcontracts under service contracts to nonprofit workshops designated by the Committee for Purchase From People Who Are Blind or Severely Disabled (Javits-Wagner-O'Day Act (JWOD) (41 U.S.C. 48)). The final rule applies to all service contracts. The rule—

- Requires that contractors that provide services for the Government's use and subcontract for those services must give preference in awarding subcontracts to nonprofit workshops, if the services are on the Committee for Purchase From People Who Are Blind or Severely Disabled procurement list;
- Requires that contracting officers must consider the preference for subcontracting with nonprofit workshops when reviewing a subcontract for services that is subject to the procedures at FAR Subpart 44.2, Consent to Subcontracts; and
- Amends the clause at FAR 52.208–9, ContractorUse of Mandatory Sources of Supply, to inform offerors and contractors that certain services to be provided for use by the Government are required by law to be obtained from the Committee for Purchase From People Who Are Blind or Severely Disabled.

Item V—Discussion Requirements (FAR Case 1999–022)

The rule amends FAR 15.306(d) to clarify that, although the contracting officer must discuss deficiencies, significant weaknesses, and adverse past performance information to which the offeror has not yet had an opportunity to respond and is encouraged to discuss other aspects of the offeror's proposal, the contracting officer is not required to discuss every area where the proposal could be improved. This clarifies the existing policy that any discussions beyond the minimum elements stated in the FAR are a matter of contracting officer judgment.

Item VI—Definition of Subcontract in FAR Subpart 15.4 (FAR Case 2000–017)

This final rule amends FAR 15.401 to exclude section 15.407–2, Make-or-buy programs, from application of the expanded definition of ''subcontract'' at FAR 15.401. This rule is a clarification and does not change any policy in Subpart 15.4, Contract Pricing.

Item VII—North American Industry Classification System (FAR Case 2000–604)

This rule finalizes, with minor changes, the interim rule which amended the FAR to convert size standards and other programs in the FAR that were based on the Standard Industrial Classification (SIC) system to the North AmericanIndustry Classification System (NAICS). NAICS is a new system that classifies establishments according to how they conduct their economic activity. It is a significant improvement over the SIC system because it more accurately identifies industries. Since October 1, 2000, NAICS is to be used to establish the size standards for acquisitions. In addition, the designated industry groups in FAR 19.1005 have been converted to NAICS and contract actions will be reported using the NAICS code rather than the SIC code.

Item VIII—Iceland—Newly Designated Country Under Trade Agreements Act (FAR Case 2001–025)

This final rule amends the definition of ''Designated country'' at FAR 25.003, and the clause at 52.225–5, Trade Agreements, and the clause at 52.225–11, Buy American Act—Balance of Payments Program—Construction Materials under Trade Agreements, to add Iceland to the list of designated countries under the Trade Agreements Act (TAA). Contracting officers may now consider offers of end products or construction materials from Iceland in acquisitions subject to the TAA. The current TAA threshold for acquisition of supplies is $177,000 and for acquisition of construction is$6,806,000.

In addition, if the TAA applies, Executive Order 13126 of June 12, 1999, Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor, does not apply to contracts for the acquisition of products from foreign countries that are party to the Agreement on Government Procurement. Therefore, this final rule also adds Iceland to the list of excepted countries of origin at 22.1503(b)(4) and

the associated clause at 52.222–19, Child Labor—Cooperation with Authorities and Remedies.

Item IX—Contractor Personnel in the Procurement of Information Technology Services (FAR Case 2000–609)

This final rule converts the interim rule published in FAC 97–25, in the **Federal Register** at 66 FR 22084, May 2, 2001, to a final rule without change. The rule added a new section to Subpart 39.1 to implement Section 813 of the Floyd D. Spence National Defense Authorization Act for fiscal year 2001 (Pub. L. 106–398). Section 813 prohibits the use of minimum experience or education requirements for contractor personnel in solicitations for the acquisition of information technology services, unless (1) the contracting officer first determines that the needs of the agency cannot be met without such requirement; or (2) the needs of the agency require the use of a type of contract other than a performance-based contract.

Dated: December 5, 2001.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 01–30547 Filed 12–17–01; 8:45 am]

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Federal Register

Tuesday,
December 18, 2001

Part IV

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Occupant Crash Protection; Final Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 01–11110; Notice 1]

RIN 2127–AI10

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: This document responds to petitions for reconsideration of the new, advanced air bag final rule; interim final rule that we published in May 2000. This document grants portions of the petitions and denies other portions of the petitions.

The May 2000 final rule amended our occupant crash protection standard to require that future air bags be designed so that, compared to current air bags, they create less risk of serious air bag-induced injuries, particularly for small women and young children; and provide improved frontal crash protection for all occupants, by means that include advanced air bag technology. The issuance of that rule completed the implementation of our 1996 comprehensive plan for reducing air bag risks. It was also required by the Transportation Equity Act for the 21st Century, which was enacted in 1998.

DATES: *Effective Date:* The amendments made in this rule are effective January 17, 2002.

Petitions: Petitions for reconsideration must be received by February 1, 2002.

ADDRESSES: Petitions for reconsideration should refer to the docket and notice number of this document and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may contact Dr. Roger A. Saul, Director, Office of Crashworthiness Standards, NPS–10. Telephone: (202) 366–1740. Fax: (202) 493–2739. E-mail: Roger.Saul@NHTSA.dot.gov.

For legal issues, you may contact Edward Glancy or Rebecca MacPherson, Office of Chief Counsel, NCC–20. Telephone: (202) 366–2992. Fax: (202) 366–3820.

You may send mail to these officials at the National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC, 20590.

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X. Rulemaking Analyses and Notices

I. Background: The Advanced Air Bag Final Rule

On May 12, 2000, we published in the **Federal Register** (65 FR 30680) a final rule; interim final rule to require advanced air bags. (Docket No. NHTSA 00–7013; Notice 1.) The rule amended Standard No. 208, *Occupant Crash Protection*, to require that future air bags be designed so that, compared to current air bags, they create less risk of serious air bag-induced injuries, particularly for small women and young children; and provide improved frontal crash protection for all occupants, by means that include advanced air bag technology.

To achieve these goals, the rule added a wide variety of new requirements, test procedures, and injury criteria, based on the use of an assortment of new dummies. Among other things, it replaced the current sled test with a rigid barrier crash test for assessing the protection of unbelted occupants.

The issuance of the rule completed the implementation of our 1996 comprehensive plan for reducing air bag risks. It was also required by the Transportation Equity Act for the 21st Century (TEA 21), which was enacted in 1998. That Act required us to issue a rule amending Standard No. 208:

> to *improve occupant protection* for occupants of different sizes, belted and unbelted, under Federal Motor Vehicle Safety Standard No. 208, *while minimizing the risk* to infants, children, and other occupants from injuries and deaths caused by air bags, *by means that include advanced air bags*.
> (Emphasis added.)

The rule will improve protection and minimize risk by requiring new tests and injury criteria and specifying the use of an entire family of test dummies: the existing dummy representing 50th percentile adult males, and new dummies representing 5th percentile adult females, 6-year-old children, 3-year-old children, and 1-year-old infants. With the addition of those dummies, Standard No. 208 will more fully reflect the range in sizes of vehicle occupants.

The rule will be phased in during two stages. The first stage phase-in will require vehicles to be certified as passing the unbelted test requirements [1] for both the 5th percentile adult female and 50th percentile adult male dummies in a 32–40 km/h (20–25 mph) rigid barrier crash, and belted test requirements [2] for the same two dummies in a rigid barrier crash with a maximum test speed of 48 km/h (30 mph). In addition, the first stage will require vehicles to include technologies that will minimize the risk of air bag-induced injuries for young children and small adults.

[1] "Unbelted test requirements" are requirements that specify the use of unbelted dummies in testing vehicles.

[2] "Belted test requirements" are requirements that specify the use of belted dummies in testing vehicles.

The second stage phase-in will require vehicles to be certified as passing the belted test requirements for the 50th percentile adult male dummy up to 56 km/h (35 mph). This requirement will provide improved protection for belted occupants.

First Stage Phase-in—Risk Minimization Provisions

During the first stage phase-in, from September 1, 2003 to August 31, 2006, increasing percentages of motor vehicles will be required to meet requirements for minimizing air bag risks, primarily by either automatically turning off the air bag when young children are present or deploying the air bag in a manner more benignly so that it is much less likely to cause serious or fatal injury to out-of-position occupants.[3] If they so wish, manufacturers may choose to use a combination of those approaches.

Manufacturers that decide to turn off the passenger air bag will use weight sensors and/or other means of detecting the presence of young children. To test the ability of those means to detect the presence of children, the rule specifies that child dummies be placed in child seats that are, in turn, placed on the passenger seat in both proper and (to simulate misuse) improper ways. It also specifies tests that are conducted with unrestrained child dummies sitting, kneeling, standing, or lying on the passenger seat.

The ability of air bags to deploy in a low-risk manner will be tested using child dummies on the passenger side and the small adult female dummy on the driver side. For manufacturers that decide to design their passenger air bags to deploy in a low risk manner, the rule specifies that unbelted child dummies be placed against the instrument panel in two different positions. The air bag is then deployed. This placement was specified because pre-crash braking can cause unrestrained children to move forward into or near the instrument panel before the air bag deploys. The ability of driver air bags to deploy in a low risk manner will be tested by placing the 5th percentile adult female dummy against the steering wheel in two different positions and then deploying the air bag.

First Stage Phase-in—Protection Improvement Provisions

In addition, the vehicle manufacturers will be required to meet a rigid barrier crash test with both unbelted 5th percentile adult female dummies and unbelted 50th percentile adult male dummies. The unbelted rigid barrier test replicates what happens to motor vehicles and their occupants in real world crashes better than the current sled test does. The maximum test speed for unbelted dummy testing will be 40 km/h (25 mph).

Our decision to set the maximum test speed for unbelted dummy testing at 40 km/h (25 mph) was issued as an interim final rule. We concluded that was the appropriate test speed for at least the TEA 21 implementation period (MY 2004–2007). We explained that that speed will provide vehicle manufacturers with the flexibility they need during that period to meet the technological challenges involved in simultaneously improving protection and minimizing risk. To achieve those twin goals, the manufacturers will have to comply with the wide variety of new requirements using an array of new dummies during this near-term time frame.

However, we did not draw any final conclusion about the appropriateness of that test speed in the longer run. We explained that, at this time, we cannot assess whether the uncertainty about the manufacturers' ability to improve protection further and minimize risk simultaneously will persist beyond the TEA 21 implementation period. We stated that, in addition, while we believed that it was unlikely that the selection of a 40 km/h (25 mph) maximum test speed (instead of a 48 km/h (30 mph) maximum test speed) would lead to a reduction in high speed protection during that period and the years beyond, we could not rule out that possibility. We noted that if manufacturers were to engage in significant depowering, it could result in lesser crash performance for teenage and adult occupants.

We stated that, to help resolve these issues and concerns, we were planning a multi-year effort to obtain additional data. We stated that, based on the results of those information gathering and analysis efforts, we would make a final decision regarding the maximum test speed for unbelted dummy testing in the long run, after providing opportunity for informed public comment.

The final rule made still other additions to Standard No. 208. To ensure that vehicle manufacturers upgrade their crash sensing and software systems as necessary to prevent late air bag deployments in crashes with soft pulses, they will be required to design their vehicles to meet an up-to-40 km/h (25 mph) offset deformable barrier test using belted 5th percentile adult female dummies. A late air bag deployment would allow enough time for even a belted occupant to move forward into the steering wheel or instrument panel during a crash before the air bag deploys. Thus, the occupant would be in contact with or very close to the air bag module when the air bag deploys, creating an increased risk of severe or fatal injury. In addition, the 5th percentile female dummy is added to the 48 km/h (30 mph) belted rigid barrier test that currently uses only the 50th percentile adult male dummy.

Second Stage Phase-in—Protection Improvement Provision

During the second stage phase-in, from September 1, 2007 to August 31, 2010, the maximum test speed for the belted rigid barrier test will increase from 48 km/h (30 mph) to 56 km/h (35 mph) in tests with the 50th percentile adult male dummy only. As in the case of the first-stage requirements, this second-stage requirement will be phased in for increasing percentages of motor vehicles. We explained that we did not include the 5th percentile adult female dummy in this requirement at this time because we have sparse information on the practicability of such a requirement. We stated that we would initiate testing to examine this issue and anticipated proposing increasing the test speed for belted tests using the 5th percentile adult female dummy to 56 km/h (35 mph), beginning at the same time that the belted test must be met at that speed using the 50th percentile adult male. That testing has already begun.

Preceding Rulemaking Proposals

The rule was preceded by a notice of proposed rulemaking (NPRM), which we published in the **Federal Register** (63 FR 49958) (Docket No. NHTSA–98–4405) on September 18, 1998, and a supplemental notice of proposed rulemaking (SNPRM), which we published in the **Federal Register** (64 FR 60556) (Docket No. NHTSA–99–6407) on November 5, 1999.

II. Petitions for Reconsideration

Eight petitions for reconsideration were submitted to the agency (see Docket No. 7013). Four of the petitions were from manufacturers of vehicles or air bags. Petitions were also filed by three industry associations representing vehicle manufacturers, and by a coalition of four consumer groups. In addition, Isuzu and TRW submitted requests for clarification before the period of time for filing petitions had

[3] The rule also establishes very general performance requirements for dynamic automatic suppression systems (DASS) and a special expedited petitioning and rulemaking process for considering procedures for testing advanced air bag systems incorporating a DASS.

run. Honda, Autoliv, and Ferrari filed comments that would be considered petitions for reconsideration had they been timely filed. These comments are addressed in today's document.

The coalition of consumer groups which filed a petition included the Center for Auto Safety, the Consumer Federation of America, Parents for Safer Air Bags, and Public Citizen. (We will refer to this coalition of consumer groups as the ''Consumer Groups.'') The Consumer Groups requested several changes to the final rule. First, they requested we amend the unbelted rigid barrier test requirements in the final rule to require a higher test speed for passenger cars (48 km/h (30 mph)) than for light trucks, vans and SUVs (40 km/h (25 mph)). Second, they requested that we require that the 40 km/h (25 mph) offset deformable barrier test be conducted with unbelted instead of belted dummies and that the vehicle impact the barrier on both the driver and passenger sides. Third, they asked that we require manufacturers to meet a 56 km/h (35 mph) belted barrier test with the 5th percentile adult female dummy as well as the 50th percentile adult male dummy. Fourth, they asked that we require vehicles to satisfy all rigid barrier test requirements in both the perpendicular and oblique modes.

The Coalition of Small Volume Automobile Manufacturers (COSVAM) petitioned us to expand the scope of a special provision we included in the final rule to accommodate the needs of small volume manufacturers (SVMs). The provision at issue permits manufacturers that produce fewer than 5,000 vehicles per year worldwide to wait until the end of the phase-in to meet the new requirements. COSVAM petitioned us to apply this provision to manufacturers that produce up to 10,000 vehicles per year. Alternatively, it petitioned that the 5,000 vehicle cap be limited to vehicles sold in the United States per year or that the 5,000 vehicle cap be averaged over the phase-in period. Under the averaged approach, if a manufacturer produced more than 5,000 vehicles in a single year, it could still take advantage of the exclusion as long as its average of production during the phase-in was not more than 5,000 vehicles per year.

The petitions from manufacturers and their associations requested numerous changes in other aspects of the final rule.

DaimlerChrysler and Toyota requested that the unbelted rigid barrier test be conducted at only 40 km/h (25 mph), with the possibility of a small tolerance, instead of the specified range of 32 to 40 km/h (20 to 25 mph). They claimed that meeting the requirements of the unbelted barrier tests at speeds below 40 km/h (25 mph) may prevent them from certifying compliance on the passenger side using the low risk deployment option. They also claimed they would have difficulty meeting the low risk deployment requirements on the driver side. Several petitioners also expressed concern over the seating position for the 5th percentile adult female test dummy in the barrier tests.

Several requests were made concerning the automatic suppression option, most of which concerned the level of seat belt cinch down force for the belted test procedures and the selection of child restraints. Toyota, the Alliance, DaimlerChrysler and Takata all stated that they believed the 134 N (30 pounds) cinch-down force specified in the final rule was unreasonable. Petitioners urged NHTSA to adopt a cinch down force of 67N (15 pounds), which is currently specified in Standard No. 213.

Toyota also raised several issues in its petition related to the use of current anthropomorphic test dummies and humans in automatic suppression tests. It urged the agency to work with industry in developing better test dummies because of the recognition problems many automatic suppression systems have with the current test dummies. Mitsubishi echoed this request.

We received several requests regarding the test procedures for both the driver and passenger low-risk deployment tests, as well as the 300 ms test duration specified in the final rule for those tests. Additionally, several issues regarding the low-risk deployment test procedures were raised at a December 2000 technical workshop that the agency conducted to explore issues related to test procedures. Several petitioners, including Toyota, the Alliance, TRW, and DaimlerChrysler argued against the extension of the 300 ms test data acquisition requirement for measuring injury criteria in the static low risk deployment tests. The petitioners argued that data should only be counted for the period prior to recoil of the head, neck and torso away from the air bag into the seat back, head restraint, B-pillar or other interior components. DaimlerChrysler petitioned the agency to change the test procedure for determining which stage or stages of the air bag to fire in the low risk deployment tests. It argued in favor of allowing the use of the dummies for which the low-risk deployment technology is designed to be used in the initial test. Thus, if a manufacturer certifies to the low-risk deployment requirement for the 6-year-old child dummy, the barrier test would be conducted using that dummy.

While the petitions regarding the low risk deployment tests for the passenger air bag addressed both the dummy head-on-instrument panel position and dummy chest-on-instrument panel test position, the greatest criticism was leveled against the chest-on-instrument panel position procedure. While other petitioners expressed general concerns about the test procedure in their petitions, the most comprehensive analysis was provided by TRW. TRW noted that when both the 3-year-old and the 6-year-old test dummies were initially positioned as specified and then moved forward, dummy contact with the windshield or instrument panel could result in the dummy being positioned at a considerable distance from the air bag unless the dummy were moved after contact was made.

Several petitioners, including TRW, DaimlerChrysler, and Toyota, sought clarification of what was meant by the ''geometric center of the right air bag tear seam,'' the point used to align the dummies in the static low risk deployment tests of passenger air bags. They noted that many passenger systems do not have a true tear seam. Instead, they may have a cover that opens as part of the instrument panel, or the instrument panel may be a solid structure with no visible tear seam. In both of these instances, the ''geometric center of the right air bag tear seam'' is difficult to determine and could vary depending on who is conducting the test.

Petitions concerning the positioning procedure for the low risk deployment test on the driver side focused on the procedure for the dummy chin-on-steering wheel rim test. Toyota stated in its petition that the final rule did not adequately ensure that the dummy's chin would not catch on the rim of the steering wheel, leading to artificially high neck extension bending moments. Honda raised similar concerns. Toyota also stated that using the seat to move the dummy forward results in pre-loading the dummy. Mitsubishi and TRW queried whether forward head movement was to cease if the dummy chest or torso impacted the steering wheel before the head contacted the windshield.

The Alliance, DaimlerChrysler, and Toyota petitioned for changes in the final rule's new injury criteria. The Alliance and DaimlerChrysler petitioned the agency to set the Head Injury Criterion (HIC) maxima for the 5th percentile adult female dummy and the 6-year-old child dummy at a

maximum HIC of 779 and 723, respectively. The Alliance, Toyota and DaimlerChrysler petitioned the agency to adopt the Alliance's scaled chest acceleration maximum of 73 g for the 5th percentile adult female dummy. They expressed particular concern over the effect that the 60 g limit would have in the belted barrier test for the 50th percentile adult male dummy. In their petitions for reconsideration, both Toyota and DaimlerChrysler reiterated their concerns with the Hybrid III dummy neck design and with the adoption of Neck Injury Criterion (Nij) an injury criterion. Toyota asked that the introduction of Nij be delayed until certain bending moment issues are resolved. DaimlerChrysler asked the agency to measure only axial force rather than using Nij due to problems it believes the current Hybrid III neck has in measuring bending moments.

We also received petitions for reconsideration for and comments on both the changed label and on the issue of whether to allow additional information other than that required by the warning label. Toyota urged us to keep the existing warning label, except for the addition of the statement ''even with advanced air bags,'' arguing that the advanced air bag technology is not yet developed enough to justify a weaker label. DaimlerChrysler, Toyota, GM, the Alliance and Ford have all requested that NHTSA limit any information beyond that in the required label to the owner's manual. Parents for Safer Air Bags asked for clarification of the agency's position regarding the extent of information to be provided on the labels.

The Alliance, DaimlerChrysler, and Mitsubishi petitioned the agency to revise the current requirement that the telltale indicating the passenger air bag has been suppressed be visible to occupants of all ages, and urged us instead to adopt the requirements of Standard No. 101, Controls and Displays. DaimlerChrysler also requested the regulatory text be clarified to assure that the telltale would be visible to all occupants seated in a forward-facing position, and that it not be obstructed by a rear-facing child restraint. The Alliance requested that they be allowed to use the abbreviation ''pass'' in lieu of ''passenger'' in the message text. DaimlerChrysler requested that manufacturers be allowed to use a universal symbol representing the status of the air bag rather than a specified text.

Technical Workshop

Petitioners raised a large number of concerns about the various test procedures in their written submissions. The agency decided to hold a technical workshop so that it could better understand the specific concerns and to determine if the test procedures needed refinement. The workshop was held at NHTSA's Vehicle Research and Test Center in East Liberty, Ohio on December 6, 2000. Representatives of 18 vehicle manufacturers and 13 seat, sensor, and dummy manufacturers attended the workshop. Five different vehicles were used as test vehicles. Some of the five had been provided by the manufacturer because it was experiencing particular problems with the existing test procedures in these vehicles. The workshop focused on the cinch-down procedure for the child seats, and the positioning procedures for the low-risk deployment tests. There was some discussion about the positioning procedure for the 5th percentile adult female test dummy for the rigid barrier tests. After we had finished trying out the test procedures on the various test vehicles, we allowed parties to make presentations. TRW, DaimlerChrysler, Toyota, and others provided slide presentations highlighting their specific concerns. Copies of these presentations have been placed in the docket (NHTSA–00–7013–51).

III. Summary of Response to Petitions

We are making several changes to the final rule in response to the petitions. These changes include a number of refinements to the positioning procedures for the low risk deployment tests and, to a lesser degree, for the automatic suppression tests. We are also changing the test duration for the low risk deployment tests. Also, the test used for determining the stage(s) of the air bag to be used for the passenger side low risk tests is modified. We are also modifying the definition of small volume manufacturer for the purpose of the rule's phase-in schedule. We have also added an option to use human children instead of the newborn or 12-month-old dummies to test a vehicle's occupant recognition system.

We have decided against making any changes to the rigid and offset deformable barrier tests other than the seating procedure for the 5th percentile adult female test dummy. Nor are we making any changes to the required injury criteria. We are addressing petitions for reconsideration of the offset deformable barrier design in a separate rulemaking.

IV. Improving the Protection of Occupants in Serious Crashes

A. Maximum Test Speed for Unbelted Barrier Test

In their petition for reconsideration, the Consumer Groups requested that we amend the final rule to require passenger cars to meet a 48 km/h (30 mph) unbelted barrier test, while applying the 40 km/h (25 mph) maximum speed only to LTVs (light trucks, vans and SUVs).

These petitioners stated that, in their view, the primary reason why the agency lowered the standard's unbelted test speed to 40 km/h (25 mph) for all vehicles, including passenger cars, was because of the greater difficulties that SUVs and light trucks would have in complying with a 48 km/h (30 mph) unbelted test, due to their stiffer frames. In support of this assertion, the Consumer Groups cited a statement by the agency in the final rule preamble that ''a 40 km/h (25 mph) maximum test speed gives vehicle manufacturers more flexibility to address the greater compliance problems associated with vehicles, e.g., SUVs, with particularly stiff pulses.''

The Consumer Groups argued further that passenger cars can meet the new injury criteria in a 48 km/h (30 mph) unbelted test. In support of this argument, they alleged that test results show some passenger cars already meet the unbelted 48 km/h (30 mph) test requirements for both 50th percentile male and 5th percentile female dummies.

The Consumer Groups stated that since, in their view, manufacturers already build some cars that meet the 48 km/h (30 mph) unbelted test, NHTSA should have required cars to meet the 48 km/h (30 mph) unbelted test, while allowing LTVs to meet a 40 km/h (25 mph) test. They argued that this would provide manufacturers with additional time and necessary design flexibility to develop engineering solutions to meet 48 km/h (30 mph) test for LTVs at some future time. They also argued that a separate phase-in would take account of the need to improve occupant protection in light of the increased number of LTVs. The Consumer Groups stated that, with LTVs accounting for over half of new vehicle sales, the need for a high level of occupant protection for passenger car occupants is especially acute since car occupants are four times more likely to be killed in collisions with LTVs than their LTV counterparts. The petitioners noted that the agency has in the past adopted different phase-ins for different types of vehicles, with passenger cars being required to meet

more stringent safety standards sooner than light trucks.

The Consumer Groups argued that the decision to apply the 40 km/h (25 mph) test speed to passenger cars as well as LTVs has serious consequences because in frontal crashes between light trucks/SUVs and cars, the lighter car experiences a higher crash severity than the heavier truck. The Consumer Groups argued that cars that need more protection received less protection under the final rule. The petitioners also argued that since a 48 km/h (30 mph) test speed represents median speed of all fatal frontal crashes, NHTSA is sacrificing passenger car occupants by not requiring 48 km/h (30 mph) protection at least for passenger cars.

After carefully considering the arguments that the Consumer Groups made in support of their request that we adopt a 48 km/h (30 mph) maximum test speed for passenger cars during the TEA 21 phase-in, we have decided to deny that request. The reasons for our denial are discussed below.

The Consumer Groups' argued that the agency's primary justification for adopting a 40 km/h (25 mph) maximum unbelted test speed for all light vehicles, including passenger cars was the greater difficulties that vehicles with particularly stiff crash pulses, e.g., SUVs, would have in meeting a 48 km/h (30 mph) unbelted test. They contrasted those difficulties with the fact that they believe some passenger cars already meet the unbelted 48 km/h (30 mph) barrier test for both the 50th percentile adult male dummy and the 5th percentile adult female dummy. They concluded that the agency should, therefore, have adopted a 48 km/h (30 mph) maximum speed for passenger cars.

We believe that the petitioners may have misunderstood the agency's reasoning. Contrary to the petitioners' assertion, the greater challenges posed by vehicles with stiffer crash pulses, including typical SUVs, was only one of many considerations, and not the paramount one, that led the agency to conclude that 40 km/h (25 mph) should be chosen as the maximum speed for the unbelted test in the near term. In the summary of our May 2000 final rule, NHTSA said that the maximum test speed for the unbelted test ''reflect the uncertainty of simultaneously achieving the twin goals of TEA 21,'' to provide improved frontal crash protection for all occupants and to minimize the risks of serious air bag-induced injuries.

NHTSA set forth six reasons for why it was in the best overall interest of safety to choose 40 km/h (25 mph) as the unbelted test speed. See 65 FR 30680, at 30687–30690. These reasons (presented in a condensed fashion) were as follows:

1. It is very important that advanced air bags be properly designed from the very beginning. Because of the potential for death and injury, we want to be cautious in how far and how fast vehicle manufacturers are required to advance the state of advanced air bag technologies in their vehicles. We are particularly concerned about the difficulties of trying to meet the unbelted rigid barrier test at 48 km/h (30 mph) with both adult dummies while simultaneously trying to reduce the risks of air bag-induced injuries and deaths. Since a significant percentage of current vehicles can already satisfy the new unbelted barrier crash test at 40 km/h (25 mph) with both the 5th percentile adult female dummy and the 50th percentile adult male dummy, we conclude that setting the maximum speed at that level will help vehicle manufacturers to focus their resources and compliance efforts during the first stage on meeting the risk reduction requirements. While advanced air bag technologies will facilitate simultaneously achieving the goals of improving protection and minimizing risk, we cannot forecast the pace of development of those technologies.

We noted that while the manufacturers' resources for dealing with air bags, as well as all the other engineering issues associated with future motor vehicles, are extensive, there are limits to how much can be done at any one time. We explained that we needed to consider the variety and complexity of changes in air bag testing and technology that will be required by the rule. We noted that the array of new requirements that the manufacturers will have to meet in the first stage is challenging. The May 2000 final rule specified the use of a new test dummy (the 5th percentile adult female) in high speed tests, added a new test (offset belted), adds new neck injury criteria, and made existing injury criteria more stringent (chest deflection). The rule also added an entire new series of risk minimization tests, which require manufacturers to install air bag suppression systems or low-risk deployment systems, or both.

Of particular concern here was that air bags must be tuned to inflate quickly enough to protect the unbelted mid-sized male dummy without posing risks to the unbelted small female dummy that will be positioned much closer to the air bag. At the same time, manufacturers are required to develop and tune suppression technologies, low-risk deployment technologies, or a combination of both of these technologies to meet the risk minimization requirements. Even now, more than one year later the issuance of the May 2000 final rule, NHTSA cannot forecast how long it will take to complete the process of simultaneously developing and incorporating all of these technologies into all vehicles lines. NHTSA decided that we would increase the risks of advanced air bags not being able to meet all of the new requirements if we adopted the more difficult 48 km/h (30 mph) unbelted test. Those were not, and are not, risks that the agency is willing to take with the available information.

Differences in crash pulse are but one of the many technological challenges that must be overcome to provide improved protection for all occupants as well as to reduce the risks of air bag-induced injuries. The need to develop and apply technology that works reliably is a challenge for both passenger cars and light trucks.

2. There are unresolved issues that make it difficult for vehicles to provide protection for both small females and mid-sized males in a 48 km/h (30 mph) unbelted test without compromising efforts to minimize the risks of serious air bag-induced injuries. A good example is the issue of the best strategy for using the two inflation levels of a dual-stage air bag to meet that test. The choice among competing strategies is complicated by the existence of ''gray'' or transition zones, i.e., ranges of conditions in which the air bag changes from one level of performance to another.

To date, the vehicle manufacturers have been required to certify compliance of their air bags based on only a single size of dummy at only a single seat adjustment position. Tuning an air bag to perform in that single combination of test conditions is a relatively simple task. No regulatory requirements preclude manufacturers from optimizing performance for that combination of test conditions while placing secondary importance on other sizes of occupants in other seat adjustment positions.

In the May 2000 final rule, NHTSA for the first time required manufacturers to balance the performance of their air bag systems for different sized occupants. In addition to protecting mid-size male dummies with the seat in the mid-track position, air bags will be required to protect small size female dummies with the seat all the way forward. This is a far more challenging task for air bag system designers. We expect that the new, more demanding requirements will encourage the use of dual-stage

inflator technology. Although the challenge of this task may be compounded somewhat by a relatively stiff crash pulse, the task is formidable for all vehicles, regardless of crash pulse.

3. The vehicle manufacturers need design flexibility to address issues regarding performance in real world crash conditions not directly replicated by Standard No. 208's tests. One of the greatest limitations of early generation air bags is that they typically deploy in the same manner regardless of such factors as crash severity or occupant size, weight or position. Successful implementation of air bags designed to vary their performance in response to sensed differences in crash severity or other conditions presents a challenge to the manufacturers in that these air bags have ''gray'' or transition zones, i.e., ranges of conditions in which the air bag changes from one level of performance to another. We believe it is appropriate for the manufacturers initially to introduce relatively simple advanced systems. While we believe that more complex systems offer promise of even greater benefits, there are significant uncertainties regarding the feasibility and thus availability of such systems.

Standard No. 208 currently tests for a full frontal crash. While such a crash occurs less frequently, compared to offset crashes, in the real world, we have chosen the full frontal crash mode because it is very repeatable and provides a more demanding evaluation of restraint systems. However, NHTSA expects vehicle and air bag manufacturers will take into account other frontal crash modes, such as offset crashes and crashes into poles. To the extent that we make our full frontal crash test more stringent, we limit the ability of the manufacturers to take account of these other crash modes. This is because the most stringent test is the primary determinant of the design of air bag and vehicle performance. After the performance attributes of the air bag system are optimized for the most stringent test (in this case, the unbelted full frontal barrier crash), the manufacturers will typically run a check on performance in other relevant test conditions to ensure acceptable performance in those conditions as well. However, the ability to adjust performance to improve performance in these other test conditions is limited by the stringency of the most severe test. Choosing 48 km/h (30 mph), instead of 40 km/h (25 mph), as the maximum test speed for the unbelted full frontal crash would allow the manufacturers less flexibility to enhance performance in other test conditions. Again, while the need for design flexibility may be compounded somewhat by a relatively stiff crash pulse, that need is substantial for all vehicles, regardless of crash pulse.

4. A 40 km/h (25 mph) maximum test speed gives vehicle manufacturers more flexibility to address the greater compliance problems associated with vehicles, e.g., SUVs, with particularly stiff crash pulses. Since unbelted occupants moving forward in frontal crashes of these vehicles will have to be engaged more quickly than in vehicles with softer crash pulses, the task of designing air bag systems in stiff pulse vehicles is significantly more challenging.

This reason is based on the greater compliance difficulties for vehicles with relatively stiff crash pulses. As a generality, SUVs and other vehicles with frame rail construction have stiff crash pulses, while cars and other vehicles with uni-body construction have softer crash pulses. In a crash, the occupants travel forward more quickly toward the steering wheel and dashboard in a vehicle with a stiff crash pulse than they would in a vehicle with a softer crash pulse. Accordingly, air bags typically need to come out sooner and/or quicker in a vehicle with a similarly stiff crash pulse than they would in a vehicle with a softer pulse. To the extent that air bags must come out quicker in vehicles with stiff crash pulses makes it more difficult to minimize air bag risks in those vehicles because the methods for getting air bags out quicker, e.g., having a fast inflation rise rate, tend to make air bags more aggressive to out-of-position occupants. It is for this reason that the technological challenges faced by the vehicle manufacturers in simultaneously improving protection and minimizing risk can be somewhat greater for vehicles with stiff crash pulses than for other vehicles.

However, the above generalization about the relative crash pulses of cars and other light vehicles has important limitations. Some newer, more ''car-like'' SUVs, i.e., cross-over or hybrid SUVs, such as the Ford Escape and the Honda CRV, are not built with frame rail construction and do not have particularly stiff crash pulses. On the other hand, many small cars, despite their uni-body construction, have relatively stiff crash pulses, because the small space limits the energy absorption by the front of the vehicle. Further, the uncertainties associated with the task of simultaneously improving protection, while also minimizing risk, are formidable for all light vehicles, regardless of crash pulse.

5. It is unlikely that vehicle manufacturers will significantly depower their air bags and minimally comply with the 40 km/h (25 mph) test. Thus, NHTSA believes that it is not risking a substantial loss of benefits by establishing an unbelted barrier test of 40 km/h (25 mph).

We explained our view that the air bags most likely to be produced under a 40 km/h (25 mph) standard would offer at least as much overall high speed protection as the current redesigned air bags, i.e., those certified to the sled test option adopted in 1997. We noted that while manufacturers might make some adjustments in providing high speed protection for different size occupants, we believed it was unlikely that they would reduce the overall level of protection, much less switch to some kind of new, hypothetical air bag design that might minimally pass the 40 km/h (25 mph) test, but provide little or no protection to unbelted occupants in higher severity crashes.

We cited several reasons for this belief. We noted that most vehicle manufacturers did not respond to the flexibility provided by the sled test by providing air bags that only minimally complied with the sled test. They did not depower their air bags as much as they could have. We also noted that the vehicle manufacturers had specifically committed to not reducing high speed protection of air bag systems through significant and widespread depowering.

For these reasons, and the others discussed in the final rule preamble, we continue to believe that it is unlikely that there will be any significant reduction in safety benefits as a result of our adoption of the 40 km/h (25 mph) maximum test speed as an interim final rule. Put another way, we continue to believe that we are not risking a substantial loss of benefits by establishing a maximum unbelted barrier test speed of 40 km/h (25 mph). We observe that the Consumer Groups did not provide any data or analysis contradicting our arguments in this area.

Finally, we note that this fifth reason applies equally to all vehicles, regardless of whether they have a stiff or soft crash pulse.

6. Replacing the 48 km/h (30 mph) generic sled test with the 40 km/h (25 mph) unbelted rigid barrier test requires a significantly higher level of safety.

This reason applies equally to all vehicles, regardless of whether they have a stiff or soft crash pulse.

From this review of our six reasons for selecting a maximum test speed of 40 km/h (25 mph), it is apparent that the

differences in crash pulses were not a paramount consideration in our assessment of the challenges presented by the advanced air bag rule. Given the uncertainties associated with overcoming those challenges, and a statutory requirement to issue a final rule in early 2000, NHTSA chose an approach that assures improved air bag protection for occupants of all sizes, without compromising efforts to reduce the risks of air bar-induced injuries to vulnerable occupants. As we said in the preamble to the May 2000 final rule:

> Such an approach is one that involves the least uncertainty for the occupants who have been most at risk. In other words, as long as the manufacturers improve the already substantial overall level of air bag protection provided by current redesigned air bags, the uncertainty involved in meeting the challenge to improve high-speed protection and minimize risk simultaneously *is best resolved at this point in favor of minimizing risk. This is especially true in the early stages of the introduction of advanced air bag technologies.*

65 FR 30680, at 30688 (Emphasis added).

We selected that test speed on a interim final basis in recognition of the possibility that those uncertainties may be resolved in the foreseeable future. To expedite the resolution of those uncertainties, we committed to a multi-year effort to obtain additional data to help resolve the issues and concerns relating to the unbelted test speed in the barrier crash test. See 65 FR 30692. To carry out that commitment, we published for public comment our plan for monitoring the performance of advanced air bags and gathering the information needed to make a final decision on the appropriate test speed for the unbelted test in the long run. See 66 FR 33657; June 25, 2001 (Docket No. NHTSA 2001–8953).

In the final analysis, the consumer groups provided no new data or analyses regarding our decision to select a maximum test speed of 40 km/h (25 mph). Further, they isolated and focused on a limited portion of all the considerations leading to that decision in arguing that that limited portion should overwhelm the big picture. Their petition simply highlights their judgment that they would have mandated a higher speed for the unbelted test, given the information that was available to us when we made our decision. We respect their judgment, but reached different conclusions after considering all of the risks and uncertainties in this area. It may be that we will ultimately propose coming to the same conclusion that the Consumer Groups are advocating—after we have gathered the additional information necessary to resolve the uncertainties. Until we have that information, however, our judgment remains that the most appropriate maximum speed for the unbelted test is 40 km/h (25 mph).

B. Minimum Test Speed for Unbelted Barrier Test

Under the May 2000 final rule; interim final rule, vehicle manufacturers are required to meet the rigid barrier crash test with unbelted 5th percentile adult female dummies and unbelted 50th percentile adult male dummies at all speeds from 32 km/h through 40 km/h (20 mph and through 25 mph).

In their petitions for reconsideration, DaimlerChrysler and Toyota requested that the unbelted rigid barrier test be conducted only at 40 km/h (25 mph) (or at 40 km/h (25 mph) with a small tolerance) instead of over a range of test speeds. They claimed that the need to meet the unbelted rigid barrier test with 50th percentile adult male dummies over the range of speeds between 32 km/h and 40 km/h (20 mph and 25 mph) creates a conflict with meeting the low risk requirements using 3-year-old and 6-year-old child dummies on the passenger side and using the 5th percentile adult female dummy on the driver side.

In addressing these petitions, we begin by noting that we addressed this issue in the final rule preamble, and made changes from the SNPRM to the final rule in light of this concern.

In the SNPRM, we proposed that manufacturers would need to meet the unbelted rigid barrier test at any speed between 29 km/h (18 mph) to the maximum speed (as discussed earlier, we were considering a range between 40 to 48 km/h (25 to 30 mph) for the maximum speed). This range represented a change from the belted barrier test and previous unbelted barrier tests, which required injury criteria to be met at any speed up to 48 km/h (30 mph).

In commenting on the SNPRM, GM and Ford supported the proposed lower test parameter 29 km/h (18 mph). AAM, DaimlerChrysler and Toyota supported a higher minimum test speed. VW and Honda supported a lower minimum test speed. Delphi urged the agency to return to its traditional ''any speed between zero and'' the maximum test speed, arguing that the minimum test speed will result in an unacceptable safety trade-off for individuals who could be aided by a deploying air bag in lower speed crashes.

In the final rule preamble, we explained that the concerns of the vehicle manufacturers opposed to the 29 km/h (18 mph) lower limit revolved around their ability to meet both the low risk deployment tests for whatever stages of the air bag would deploy in speeds up to 29 km/h (18 mph) and the unbelted high speed tests at any speed between 29 km/h (18 mph) and 40 to 48 km/h (25 to 30 mph). These manufacturers argued that while individual manufacturer's strategies will differ, the basic premise for dual-stage inflation systems is that the first stage can be tailored to reduce risk for children while offering protection for 5th percentile adult females while the second stage protects the 50th percentile adult male occupant. According to the manufacturers, in many cases a first stage air bag that would not harm children would not be sufficient to satisfy the injury criteria performance limits for the 50th percentile adult male dummy in a test at 40 km/h (25 mph) and may be insufficient to certify compliance in a 29 km/h (18 mph) test. In order to assure compliance with both the unbelted crash test requirement and a low risk deployment option utilizing a dual-stage air bag system, a manufacturer arguably would either have to drop the threshold for the second stage air bag close to 29 km/h (18 mph) to ensure compliance for the 50th percentile adult male or provide a higher-energy first stage inflator. The commenters asserted that if NHTSA were to impose the proposed speed range for the unbelted tests, we would create a situation that would make compliance with a low risk deployment option impossible, since it would not be possible to assure that only the first stage air bag deploys at 29 km/h (18 mph) for the out-of-position test.

For the final rule, we decided to raise the minimum test speed for the unbelted test from 29 km/h (18 mph) to 32 km/h (20 mph) while decreasing the maximum threshold for the various out-of-position tests from 29 km/h (18 mph) to 26 km/h (16 mph). We stated that we believed that this difference in speed between the two tests would be sufficient to resolve manufacturers' concerns in this area. We noted that the requirement we adopted built in a 6 km/h (4 mph) ''grey zone'' that would allow manufacturers to assure the deployment of both inflator stages, if needed, in all high speed tests, while preserving their ability to deploy only the first stage (or allow for deployment of a combination of benign stages) of the air bag in the low risk deployment tests.

In the final rule preamble, we stated that we were rejecting DaimlerChrysler's and Toyota's request that we test unbelted dummies only at 40 km/h (25 mph) because we continued to believe

a range of speeds is necessary to adequately protect drivers and adult passengers.

In petitioning for reconsideration, DaimlerChrysler again requested testing only at 40 km/h (25 mph). That manufacturer argued that the requirement for protecting an unbelted 50th percentile adult male occupant during a rigid barrier test at speeds as low as 32 km/h (20 mph) and the requirement for static out-of-position tests to be conducted with whichever air bag stage is deployed during a 26 km/h (16 mph) rigid barrier test are in conflict and inconsistent with the reality of crash sensing and air bag inflator technology.

Toyota similarly argued that the agency's decision to reduce the test speed range from 29–40 km/h (18–25 mph) to 32–40 km/h (20–25 mph), although directionally correct, does not adequately address the concerns it outlined in its comment on the SNPRM. That company argued that conflicts exist between offering sufficient compliance margin for the 50th percentile male dummy in the upper speed ranges and the desire to minimize risk to out-of-position children and small adults. Toyota stated that it believes that given the limitations of current seat suppression technology, regardless of its performance in certification tests under controlled conditions, automakers must be allowed the design flexibility to offer seemingly redundant technologies to protect out-of-position children in the real world.

On reconsideration, after carefully considering DaimlerChrysler's and Toyota's requests that we specify testing of unbelted dummies only at 40 km/h (25 mph) instead of a range between 32–40 km/h (20–25 mph), we have decided to deny those requests. As discussed below, we again conclude that the 32–40 km/h (20–25 mph) range of speeds helps ensure adequate protection of drivers and adult passengers. Moreover, we believe that the change requested by these petitioners is unnecessary, particularly in light of another change we are making in response to the petitions for reconsideration.

In addressing the requests of DaimlerChrysler and Toyota, it is appropriate to begin by citing again the requirements of TEA 21, that the agency issue a final rule meeting two different, equally important goals:

> To *improve occupant protection* for occupants of different sizes, belted and unbelted, under Federal Motor Vehicle Safety Standard No. 208, *while minimizing the risk* to infants, children, and other occupants from injuries and deaths caused *by air bags, by means that include advanced air bags.* (Emphasis added.)

There is obviously a tension between improving occupant protection for occupants of different sizes, belted and unbelted, while also minimizing the risk to infants, children, and other occupants from injuries and deaths caused by air bags. This tension exists because the deployment process of the air bag that is needed to provide protection can also create risks for persons who are extremely close to the air bag before that deployment. It was because of this tension that Congress included the reference to ''advanced air bags''; it recognized the need for vehicle manufacturers to incorporate advanced technologies in their air bags in order for these two goals to be met simultaneously.

However, while we recognize that there is a tension between these goals, there is no conflict between requiring vehicles to meet the rigid barrier crash test with unbelted 5th percentile adult female dummies and unbelted 50th percentile adult male dummies at all speeds between 32 km/h and 40 km/h (20 mph and 25 mph) while also meeting risk minimization requirements. We will discuss this issue separately for the driver and passenger sides.

To address the risks posed by driver air bags, the rule requires vehicles to either (1) have a driver air bag that deploys in a low-risk manner to out-of-position occupants or (2) to have a feature that suppresses the air bag when a driver is out-of-position (including in dynamic events). We believe that all manufacturers are focusing on the first of these two options. The ability of air bags to deploy in a low-risk manner is tested in static, out-of-position tests, using unbelted 5th percentile adult female dummies placed against the steering wheel, and deploying the air bag with any stage(s) that may deploy during a 26 km/h (16 mph) rigid barrier test.

We believe the arguments raised by DaimlerChrysler and Toyota are primarily relevant to passenger side air bags and not to driver air bags. The information we have indicates that available technology enables vehicle manufacturers to meet the low risk and unbelted high speed protection requirements for driver air bags.

We recognize that passenger air bags pose a greater design challenge than driver air bags with respect to simultaneously meeting both low risk and unbelted high speed protection requirements. The challenge is greater for two reasons. First, passenger air bags typically need to be considerably larger than driver air bags to provide protection. Larger air bags typically create greater risk to out-of-position occupants than smaller air bags. Second, young children are more susceptible to risk than adults.

To address the risks posed by passenger air bags, the rule requires vehicles to either (1) have a passenger air bag that deploys in a low-risk manner to out-of-position occupants, (2) to have a feature that suppresses the air bag when a young child is present in a variety of positions, or (3) to have a feature that suppresses the air bag when a passenger is out-of-position (including in dynamic events). The risk minimization requirements must be met separately for 1-year-old, 3-year-old and 6-year-old children, and manufacturers may choose different options for these three classes of occupants. We developed the risk minimization requirements for passenger air bags in light of these classes of occupants because, on the passenger side, the vast majority of deaths and serious injuries from air bags have been to young children.

We believe that all manufacturers are focusing on suppressing the air bag for 1-year-old children. Thus, the requirements for those children are not relevant to the issues raised by DaimlerChrysler and Toyota.[4]

Manufacturers are generally focusing on the first two options for 3-year-old children and 6-year-old children; i.e., the low risk deployment requirements and/or suppressing the air bag in the presence of young children.

The ability of an air bag to deploy in a low risk manner is tested in static out-of-position tests, using unbelted 3-year-old and 6-year-old child dummies placed against the instrument panel in two positions, and deploying the air bag with any stages that may deploy during a 26 km/h (16 mph) rigid barrier test. Specified injury criteria performance limits must be met to pass the low risk test.

Manufacturers that decide to suppress the passenger air bag in the presence of young children will use weight sensors, pattern recognition sensors and/or other means of detecting their presence. To test the ability of those means to detect the presence of children, the rule

[4] We note that the risk minimization requirements using infant dummies differ in certain respects from those using 3-year-child dummies and 6-year-old child dummies. The third option cited above, for a feature that suppresses the air bag when a passenger is out-of-position, is not available for infant dummies because infants in rear facing child seats would always be extremely close to the air bag. Different requirements also apply with respect to determining which stages of an air bag are deployed in low risk deployment tests.

specifies that 3-year-old and 6-year-old child dummies are placed in child seats that are, in turn, placed on the passenger seat. It also specifies tests that are conducted with unrestrained child dummies sitting, kneeling, standing, or lying on the passenger seat. At the option of the manufacturer, the ability of a suppression system to detect the presence of a child may be demonstrated using human beings instead of test dummies.

While manufacturers are required to meet at least one of the options specified by the risk minimization requirements, they are free to meet more than one of those options. For example, they can suppress the air bag in the presence of young children and also provide air bags that deploy in a low risk manner.

We recognize that the combination of suppression and low risk deployment may best achieve the goal of minimizing air bag risks. For example, low risk deployment air bags may provide benefits that would not be provided by systems that simply suppress the air bag in the presence of young children. It was in light of this recognition, as well as to avoid unnecessary design restrictions, that we were willing to make some adjustments between the SNPRM and the final rule to facilitate use of low risk systems. In particular, we were willing to raise the minimum test speed for the unbelted test from 29 km/h (18 mph) to 32 km/h (20 mph) while decreasing the test speed threshold for determining the stages to deploy in the low risk deployment tests from 29 km/h (18 mph) to 26 km/h (16 mph).

However, we believe that granting DaimlerChrysler's and Toyota's request to raise further the minimum test speed for the unbelted test from 32 km/h (20 mph) to 40 km/h (25 mph) (the same speed as the maximum test speed) would have significant adverse safety consequences.

Unbelted occupants are at significant risk of serious injury and fatality in crashes with a delta V between 32 km/h and 40 km/h (20 mph and 25 mph). Indeed, the agency's Final Economic Assessment for the advanced air bag final rule estimated that air bags designed for an unbelted rigid barrier test with a maximum test speed of 40 km/h (25 mph) would save 472 lives in crashes within the 32 to 40 km/h (20 to 25 mph) range. Of these 472 lives saved, 372 would be on the driver side and 98 would be on the passenger side.

We also believe that the change requested by these petitioners is unnecessary. As noted earlier, available technology enables vehicle manufacturers to meet the low risk and unbelted high speed protection requirements for *driver* air bags, even without using dual stage air bags.

As for passenger air bags, we note that the advanced air bag final rule does not require manufacturers to meet low risk requirements for passenger air bags. They can alternatively choose to meet the standard's risk minimization requirements for passenger air bags by suppressing the air bag in the presence of 3-year-old and 6-year-old children. A number of vehicle manufacturers appear to be pursuing this option.

Also, as discussed later in this document, we are making another change in the final rule that should resolve any concerns as to whether the need to meet the standard's high speed protection requirements for unbelted 50th percentile adult male dummies prevents manufacturers from providing low risk deployment for small children. In particular, we have decided to use 5th percentile adult female dummies, instead of 50th percentile adult male dummies, in the 26 km/h (16 mph) rigid barrier test that is used for determining the stage(s) of the air bag to be used for the passenger side low risk tests.

Thus, if a vehicle manufacturer faces a situation where deployment of both stages of a dual stage air bag is necessary to meet the unbelted barrier test requirements for 50th percentile adult male dummies in a 32 km/h (20 mph) crash test, and, because of grey zone issues, it is possible that both stages may fire in a 26 km/h (16 mph) crash, the manufacturer can design its air bag system, using occupant recognition technology, so that only the first stage will fire in the presence of 5th percentile adult female dummies in crash tests at these severity levels. Since only the first stage of the air bag would fire when 5th percentile adult female dummies are used in a 26 km/h (16 mph) rigid barrier test, only the first stage would be fired when conducting the low risk tests using child dummies.

C. Additional Tests

In addition to their request concerning the maximum test speed for the unbelted barrier test, the Consumer Groups requested that we make a number of other changes to address what they consider to be shortcomings of the final rule. They argued that the final rule fails to follow the Congressional mandate of providing advanced air bag protection for all occupants, male and female, large and small, belted and unbelted. The Consumer Groups requested that we amend the final rule to add a number of tests. They also asked that we change one test from a belted test to an unbelted test. These requests of the Consumer Groups are addressed below.

1. The Consumer Groups' Requests

Protection for unbelted occupants in crashes with soft pulses. The Consumer Groups argued that the final rule does not require protection for unbelted occupants in crashes with soft pulses. They stated that although NHTSA recognizes that many air bag fatalities occur in low speed, soft pulse crashes, where the air bag deploys late and strikes an out-of-position occupant who has moved forward in the crash before the air bag deploys, the agency failed to require any test to protect against this in the final rule. The Consumer Groups argued that the agency instead adopted only a belted offset deformable barrier test and an automatic suppression test. They argued that neither of these tests requires protection for unbelted occupants in crashes with soft pulses.

The Consumer Groups argued that conducting the offset test with belted dummies ignores the fact that unbelted occupants are at greater risk from air bags than belted occupants. They also argued that manufacturers might respond to the up-to-40 km/h (25 mph) belted offset test by suppressing deployment, whereas specifying the use of unbelted dummies would more likely require deployment and the use of multi-stage inflators. The Consumer Groups apparently believed (erroneously) that the offset test is conducted with a dummy only on the driver's side and argued that this omits requiring protection for passengers.

The Consumer Groups also expressed concern that the agency dropped the proposed dynamic out-of-position test requirements. They stated that the final rule contains only a series of static tests that are far simpler to meet than a dynamic test. They stated that weight-based static sensors can be fooled into false readings. They argued that the agency compounded this problem by deleting ''rough road'' testing.

The Consumer Groups requested that we require that the up-to-40 km/h (25 mph) offset deformable barrier test be conducted with unbelted rather than belted dummies and on both the driver and passenger sides.

High speed crash protection for 5th percentile adult females. The Consumer Groups also argued that the final rule does not ensure high speed crash protection for 5th percentile adult females. They objected to the agency's adopting a 56 km/h (35 mph) belted test using 50th percentile adult male dummies while deferring the decision whether to propose using 5th percentile

adult female dummies until additional testing is completed. They argued that the agency's explanation that there is sparse information on the practicability of such a requirement is inconsistent with actions taken by the agency with respect to other requirements in this rulemaking.

The Consumer Groups requested that we require manufacturers to meet a 56 km/h (35 mph) belted barrier test with the 5th percentile adult female dummy as well as the 50th percentile adult male dummy.

Protection for unbelted 5th percentile adult females in oblique crashes. The Consumer Groups also objected to the fact that the final rule does not specify that the rigid barrier tests using 5th percentile adult females are conducted at angles but are instead only conducted in the perpendicular mode. They argued that in specifying oblique testing only using 50th percentile adult male dummies, the agency assumes that if the male is protected, so will the female. The Consumer Groups argued that this logic has led to many small women being killed by air bags. These petitioners stated that an oblique test of the 1997 Dodge Caravan conducted by NHTSA shows that interaction of the air bag with the anatomy of small women can lead to fatal air bag injuries.

The Consumer Groups requested that we specify that vehicles must satisfy the requirements of all barrier tests in both the perpendicular and oblique modes.

2. Agency Response to Consumer Groups' Requests

As we address the Consumer Groups' requests for additional tests, we begin by noting that no matter how many tests we include in Standard No. 208, it would always be possible to identify additional tests that represent potential real world situations. However, as we explained in the final rule preamble, it is necessary to strike a balance between ensuring that there are sufficient tests to meet the need for safety, and avoiding unwarranted compliance burdens.

We note that some of the additional tests requested by the Consumer Groups are ones that we dropped during the course of the advanced air bag rulemaking. After considering the comments on our original September 1998 NPRM, we tentatively concluded that we could reduce the number of originally proposed tests without significantly affecting the benefits of the rule. We were persuaded by the commenters that reducing the amount of testing was important, given resource limitations and the costs to manufacturers associated with certifying vehicles to such a large number of new test requirements. At the same time, we wanted to be sure that the advanced air bag rule included sufficient tests to ensure that air bags are redesigned to meet the goals mandated by TEA 21. Considering both of these factors, we included a reduced number of tests in our November 1999 SNPRM and in our May 2000 final rule.

While the final rule for advanced air bags includes fewer tests than our original proposal, it nonetheless specifies an unprecedented number of new tests, and mandates a much more comprehensive assessment of air bag protection than the earlier version of Standard No. 208. In the past, the standard assessed air bag protection solely by means of rigid barrier crash tests (or a temporary sled test) using a single size of test dummy positioned well back from the air bag. The final rule adds an entirely new series of tests to assess low speed risk to occupants of many different sizes. For the first time in the history of Standard No. 208, the agency will use dummies representing a 12-month-old infant, a 3-year-old child, a 6-year-old child, and a 5th percentile adult female. All of these new dummies will be used in assessing risk of air bags. For the belted and unbelted tests assessing high speed protection, performance will be evaluated using both the mid-sized male dummy positioned well back from the air bag *and* the new 5th percentile female dummy positioned as far forward as the seat and/or vehicle interior allows. Also, a new belted offset test using the 5th percentile female dummy will help ensure that vehicle manufacturers upgrade their crash sensing and software systems, as necessary, to better address soft crash pulses.

With this background in mind, we will address the specific requests of the Consumer Groups.

Protection for unbelted occupants in crashes with soft pulses. As discussed earlier, the Consumer Groups argued that the final rule does not require protection for unbelted occupants in crashes with soft pulses, where the air bag may deploy late and strike an out-of-position occupant who has moved forward in the crash before the air bag deploys. They asked that we require that the 0–40 km/h (0–25 mph) offset deformable barrier test be conducted with unbelted rather than belted dummies. In considering the Consumer Groups' petition, we have considered both the possibility of changing the test from a belted test to an unbelted test, and of adding an unbelted test in addition to the belted test.

In developing the advanced air bag rule, we focused a great deal of attention on identifying a sensible, effective array of requirements for increasing protection and minimizing risk. A considerable portion of the new rule is designed to help ensure the safety of unbelted occupants in crashes where occupants may be out-of-position and very close to the air bag. Occupants may move forward toward the air bag in crashes with soft pulses and/or as a result of pre-crash braking before the air bag deploys.

On the passenger side, the vast majority of deaths and serious injuries from air bags have been to young children. The rule requires vehicles to meet requirements for minimizing these risks, primarily by either automatically turning off the air bag in the presence of young children or deploying the air bag in a manner much less likely to cause serious or fatal injury to out-of-position occupants. If they so wish, manufacturers may choose to use a combination of those two approaches. There is also an option for a feature that suppresses the air bag when a child is out-of-position (including in dynamic events).

Manufacturers that decide to turn off the passenger air bag in the presence of young children will use weight sensors and/or other means of detecting their presence. To test the ability of those means to detect the presence of children, the rule specifies that child dummies be placed in child seats that are, in turn, placed on the passenger seat. It also specifies tests that are conducted with unrestrained child dummies sitting, kneeling, standing, or lying on the passenger seat.

The ability of air bags to deploy in a low risk manner is tested using unbelted child dummies placed against the instrument panel. The air bag is then deployed, and specified injury criteria performance limits must be met.

To address the risks air bags pose to out-of-position drivers, the rule requires vehicles to either have a driver air bag that is deployed in a manner much less likely to cause serious or fatal injury to out-of-position occupants or to have a feature that suppresses the air bag when a driver is out-of-position (including in dynamic events). The ability of air bags to deploy in a low risk manner is tested using unbelted 5th percentile adult female dummies placed against the steering wheel.

The Consumer Groups did not present any analysis to support their contention that these requirements are inadequate, or to support their assertion that suppression devices are likely to be Afooled'' into false readings. Moreover, we disagree with their characterization of the final rule as containing ''only a

series of static-based tests that are far simpler to meet than a dynamic test.'' The ease or difficulty in meeting a particular test requirement does not depend on whether the test is static or dynamic, but instead on the overall nature of the test requirement. Moreover, in some situations, static tests can offer advantages over dynamic tests. For example, by using static tests to evaluate the ability of a suppression system to detect the presence of children, we are able to test many more potential real world conditions relating to how children might be positioned than if we specified dynamic tests.

As to the petitioners' concerns about dropping the proposed dynamic out-of-position test option and the rough road tests, we explained in the November 1999 SNPRM that both proposed tests had proven to be unworkable in their existing forms, and that both tests were unnecessary for safety. As to the option for a full scale dynamic out-of-position test, we explained in the final rule preamble that other options included in the final rule would accommodate the various advanced air bag technologies under development. With respect to the rough road tests, we explained:

> While rough road performance is certainly important, we do not believe there is any evidence that this is likely to be a real world problem. It would also be difficult to develop a test procedure that would assure that a dummy responded like a human to the forces imparted by a rough road. Indeed, the procedure we had proposed in the NPRM turned out to be impractical and did not accomplish its objective. Given our limited resources, we do not believe there is a need at this time to develop test procedures in this area.

The Consumer Groups were incorrect with respect to their apparent belief that the offset test is conducted with a dummy only on the driver's side. Dummies are positioned at both the driver and right front passenger positions.

These petitioners may, however, have meant to refer to the fact that the test is conducted only with the left side of the vehicle engaged with the barrier. (The left side of the vehicle is nearly always the driver side, although the driver sits on the right in a few vehicles.[5]) As we discussed in the final rule preamble, we believe that testing with the left side of the vehicle engaged with the barrier will be sufficient to help ensure that vehicle manufacturers improve their sensing systems. We stated, however, that we will monitor future air bag system designs and will consider changing this decision if we find that manufacturers are implementing sensor systems that optimize performance only for impacts into the left side of the vehicle.

The Consumer Groups also did not even attempt to demonstrate that requiring that the 0–40 km/h (0–25 mph) offset deformable barrier test to be conducted with unbelted rather than belted dummies (or with both belted and unbelted dummies) would result in any additional safety benefits, given the overall array of tests included in the advanced air bag rule to improve protection and minimize risk.

We added this particular test to encourage vehicle manufacturers to upgrade their crash sensing and software systems, as necessary, to better address soft crash pulses. As we noted in the final rule preamble, the improved sensing systems required by this test will benefit both belted and unbelted occupants. We also pointed out in the final rule that the belted offset test may represent the worst case scenario since the belt allows the dummy's head and neck to rotate into the path of the deploying air bag. This condition may better test for potential neck injuries than an unbelted test.

We also note that the unbelted rigid barrier test using 5th percentile adult female dummies, conducted at speeds between 32 and 40 km/h (20 and 25 mph), and the belted rigid barrier test using 5th percentile adult female dummies, conducted at speeds up to 48 km/h (30 mph), also help ensure protection of occupants who are close to the air bag, since the 5th percentile adult female dummies are positioned with the seats in the full forward position.

We conclude that it would be inappropriate to change the offset deformable barrier test from a belted test to an unbelted test. As discussed in previous rulemaking notices, this test was developed by Transport Canada. That agency found in its research that one of the causes of adverse effects of air bags is late deployment of some air bags in crashes with a ''soft crash pulse.'' In order to reproduce the softer, longer duration crash pulse, it selected the 40 percent offset barrier. Transport Canada found that in 40 km/h (25 mph) offset deformable barrier crash tests, the air bag typically deployed and was sometimes so late that the *belted* test dummy would be right on the steering wheel at that time, a ''worst case'' condition.

The test configuration represents a real world situation where small women who are wearing their seat belts may nonetheless be at risk from the air bag, since they are seated close to the air bag. This is a particularly common situation on the driver side, since small women typically need to sit close to the steering wheel in order to drive the vehicle.

By specifying that the belted 5th percentile adult female dummies are in the full forward position in this test, we can effectively test whether the air bag deploys late. Having the dummy unbelted would not improve the test. In addition, as noted earlier, the belted offset test may represent a worst case scenario as compared to the unbelted test. For all of these reasons, we believe it appropriate to maintain a belted 0–40 km/h (0–25 mph) offset deformable barrier test.

We have also considered the possibility of adding an unbelted 0–40 km/h (0–25 mph) offset deformable barrier test. Given the wide array of tests already included in the advanced air bag rule, and noting the fact that the Consumer Groups did not provide any evidence, we do not believe that there would be any significant benefits from adding this particular test.

After carefully considering the Consumer Groups' request that the 0–40 km/h (0–25 mph) offset deformable barrier test be conducted with unbelted rather than belted dummies, we decline to make that change.

High speed crash protection for 5th percentile adult females. The Consumer Groups also argued that the final rule does not ensure high speed crash protection for 5th percentile adult females, since the agency adopted a 56 km/h (35 mph) belted test using 50th percentile adult male dummies but deferred the decision whether to propose also using 5th percentile adult female dummies in that test until additional testing is completed. They requested that we require vehicles to meet a 56 km/h (35 mph) belted barrier test with the 5th percentile adult female dummy as well as the 50th percentile adult male dummy.

The Consumer Groups are incorrect in asserting that ''the final rule requires no high speed crash protection for the 5th% female.'' We note that while Standard No. 208 has long included high speed crash test requirements using 50th percentile adult male dummies, the advanced air bag rule establishes, for the first time, high speed crash test requirements using 5th percentile adult female dummies. For belted dummies, vehicles must meet injury criteria performance limits at speeds up to 48 km/h (30 mph), the

[5] DaimlerChrysler petitioned the agency to impact only the driver-side of the vehicle rather than the left-side. It noted that in some vehicles the driver sits on the right. We are not making the suggested change. Occupants on both the left and right side of the vehicle should be protected in an offset crash. However, one portion of the regulatory text, S18.1, references the driver side of the vehicle rather than the left side. That reference has been corrected.

same speed that has long been used for 50th percentile adult male dummies. For unbelted 5th percentile adult female dummies, vehicles must meet injury criteria performance limits at speeds from 32 km/h (20 mph) to 40 km/h (25 mph), the same speed range as will apply to unbelted tests with 50th percentile adult male dummies.

The final rule does increase the speed for the belted test using the 50th percentile adult male dummy from 48 km/h to 56 km/h (30 mph to 35 mph). This increase in test speed will be phased-in after the phase-in of the other requirements for advanced air bags is complete, beginning in the 2008 model year.

As we discussed in the advanced air bag final rule preamble, we did not include the 5th percentile adult female dummy in this requirement because we had sparse information on the practicability of such a requirement. We stated that we would initiate testing to examine this issue and anticipated proposing to increase the test speed for belted tests using the 5th percentile adult female dummy to 56 km/h (35 mph), beginning at the same time that the 50th percentile adult male is required to be used in belted testing at that speed. We note that Congress gave us money in our FY 2001 budget to do research to gather information in this area.

We disagree with the Consumer Groups' assertion that it is ''arbitrary and capricious'' for the agency to conduct testing that will help us determine whether a 56 km/h (35 mph) belted rigid barrier test requirement using 5th percentile adult female dummies is practicable, prior to proposing and adopting such a requirement. We believe that testing before imposing a requirement represents a rational approach to establishing safety performance requirements. We also disagree with the Consumer Groups' suggestions that we are being inconsistent as compared to our actions with some of the other requirements for advanced air bags, such as the out-of-position requirements for 5th percentile adult female drivers and children. The amount of testing and analysis that may be needed to establish the practicability of a particular requirement varies with the requirement at issue. We note, however, that we did conduct significant testing and analysis concerning the out-of-position requirements for 5th percentile adult female drivers and children.

After considering the Consumer Groups' request that we establish a requirement now for vehicles to meet a 0–56 km/h (0–35 mph) belted barrier test with the 5th percentile adult female dummy, we decline to take that action. However, depending on the results of our testing, we continue to anticipate proposing to increase the maximum test speed for belted tests using the 5th percentile adult female dummy to 56 km/h (35 mph), beginning at the same time that the 50th percentile adult male is required to be used in belted testing at that speed.

Protection for unbelted 5th percentile adult females in oblique crashes. The Consumer Groups also objected to the fact that the final rule does not specify that the rigid barrier tests using 5th percentile adult female dummies include oblique tests. They requested that we specify that vehicles must satisfy the requirements of all barrier tests in both the perpendicular and oblique modes.

We note that the oblique tests using the 5th percentile adult female dummy, as well as the oblique tests using the belted 50th percentile adult male dummy, were among the ones we dropped during the course of the advanced air bag rulemaking. We were persuaded by the commenters that reducing the amount of testing was important, given resource limitations and the costs to manufacturers associated with certifying vehicles to such a large number of new test requirements. Moreover, looking at the whole array of test requirements included in the advanced air bag rule, we believed that these tests were unnecessary.

As we have explained before, the primary purpose of oblique tests is to ensure that air bags are sufficiently wide to provide protection if an oblique crash results in the occupant moving forward at an angle. The test that presents the greatest challenge with respect to the width of the air bag is the unbelted test using the 50th percentile adult male dummy.

As we explained in the final rule preamble, we dropped the requirement for conducting oblique angle tests on vehicles using 5th percentile adult female dummies because we believed that if a vehicle can pass the perpendicular test with 5th percentile adult female dummies and the oblique tests with unbelted 50th percentile adult male dummies, it would also likely pass the oblique test using 5th percentile adult female dummies. We explained further that we dropped the belted oblique angled tests for the 50th percentile adult male dummy because, given the unbelted oblique tests using that dummy, we believed that the belted oblique angled tests are unnecessary. We noted that the unbelted oblique tests are more stringent than the belted oblique tests in this respect, since the belts limit occupant movement, and that the unbelted oblique tests, which are being retained, will ensure that air bags are sufficiently wide to provide protection when occupants move forward at an angle in oblique crashes.

Upon reconsideration, we continue to believe that the current array of tests strikes a reasonable balance between ensuring that there are sufficient tests to meet the need for safety, and avoiding unwarranted compliance burdens. Given the entire array of tests that both ensure protection and minimize risk, and in light of the reasons discussed above, we do not believe that adding additional oblique crash test requirements would produce significant safety benefits.

We disagree with the Consumer Groups' assertion that in specifying oblique testing only using 50th percentile adult male dummies, the agency ''assumes that, if the male is protected, so will the female.'' Our decision reflects careful analysis of the practical effects of the various requirements on air bag design, and the contribution each requirement makes to ensuring protection and reducing risks.

4. Positioning Procedure for the 5th Percentile Adult Female Test Dummy (Barrier Test)

The final rule established a new positioning procedure for the 5th percentile adult female test dummy in the dynamic crash tests. This procedure used the dummy legs' relationship with the front of the seat to determine where the dummy's H-point would be set. The seat would then be moved forward until the seat reached its full-forward position or until a dummy leg contacted the vehicle interior. Under the final rule, the legs are moved into position; e.g., the driver's leg is adjusted to place the foot on the pedal, only after the seat has been moved forward.

We received several comments and petitions regarding various aspects of the 5th percentile adult female dummy positioning procedure. Mitsubishi and DaimlerChrysler raised questions about the relationship between the seat cushion angle and the seat position. Honda commented that not specifying a seat position before the dummy is placed in the vehicle could lead to repeatability problems. As with the low-risk test conditions, Mitsubishi queried whether the centerline of the seat was the geometric center of the entire seat or only of the designated seating area. Honda, Mitsubishi, DaimlerChrysler, and the Alliance all had concerns about positioning the legs and feet. These

concerns were focused on placement of the left foot on the foot rest, early interference of the dummy legs with the steering wheel or column, and the distance between the dummy's knees when initially positioning the dummy.

At the December, 2000 technical workshop, VW asked what seat position would be required for vehicles with seat cushions that could be lengthened or shortened. Honda noted that in some of its vehicles it could not position the seat in a full forward position using the existing procedure. A more general discussion followed exploring possible solutions to the problem raised by Honda.

We have reviewed the petitions and the seating procedure specified in the final rule. After experimenting with the test procedure in several vehicles, we have determined that the seating procedure specified in the final rule should be modified to better address potential problems in production vehicles. The primary problem with the existing seating procedure is that early dummy contact with the steering wheel, steering column, or knee bolsters can preclude placing the seat in the full forward seating position. As we noted in both the NPRM and the SNPRM, we believe it is critical to test with the seat in the most forward designated seating position because this represents the worst case position. A procedure where the final seat position is closer to mid-track than full forward circumvents the intent of the final rule. Since the existing procedure led to this result in some vehicles, we have determined the procedure and the regulatory text should be changed to address early contact with interior components.

Rather than requiring the knees be at a 90 degree angle when placing the dummy in the seat and moving the seat forward, we are now specifying that the knees be placed at a 120 degree angle at the beginning of the seating procedure. By changing the initial knee angle, it is now possible in most vehicles to move the seat into the full forward seat position and to have the right foot reach the accelerator. In some cases, the steering wheel or steering column will still prohibit moving the seat into a full-forward position. In those instances, we are now specifying that the steering wheel be adjusted upwards to facilitate dummy placement and that the legs then be splayed if needed. The steering wheel height will be returned to the mid-position prior to running the barrier tests. We note that we are making these changes not because we believe that people actually engage in such acts each time they enter their vehicle, but because the dummies are much more difficult to place in a vehicle given their relatively stiff structure.

There may be instances where, even with the new procedure, it is impossible to place the dummy in a full-forward seating position. In such instances, we will use the new procedure and move the seat forward until there is no more than a 5 mm (0.2 in) clearance between the dummy and the vehicle interior. Given the variety of vehicle interior designs, we do not believe it is possible to develop a test procedure that allows dummy placement in a full-forward position in every vehicle. However, we have determined that this is not a significant problem. Using the new procedure, we were able to place the dummy in a full-forward position most of the time. We did find that in the Dodge Grand Caravan we were only able to get the seat within one quarter inch of the full-forward position. In the Dodge Durango, we were only able to get the seat within one-and-one-quarter inch of the full-forward position. In both cases, the seat was much closer to the full-forward position than to the mid-track position. We do not expect manufacturers to introduce excessive molding and contouring into the vehicle interior to prevent the dummy from reaching the full forward position since that approach would invariably have a negative effect on vehicle sales. People will not buy cars that they cannot drive. To the extent manufacturers rely on such molding and contouring to keep the occupant away from the air bag, they will also have to provide some countermeasure to ensure that individuals can reach the accelerator and brake. If we find that manufacturers mold the steering column or knee bolsters primarily to prevent the dummy from being placed in a full-forward position, we may amend the regulation.

Other minor changes have been made in the seating procedure to ease placement of the dummy in the full-forward seat position and to address the specific issues raised by the commenters. First, the new seating procedure provides specific information on seat location and configuration prior to placing the dummy on the seat; this accounts for vehicle seat cushions that can be adjusted without changing the seat track. Second, the legs are positioned equidistant from the center of the steering wheel rim to improve repeatability. Third, the left foot is now positioned on the toe board unless it is impossible to maintain that position. In that case, the left foot is placed on the floor pan.

5. Issues Related to Minimizing the Risk of Injuries and Deaths Caused by Air Bags

The advanced air bag final rule implemented numerous measures designed to minimize the risk of serious injury or death caused by deploying air bags. On the passenger side, these measures were directed primarily towards small children, while on the driver side, the measures were directed toward individuals, primarily small women but also other out-of-position occupants, who are close to the air bag at the time of deployment. Because we wished to avoid being unnecessarily design-restrictive, the agency provided manufacturers with multiple compliance options to reduce these risks. On the passenger side, we allowed both automatic suppression and dynamic suppression systems, as well as systems that utilize low-risk deploying air bags. For the driver side, we allowed a dynamic suppression system or low-risk deployment systems.

While we are aware of some long-range development work in the area of dynamic suppression systems, we do not know of any manufacturers who currently plan on using such systems as a method of certifying compliance with the requirements of the final rule. We received no petitions for reconsideration on that option. We have received numerous petitions for reconsideration on various aspects of the automatic suppression and low-risk deployment options.

A. Automatic Suppression Requirements

Several petitions were filed concerning the automatic suppression option, most of which addressed the level of seat belt cinch-down force for the belted test procedures and the selection of child restraints. Additionally, Toyota stated that given the wide variation in ''cushion hardness'' and ''cover tightness'' in production seats, it did not believe it could certify compliance for the 6-year-old child using automatic suppression. It also raised concerns about the use of current test dummies for testing automatic suppression systems.

1. Child Restraints

The primary concern raised by petitioners regarding automatic suppression systems regarded the belt cinch-down requirement for rear-facing child restraints systems (RFCRS) and convertible child restraint systems. The final rule specifies that the car bed, the RFCRSs and the convertible child seats specified in Appendix A to the final

rule all need to pass certain compliance tests with the child restraints in both a belted and unbelted condition. In the belted tests, the seat belt is to be cinched down at 134 N (30 lbf) as measured at the outboard section of the lap belt.

Toyota, the Alliance, DaimlerChrysler and Takata all commented that they believed the 134 N (30 lbf) cinch-down force was unreasonable. They argued that this force was impossible to achieve and often placed the child seat in an unrealistic position. They also argued that one would not expect to see a child seat installed with this level of force in the real world. Petitioners urged NHTSA to adopt a cinch-down force of 67N (15 lbf), which is currently specified in Standard No. 213. Toyota posited that perhaps NHTSA was measuring the seat belt force differently than manufacturers and suggested a detailed test procedure be provided to assure that the 134 N (30 lbf) force could be achieved.

Additional concerns were raised at the technical workshop held in December, 2000. Ford observed that a system it is evaluating, which uses a load cell built into the seat belt system, had difficulty differentiating between a child seat installed at 134 N (30 lbf) and a large adult occupant that was straining against the seat belt. Delphi noted that when RFCRSs were installed without a base at the required force level, the restraint flipped up against the back of the passenger seat unless towels or blankets were placed under the restraint. Isuzu remarked that on one of its vehicles, the load cell could not be placed in the position required by the final rule because of a sheath that encases the belt on the outboard side. Testing on the Isuzu vehicle provided for the workshop verified that the load cell being used at the workshop did not fit in the specified location. Finally, our own testing in preparation for the workshop indicated that the 134 N (30 lbf) force level was impossible to achieve with the car bed specified for testing because that car bed does not use a rigid structure for feeding the seat belt through the restraint. Indeed, we noted that the greater the force placed on the seat belt, the less realistic the test became, because the car bed was tipped up off the seat and toward the seat back.

Several commenters also noted that some of the child restraints listed in the appendix to the final rule were already obsolete. Toyota and the Alliance urged us to reconsider developing a standardized test device that could provide a common ''footprint'' for seat-based suppression systems. At the December workshop, DaimlerChrysler requested we clarify the time frame that child seats on the list would be used as potential test devices in the agency's compliance tests. DaimlerChrysler also urged the agency to establish a point in time, such as the date of certification, at which the list of child restraints becomes final for the purpose of compliance tests. It was concerned that it could be responsible for the recognition of child restraints for which the suppression system had not been designed.

Finally, DaimlerChrysler introduced in its petition some clarifying language regarding the use of Standard No. 225 restraint attachments in vehicles that are equipped with such attachments in the front seat. DaimlerChrysler also suggested that the automatic suppression tests be conducted with and without tethers, arguing that tethers can place additional weight on the seat and could reflect a ''worst case'' scenario.

We have decided to retain the 134 N (30 lbf) cinch-down requirement specified in the final rule for all child seats except the car bed. The car bed will be installed in accordance with the restraint manufacturer's installation instructions, and a cinch-down force will not be measured.

We believe the primary problem related to belt cinch-down is the level of variability in the load cell measurement. Indeed, we found at the December 2000 technical workshop that the load cell we used provided widely variable readings. Subsequent to the workshop we obtained a smaller load cell that is specifically designed for use on a seat belt. The smaller load cell is designed to measure loads only up to 447 N (100 lbf), which significantly decreases the amount of variability in measurement. With this load cell, we found that consistent results could be obtained for at least five minutes, establishing that the load cell was measuring force in a repeatable manner. These readings were above 134 N (30 lbf). Additionally, the child restraints were positioned in a stable and realistic manner. We were able to achieve the load levels using the test procedure laid out in the final rule, although in some instances the plastic button that some manufacturers place on belts to keep the buckle from sliding down on the unsecured belt had to be removed. Thus, we do not believe there is any need to change or refine the existing test procedure. While we are not adding a provision to the regulatory text, we do intend to remove the plastic button if it prevents us from reaching a 134 N (30 lbf) force. This button is not required under any Federal motor vehicle safety standards.

We note that it will likely be impossible to maintain a cinch-down force in excess of 134 N (30 lbf) once the test dummy or child is placed in the child restraint. The test procedure does not require that the cinch-down force remain stable once the restraint is occupied. This is because the intent behind the 134 N (30 lbf) cinchdown requirement is to replicate the installation of a child restraint by individuals who have been trained in such installation. Given our ability to consistently achieve a 134 N (30 lbf) force, we continue to believe some installers will install child restraints at this level. However, once a child is seated in that restraint, the amount of force applied to the seat belt will ease up.

We reject Toyota's suggestion that we adopt a maximum cinch-down force of 67 N (15 lbf). As noted by Toyota, this is the maximum force required by Standard No. 213. That standard specifies a cinch-down force between 53.2 N and 67 N (11.9–15 lbf). The purpose of measuring cinch-down force is different in Standard No. 213 than in Standard No. 208. In Standard No. 213, the intent is to replicate the circumstances under which most child restraints are installed and then to test how well the restraint protects an occupant when so installed. As such, 67 N (15 lbf) cinchdown force does not represent a ''worst case'' scenario for testing the child restraint. In Standard No. 208, we want to be sure that the air bag suppression systems in vehicles perform properly under a worst case scenario; i.e., when a properly installed seat that is cinched down in a manner that might fool an inadequate suppression system into believing the seat is occupied by someone other than a small child.

We recognize the difficulties Ford is currently experiencing with the load cells that it was planning to use in its vehicles. However, we believe manufacturers will be able to improve this type of technology, and note that even with this technology, the presence of pressure on the safety belt is only one of the factors considered by the suppression system to determine whether to suppress.

As for Isuzu's problems in getting a load cell to fit on the seat belt, we note that it may need to shorten the sheath on the belt to conduct compliance testing. As a larger matter, we hope Isuzu would do this anyway because we are concerned that its sheath may make routine installation of some child restraints unduly difficult. We

recommend all vehicle manufacturers consult SAE recommended practice J1819, Securing Child Restraint System in Motor Vehicles (Rev 11/94) when designing their seat belts to assure a good fit between the vehicle and the child restraint.

We have decided against changing our test procedure to allow the use of rolled up blankets or towels when installing the child restraint. As noted in the final rule, we expect manufacturers to design their suppression systems to recognize the presence of a towel or blanket. However, we do not believe we should add a requirement that child restraints be tested with such objects since that would significantly add to the manufacturer's compliance burden. We recognize that in some instances testing facilities will need to exercise care in applying the cinch load so that the child restraint does not shift from the proper position.

We have updated the list of child restraints contained in Appendix A to Standard No. 208, removing those restraints that are no longer in production. These models have been removed from Appendix A, and replacement restraints have been added. We are not adopting Toyota and the Alliance's suggestion that a common ''footprint'' test device be developed for testing automatic suppression systems. As stated in the final rule, passing a compliance test using a test device that is not representative of near-term production child restraints provides no assurances that the automatic suppression systems will actually work in the real world. The only way to relieve this concern would be to require all child restraint manufacturers to incorporate that footprint into their restraints. We decided in the final rule that there was no need to be so design restrictive, and petitioners have offered no new arguments that would lead us to change our position on this matter.

We believe DaimlerChrysler's concern over how a manufacturer can assure a given vehicle will be tested using the restraints on a specific list is valid. Manufacturers are not responsible, as a matter of certification, for child restraints that are not included in the appendix on the date of vehicle certification. We believe the text of Appendix A is clear in that regard. However, problems may arise when the appendix is updated with insufficient leadtime to reasonably permit manufacturers to assure compliance of vehicles with the updated list. Other than the updated appendix that is part of this rule, which is effective in 30 days, we will specify in the text of any updated appendix that its effective date shall be at least one year from the date of publication. All vehicles certified on or after that effective date will need to comply with the standard using the restraints on the updated list. We believe this one-year leadtime will provide manufacturers with sufficient time to ensure that their vehicles comply. Providing an effective date in the text of the appendix will also avoid any confusion as to which set of restraints are to be used to test a given vehicle.

We note that some vehicle manufacturers may wish to certify compliance with the updated appendix prior to the effective date of the appendix. We will allow this type of ''early compliance'' as long as the manufacturer notifies us that it is irrevocably exercising this option.

We believe DaimlerChrysler's suggestion for clarifying language regarding the use of Standard No. 225 vehicle restraint attachments improves the clarity of the regulatory text. Accordingly, we have adopted those changes. However, we decline to accept DaimlerCrysler's suggestion that we test child restraints with any tethers attached. We believe attaching the tethers would represent the worst case scenario in only one instance; i.e., if the automatic suppression system used only the force of tension against the belt to determine whether to suppress. In this instance, the suppression system could determine that a heavier occupant was in the seat. However, as noted earlier, we do not believe a suppression technology could depend solely on the force measured against a seat belt and meet all of the test requirements for suppression systems.

2. Dummy Positioning

The final rule did not specify extremely detailed positioning procedures for dummies used in the testing of automatic suppression systems. Toyota petitioned that the positioning procedure be specified in greater detail, particularly the spacing between the knees (S22.2.2.6) and the feet (S22.2.2.5). It also petitioned to change the test procedure that tests for a child lying on the seat. Likewise, Mitsubishi raised questions about how to find the geometric center of the seat for determining the location of Plane B and questioned whether the seat height was in the mid-position. Toyota requested that Plane B be defined in relation to the H-point rather than the entire seat.

At the technical workshop, TRW presented data indicating that the knee angle established in the 5th percentile female seating procedure had the effect of shifting too much weight to the floor pan, making the weight on the seat resemble the weight of the 6-year-old test dummy.

DaimlerChrysler opined that the requirement to make sure any threads used to hold a dummy in position do not interfere with the air bag was overly stringent. It argued that the location of the thread in relationship to the air bag was irrelevant since the air bag is not deployed in any of the automatic suppression tests. Isuzu noted an apparent typographical error in the position that tests for a child leaning against the door (S24.2.3). It stated that the regulatory text should allow a maximum distance of 5 mm (0.2 in) between the dummy and the vehicle interior rather than a minimum distance of 5 mm (0.2 in).

For the most part, we have decided against adopting positioning procedures more detailed than those in the final rule. We want the positioning procedures to be broad to ensure that the automatic suppression systems will work in the myriad of occupant positions that occur in the real world. More precision in test positions would permit manufacturers to certify suppression systems that work when occupants are in the specified position but may not work if the occupant were positioned slightly out of this position. Accordingly, although the procedures set forth in the final rule may not be precisely repeatable, this is consistent with the purposes of the rule and helps to assure the proper performance of the suppression systems in the real world.

We have refined the seating procedure for the child-lying-on-seat position. As Isuzu noted in its petition, the final rule does not specify a longitudinal position. We agree that the position described in the final rule may be ambiguous with regard to the placement of the dummy against the vehicle's seat back. Accordingly, we have added language to the regulatory text specifying that the dummy is to be positioned as far back in the seat as possible.

We have also made some changes to the positioning procedure for the test that represents a child kneeling on the seat, facing forward (S22.2.2.6). Upon review of the regulatory text, the agency believes it makes more sense to state where the dummy should be positioned on the seat before placing the dummy on the seat, rather than having the dummy placed on the seat and then only later specifying how it was to be placed. Additionally, the requisite 90 degree angle at the knee has proven unworkable in vehicles with sloped seat cushions. This is because keeping the spine vertical and the knees at 90

degrees could mean that the legs do not fully contact the seat cushion. Accordingly, the reference to a specific leg angle has been removed and the legs are to follow the contour of the seat cushion while maintaining a vertical spine.

Plane B is used to place the child dummies roughly in the center of the seat. In defining Plane B in the final rule, we specified that the plane would be aligned along the geometric center of the seat parallel to the longitudinal centerline of the vehicle. We believe it may be clearer to specify that Plane B is aligned along the longitudinal centerline of the seat rather than the geometric center. We acknowledge that in vehicles where the outside seat bolster is larger than the inboard seat bolster, the center of the designated seating position may be slightly different than the center of the actual seat. We do not believe this difference will be significant. Accordingly, we have decided against adopting Toyota's recommendation to use the H-point. We believe it is appropriate to establish Plane B as a plane that can be practically and repeatedly defined. In keeping with our desire to have automatic suppression positioning procedures that are not overly specific, we have decided against adopting a plane that is defined by the H-point rather than the overall measurements of the seat.

As discussed above, the seating procedure for the 5th percentile adult female has been changed in various respects. One of those changes involves changing the initial knee angle from 90 degrees to 120 degrees. We believe this change will largely resolve the problem addressed by TRW's presentation at the technical workshop. We also note that using humans rather than test dummies may resolve any lingering problems in this regard.

DaimlerChrysler is correct that there is no need to specify that the placement of threads used to hold the dummy in position not interfere with the air bag. The automatic suppression tests do not involve deployment of the air bag. Accordingly, it is irrelevant where these threads are located relative to the air bag. This requirement has been removed.

Isuzu is correct that the intent of the leaning against the door test procedure is to have the dummy contact the door, not to avoid contact. Thus, the requirement for a minimum distance from the vehicle interior has been changed to specify a maximum allowable distance from the vehicle interior.

3. Use of Humans for Testing Automatic Suppression Systems

Toyota raised several issues in its petition related to the use of current anthropomorphic test dummies and humans in automatic suppression tests. Initially, it urged the agency to work with industry in developing better test dummies because of the recognition problems many automatic suppression systems have with the current test dummies. Mitsubishi echoed this request. Not only are the current dummies not physiologically accurate enough to mimic the human form or characteristics, but according to Toyota, these dummies shift up the suppression threshold when compared to humans of the same weight. Thus, as many as 50 percent of the tests conducted by or on behalf of Toyota with the 5th percentile adult female test dummy did not detect the presence of that dummy at the weight needed to turn off the suppression system; i.e., to assure that the air bag would deploy in a crash.

Toyota was dissatisfied with the option that they certify their systems using humans within specified height and weight ranges because it believes those parameters allow for too much variation in physiology to make humans practical test objects.

Finally, Toyota maintained that NHTSA should specify as part of the regulatory text that it will conduct its compliance tests using the test device used by the vehicle manufacturer when it certified its system. Thus, if certification was based on tests with human test objects, NHTSA would conduct its compliance tests using humans. Likewise, if the manufacturer used a test dummy to certify compliance, the agency would use test dummies in running its compliance tests.

At the December 2000 workshop, TRW presented data indicating that the seated weight distribution of the 5th percentile adult female test dummy is sufficiently different from the seated weight distribution of a seated human who is in the weight and height range specified in the final rule.

We recognize there may be some variations in using humans instead of a test dummy. As discussed in both the SNPRM and the final rule, the fact remains that no physiologically accurate dummy currently exists. This is why we decided to allow manufacturers to certify compliance with the automatic suppression requirements using either the existing test dummies or human beings. Thus, while we note Toyota's concerns, we see no alternative beyond what is already in the final rule. If Toyota finds that its automatic suppression systems cannot adequately distinguish between the 6-year-old child dummy and the 5th percentile adult female test dummy, then it may certify compliance using humans.

As noted in the final rule, certifying compliance using humans for recognition purposes constitutes exercising a specific compliance option. Thus, NHTSA must be told whether certification to the automatic suppression option was based on recognition of dummies or of humans. We will conduct our compliance tests using the type of occupant used by the manufacturer. We note that manufacturers will not be able to come back to the agency, in the event of a noncompliance, and argue that the system would meet the requirements if another type of occupant were used. Likewise, manufacturers cannot use humans for some portion of the automatic suppression test for a given size child/dummy and test dummies for other portions related to that size child/dummy.

We do not believe it is useful to further restrict the size and weight ranges of the humans that may be used for conducting compliance tests. As an initial matter, further restrictions will make it more difficult to find surrogates for use in the tests. More importantly, adopting narrower parameters has the potential of reducing the effectiveness of automatic suppression systems in the real world. As explained above in our discussion of the positioning procedures for child-size occupants, we believe automatic suppression systems need to be very robust. This is why we have refused to adopt more stringent positioning procedures in many of the automatic suppression tests. The same rationale applies here.

B. Low-Risk Deployment Options

In the final rule, the agency adopted the low-risk deployment tests that were proposed in the SNPRM with two modifications. First, we decreased the speed in the crash test that determines the low-risk stage of deployment from 29 km/h (18 mph) to 26 km/h (16 mph). We have already addressed the comments and petitions for reconsideration that deal with this change. Second, we reduced the number of steps involved in placing the dummies in a final position because we were concerned that small variations in the procedure, as well as specific vehicle configurations, could lead to significant variations in final placement of the dummy. Since the only position we are interested in is the final one, it seemed reasonable to specify that

position and not address how it was reached. However, we retained, with slight modifications, the step-by-step procedure proposed in the SNPRM for the head-on-instrument-panel test position because we believed it was impossible to specify a final position for that test with sufficient clarity. We also set the test duration at 300 ms, as measured by the point where the air bag is signaled to deploy, taking into account DaimlerChrysler's observation that peak injury readings could occur after the 100 ms time frame proposed in the SNPRM.

We received several petitions regarding the test procedures for both the driver and passenger low-risk deployment tests, as well as the 300 ms time frame specified in the final rule for those tests. Additionally, several issues regarding the low-risk deployment test procedures were raised at the December 2000 technical workshop. More detailed discussions are given below that directly address the petitioners' specific concerns.

1. 300 ms Test Duration

In the final rule, we extended the period of time for which we would collect data from the proposed 100 ms to 300 ms, relying in large part on DaimlerChrysler's comments to the SNPRM that the proposed 100 ms timeframe was too short to allow clearance of the dummy from the air bag in some systems.

Several petitioners, including Toyota, the Alliance, TRW, and DaimlerChrysler have argued against the extension of the 300 ms data acquisition requirement for measuring injury criteria in the low risk deployment tests. Toyota, Takata, and the Alliance argued that data should only be counted prior to impact of the head, neck and torso with interior components other than the air bag. Toyota indicated that its dynamic tests showed that interaction with these other interior components were not significant. However, in its static tests, the peak injury values were the result of dummy interaction with these components. Arguing that the dynamic tests better represent actual crash events, Toyota stated that the data produced as a result of interaction with interior components other than the air bag were of little consequence and should not be counted. Toyota, Honda and VW noted that their primary problem with the 300 ms time frame was that the lack of requirements regarding seat track, height, and seat back angle made it impossible for them to determine whether a dummy could meet all applicable injury criteria for that period of time since they could not determine how the dummy would respond in all the possible seat positions. The Alliance suggested the test last until the dummy was no longer in contact with the air bag or 300 ms, whichever occurs first.

DaimlerChrysler argued that since the 300 ms range was not included in either the NPRM or the SNPRM, commenters did not have sufficient opportunity to comment on it.

We adopted the 300 ms time duration after DaimlerChrysler commented that the 100 ms time duration proposed in the NPRM was insufficient for some air bag systems. Contrary to DaimlerChrysler's assertion, the issue of time duration for low risk deployment tests was raised in the SNPRM and the 300 ms requirement was adopted in light of the comments to that document. Because of the concerns originally raised by DaimlerChrysler, we continue to believe a time duration less than 100 ms would be too short.

We adopted a specific period of time for measuring injury criteria because we do not want manufacturers to claim that a test is over for compliance purposes even though air bag-related injuries are possible. In order to address the petitioners' concerns, NHTSA reviewed its out-of-position tests to determine if there is a need to further truncate the data. We reviewed twelve tests conducted at VRTC. Seven of the twelve tests were conducted with a 5th percentile adult female dummy in the driver position, and five were conducted using the 6-year-old child dummy on the passenger side. In the seven driver tests the sole failure mode was Nij, with the latest failure occurring at approximately 40 ms. The earliest moment of contact with the vehicle interior was at 62 ms, and the earliest point at which the dummy was clearly no longer in contact with the air bag was at 58 ms. In the five passenger tests there were HIC, chest deflection, Nij, neck tension, and neck compression failures. The earliest contact with the vehicle and the earliest clear indication that the dummy was no longer engaged with the air bag were both at approximately 50 ms. Two of the five tests had peak neck injury readings after 50 ms, with the latest peak measurement recorded at 104 ms.

We are not adopting the recommendation made by the Alliance that injury criteria be measured for 300 ms or until the dummy is no longer in contact with the air bag, whichever occurs first. We believe this proposal to subjectively determine when the dummy is no longer in contact with the air bag is inherently nonobjective, and would be unmanageable from a compliance perspective. Measuring injury criteria for a specific period of time is the most objective way to assure that the requisite injury criteria are met for the duration of the test.

As noted in the preamble to the final rule, we do not believe that all dummy contact with the vehicle interior would necessarily be the result of dummy interaction with an overly aggressive air bag. Nevertheless, we are concerned that peak injury measurements that are recorded early in the crash event could be the result of an air bag propelling the dummy backward with excessive force. Likewise, we are concerned that with a multiple-stage air bag, those stages that are deployed later in the crash event could be sufficiently aggressive to cause injury. The test duration for low risk deployment tests should accurately reflect the propensity of the deploying air bag to harm an occupant while it is deploying. Thus, we are adopting a time duration for the low risk deployment test of 125 ms from the initiation of deployment of the final stage air bag that will fire in a 26 km/h (16 mph) crash. We believe this time frame will adequately measure air bag-related injuries without penalizing manufacturers for injuries sustained by vehicle contact that is unrelated to the air bag deployment. However, we intend to monitor our test data to determine whether all air bag-related injuries are in fact being included within the specified time period. If they are not, we may consider increasing the period of time for measuring injury criteria in the compliance tests.

We believe that currently manufacturers would not deploy the last stage of an air bag more than 100 ms after first initiating an air bag deployment. Thus, the injury criteria would likely only be measured up to 225 ms, and often for an even smaller period of time. Vehicle manufacturers will be required to provide NHTSA with the time interval between the initial signal to deploy the air bag and the initiation of the final stage of deployment so that we will know when to stop counting the injury measurements. We note that the 300 ms time duration remains in full effect for all barrier tests.

2. Seat Positioning

Toyota requested that all the low risk test procedures incorporate specific seat positions. They argued that more specificity was needed to achieve repeatable results. At the public workshop, other participants echoed this request, stating that the lack of seat position requirements, when coupled with a 300 ms test duration, prevented

them from controlling injury measurements after the dummy's head and chest had cleared the air bag. They said they would need to test in all possible seat positions to ensure that a dummy rebound would not cause unacceptably high injury measurements.

We believe we have largely resolved the petitioners' concerns regarding the location of the seat by reducing the duration of the low risk deployment tests. However, because we are rejecting a test duration that is defined by when the dummy clears the air bag, we believe there may still be value in specifying the seat position. Accordingly, seat track, seat height, head restraint, and seat back angle are now all specified in the positioning procedures for each of the low risk deployment tests.

3. Tests to Determine Which Stage of Deployment Will Be Used in the Low Risk Deployment Tests

The final rule requires all vehicles certified to the advanced air bag requirements pass a static low risk deployment test or dynamic suppression test on the driver side and a low risk deployment, automatic suppression test, or dynamic suppression test on the passenger side. These requirements are consistent with TEA 21's mandate to reduce the risk of air bag injury to all front-seat occupants in low speed crashes, particularly small women and children.

The low risk deployment test actually consists of two different types of tests, a dynamic crash test and a static low risk deployment test. Each type of test serves a specific purpose.

Prior to conducting the various static low risk deployment tests, the manufacturer must first determine which stage or stages of the air bag to deploy in the static low risk test. This is determined by running a dynamic, frontal barrier crash test at 26 km/h (16 mph) (except for the 12-month-old child dummy, where the dynamic test is run at 64 km/h (40 mph)). Under the May 2000 final rule, all of these dynamic tests, except for the one involving low risk deployment technology for infants, are run using an unbelted 50th percentile male dummy in the mid-track seat position.[6] The use of the 50th percentile male dummy in the dynamic crash test effectively makes crash speed the sole determinant of which stage or stages of the air bag fires in the static low risk deployment test. Injury measurements are not recorded.

Once the appropriate level of deployment has been determined, the specified static low risk deployment test is run for each of the dummies for which the manufacturer has certified to the low risk deployment option, and injury criteria are measured. The static low risk deployment tests are conducted with a 5th percentile adult female at the two specified positions on the driver side and either a 6-year-old child, or 3-year-old child dummy at the two specified positions on the passenger side (the manufacturer may use a combination of automatic suppression and low risk deployment systems).

The purpose of determining compliance with the injury criteria using the 5th percentile adult female dummy on the driver side and with the 6-year-old and/or 3-year-old dummies on the passenger side is to ensure that the low risk deployment is sufficiently benign to prevent air bag-related serious injuries or fatalities to the entire population of individuals who are exposed to a low risk deployment in a low-speed crash. Compliance with the injury criteria is determined using only the dummies that represents historically the most-at-risk individuals within the greater population because requiring tests using all the dummies represented by the greater population would be overly expensive. In issuing the final rule, we assumed that heavier individuals would not be seriously injured by an air bag that meets the injury criteria for the smaller dummy.

DaimlerChrysler petitioned us to have the dynamic tests run with the dummies which will be used in the static low risk deployment tests rather than with a 50th percentile adult male dummy. DaimlerChrysler's petition for reconsideration made four arguments: the sole purpose of the dynamic test is to determine what stage air bag to deploy in the static low risk deployment test; using the 50th percentile adult male test dummy is inconsistent with the use of the 12-month-old dummy in the dynamic portion of the infant low risk deployment test; the agency failed to consider the impact of using the 50th percentile adult male in the dynamic portion of the non-infant low risk deployment tests; and reducing the size of the dummies used in the dynamic portion of the low risk deployment tests will resolve many of its concerns regarding the size of the gray zone between the low risk deployment tests and the barrier tests since it will be able to design low risk deployment systems based on occupant recognition rather than on crash speed alone.

In a recent meeting with the agency, DaimlerChrysler changed its position and suggested that the dynamic portion of the test could be run with the 5th percentile adult female dummy on the passenger-side and the 50th percentile adult male dummy on the driver-side. While DaimlerChrysler did not provide a basis for its change in position, Volkswagen and BMW reiterated this potential approach in subsequent meetings and provided a basis for making the change. All three manufacturers expressed concern with the ability of current automatic suppression technology to reliably differentiate between a 6-year-old child and a small adult in real world conditions. Volkswagen and BMW indicated that the occupant recognition technology that they had studied can reliably differentiate between a small adult and a mid-size adult male. They expressed confidence that they could employ a low-risk deployment strategy that would assure all children and small adults would receive the benefit of a benignly deploying air bag at low speeds, while larger occupants could be provided with an air bag that deployed with more force. This design strategy would allow the manufacturer to provide protection to the larger occupant, while minimizing the risk of injury to smaller occupants. All three manufacturers stated that they would suppress the air bag in the presence of an infant.

Accordingly, we have decided to specify that the dynamic portion of the low risk test be run with the 5th percentile adult female on the passenger-side. Because we do not want manufacturers to rely on a seat-track based system to assure a low risk deployment at speeds up to 26 km/h (16 mph), we are further specifying that the test may be run with the passenger seat in any seat track position.

Low risk deployment options on the driver side remain the same as in the final rule. This is because there are not the same practicability concerns as there are on the passenger side and because no one needs the full-powered deployment of a driver air bag in low speed crashes.

4. Test Procedures for the Passenger Air Bag

As discussed briefly above, the positioning procedure for the chest-on-instrument-panel test was revised significantly in the final rule. The procedure for the head-on-instrument-panel test was largely adopted as proposed in the SNPRM. The Alliance stated in its petition that neither test position assured that the dummy's head

[6] In the infant test, the test is conducted with the 12-month-old child dummy in a belted rear-facing child restraint, since this is the only risk group the requirement attempts to protect.

or chest would actually be positioned against the instrument panel, contradicting the intent of the original ISO positions on which they were based.

a. Chest-on-Instrument Panel Test Procedure

While the petitions addressed both the head-on-instrument panel and chest-on-instrument panel test positions, the greatest criticism was leveled against the chest-on-instrument panel position. While Toyota and the Alliance expressed general concerns about the test procedure in their petitions, the most comprehensive analysis was provided by TRW. TRW noted that when both the 3-year-old and the 6-year-old test dummies are initially positioned as required and then moved forward, it soon becomes impossible to keep Point 1 in Planes C (a horizontal plane) and D (a vertical plane) as specified by the regulatory text because of contact with the windshield. The problem is more acute with the 6-year-old dummy than with the 3-year-old dummy, although it can occur with either dummy depending on vehicle design. While the regulatory text then specifies that the dummy may be lowered until there is a 5 mm (0.2 in) clearance from the windshield, TRW noted that the text does not then say whether to continue to move the dummy forward along a diagonal plane until there is contact with the instrument panel, or to leave the dummy in that position. Leaving the dummy in that position may result in the chest being a considerable distance from the instrument panel. Moving the dummy along a diagonal plane until there is contact with the instrument panel may mean that Point 1 is significantly lower than Plane C, the horizontal plane located at the center of the air bag tear seam. TRW noted that this is particularly problematic in vehicles with top-mounted air bags because Plane C is on or near the top of the instrument panel. It is also a problem in vehicles with deeply sloped windshields because contact with the windshield occurs relatively quickly. These concerns were echoed by Honda and Autoliv in their late submissions and by other manufacturers at the December 2000 technical workshop.

At that workshop, VW inquired as to whether a handgrip mounted on the front of the instrument panel would be considered as part of the instrument panel for the purpose of these tests. VW also queried whether it could place the legs of the 6-year-old dummy back on the dummy after the final position had been reached in vehicles where it was possible to do so. This request was similar to the one made by DaimlerChrysler in its petition that the legs of the 6-year-old dummy only be removed when necessary, as the removal of the legs could affect the dummy kinematics in a manner that may not be representative of a 6-year-old child.

Several petitioners and commenters asked for seat position requirements for the chest-on-instrument panel test procedure. We did not specify seat requirements for this test because the seat is not used in positioning the test dummy. The primary concern on the part of petitioners is that the lack of a specified seating position may lead to excessive test variability that is unrelated to air bag design, particularly if injury criteria are to be measured for 300 ms. Our resolution of this issue was discussed earlier.

We believe the primary problem with the seating procedure specified in the final rule is that it starts with the dummy in an elevated position and then moves the dummy forward along a horizontal plane. The SNPRM had proposed a test procedure where the dummy was positioned against the instrument panel and then moved up. We have reevaluated both positioning procedures and believe that the procedure proposed in the SNPRM largely resolves the problems experienced by petitioners. The regulatory text has also been simplified to make the positioning procedure clearer. In response to VW's question, the instrument panel would include any handgrips that are within Plane D.

Under the new test procedure, there may be some instances where the center of the chest, as indicated by Point 1, will not be in the same horizontal plane as the center of the air bag, as indicated by Plane C. This will be more likely in vehicles with top-mounted air bags. In that instance, we believe it is more important to place the chest against the instrument panel, than to establish Point 1 in Plane C. The only way to assure that Point 1 remains in Plane C and that the chest maintains contact with the instrument panel in all vehicles would be to remove the windshield for vehicles with top-mounted air bags. We believe this is an inappropriate test condition.

It is possible that even with the new positioning procedures, there may be instances where the deployment of the air bag will be closer to the dummy's head than Point 1. We believe that two vehicle designs could lead to such a scenario. First, if the windshield were severely sloped at a position rearward of the instrument panel, the dummy could strike the windshield before the chest is positioned near Plane C. Second, if the air bag were a top-mounted air bag, such an air bag could establish Plane C substantially higher than it would be in a mid-mounted air bag. In these instances, the chest-on-instrument panel test may test the effect of the air bag on the head and neck twice. The dummy would be positioned further away from the air bag than in the head-on-instrument panel test, so it is likely that the chest-on-instrument panel would produce lower injury measurements than the head-on-instrument panel test. However, it is possible that the particular kinematics may result in a greater stress on the neck. Accordingly, we will be paying particular attention to the test results from this chest-on-instrument panel test, particularly in vehicles with top-mounted air bags.

We have decided against allowing manufacturers to leave the legs on the 6-year-old dummy in vehicles that will accommodate the entire dummy in this position. Having the legs attached in some but not all compliance tests could lead to different injury measurements, because of the different dummy kinematics. We believe it is critical that all vehicles should be tested using the same test procedure.

b. Head-on-Instrument-Panel Test Procedure

The final rule specifies placement of the 3-year-old and 6-year-old test dummies such that the head is located on the instrument panel. This test procedure was challenged by several petitioners and commenters. Honda commented that it believed differences in the dummy's leg position could affect the kinematics of the crash and the injury measurements. It noted that it believes that this is particularly troublesome with top-mounted air bags. Honda maintained that the positioning procedure for the head-on-instrument panel test calls for rotating the dummy thighs and legs in a manner that does not sufficiently control the positioning of the legs. It offered no suggestions, however, on how to resolve its concerns. Toyota and TRW raised questions regarding dummy movement after contact has been made with the instrument panel. They noted that if the dummy were not moved once contact was made, the dummy could be a considerable distance from the instrument panel. This is because the knees could strike the instrument panel early in the positioning process, and the chest or head would still be some distance from the instrument panel. Toyota and TRW urged us to change the regulatory text to accommodate an early

knee contact. At the public workshop, some participants, primarily Honda and Toyota, urged us to specify that the dummy be pushed forward once initial contact was made while others, primarily DaimlerChrysler and VW, urged that movement of the dummy stop once initial contact was made. The primary difference in opinion was due to concerns on the part of some participants that moving the dummy forward could change the leg angle, which they believe could lead to wide variations in the final placement of the dummy on the instrument panel. Those supporting the continued movement of the dummy argued that it was more important to get the dummy against the instrument panel than to maintain a level leg position.

Honda failed to provide any data indicating that more specific leg positioning procedures are needed. We acknowledge that the angle of the femur, as measured against the spine, could have some effect on the abdomen. However, we do not believe that slightly different angles would lead to inconsistent HIC or Nij measurements, the most critical injury criteria for this test. Thus, we have decided against adopting more specified leg positioning procedures. Likewise, we have decided against adopting the recommendation of VW and DaimlerChrysler that the leg remain parallel to the floorpan, when maintaining that position would result in the head not being placed on the instrument panel. We believe it is critical that the head be in contact with the instrument panel, even if the legs must be rotated out of a horizontal plane to achieve contact. Thus, under the new test procedure, early leg contact does not prevent placement of the dummy head on the instrument panel. Instead, the dummy is rotated forward until contact is achieved. While in some instances, this rotation could result in a relatively severe leg angle, as measured against the pelvis, we believe it is more critical that the head contact the instrument panel than that this angle remain constant.

c. Definition of Points, Planes and Materials

The positioning procedures for the low risk deployment tests specify two planes and one point. ''Plane C'' is defined as the horizontal plane through the geometric center of the right air bag tear seam. ''Plane D'' is defined as the vertical plane parallel to the vehicle longitudinal centerline through the geometric center of the right air bag tear seam. ''Point 1'' is defined as the center point of the dummy's chest/rib plate (the vertical mid-point of the frontal chest plate of the dummy on the midsagittal plane).

Questions were raised at the workshop about referencing Point 1 from a rigid structure on the dummy, such as the shoulder joints, rather than a point on the chest jacket. Several petitioners, including TRW, DaimlerChrysler, and Toyota sought clarification of what the agency meant by the term ''geometric center of the right air bag tear seam''. They noted that many passenger systems do not have a true tear seam. Rather, they may have a cover that opens as part of the instrument panel. The air bag may not be centered under the cover. Likewise, the instrument panel may be a solid surface with no visible tear seam. In both of these instances, the ''geometric center of the right air bag tear seam'' is difficult to determine and could vary depending on who is conducting the test. Finally, at the technical workshop, DaimlerChrysler requested that Plane D be established relative to the geometric center of the seat rather the geometric center of the air bag. This would allow them to take advantage of various countermeasures, such as a slight offset, that they use to reduce the aggressivity of the passenger air bag.

We have redefined the location of Point 1 to place it in a location relative to the upper edge of the chest jacket rather than the center of the chest/rib plate. The chest jacket, while relatively snug, still moves about the dummy's ribcage. Thus, the center of the chest/rib plate may be different relative to the internal hardware from one test to another. The upper edge of the chest jacket, however, remains largely the same, making it a preferable point of reference. We decided against measuring Point 1 relative to fixed hardware because we do not believe that degree of specificity is required and because there is very little exposed fixed hardware. Point 1 is now located on the front of the dummy chest jacket on the midsagittal plane by measuring a certain distance along the surface of the chest skin from the top of the skin at the neckline.

We agree that the final rule is not as clear as it could be in specifying the location of the planes. ''Air bag tear seam'' has no technical definition. Accordingly, the center of the tear seam could be subject to different interpretations. More importantly, the apparent air bag opening may be considerably different from the opening from which the air bag initially emerges. This is because the air bag covers may be designed in a manner that best accommodates the overall shape of the dashboard, with only a nominal relationship to the actual location of the air bag opening beneath the dashboard. Additionally, many dashboards have no discernable air bag cover, and the air bag enters the occupant compartment through a tear in the dashboard. At the technical workshop, the agency attempted to garner some consensus among industry on a better definition that would establish the vertical and horizontal planes along a point that was centered on where the air bag deployed. No one was able to come up with a location that was readily understandable and that was easily measured.

We do, however, believe that it would be more appropriate to specify that the planes be established using the geometric center of the opening through which the air bag deploys into the occupant compartment. This would not necessarily be the same as the geometric center of the air bag cover. Rather, it would be the geometric center of whatever frame or casing is used to allow the air bag to deploy in a controlled manner. Since this frame or casing cannot be seen without dismantling the dashboard, we intend to ask vehicle manufacturers to give us the location of the air bag opening as part of our pre-compliance test information requests.

The final rule specifies that the dummies be held in place using thread. Toyota requested specific definitions related to the material properties of the thread. TRW asked that the specification for thread be removed, arguing that other materials, such as tape, could work just as well. We agree with TRW. The material properties of the binding is irrelevant as long as it holds the dummy in place for the duration of the low speed deployment tests. Thread was merely specified because that is the material the agency has traditionally used. The regulatory text has been changed to remove the specification for thread.

We have chosen not to use the geometric center of the seat as a reference for Plane D. We have changed the definition to ''* * * vertical plane parallel to the vehicle longitudinal centerline through the geometric center of the opening through which the right front air bag deploys into the occupant compartment.'' We believe this is more practical for compliance tests and removes the problem of defining the tear seam.

5. Driver Side Air Bags

As with the low risk deployment tests for the passenger air bag, the agency did not provide final seat positions for the test dummy in tests for the driver air bag

in the final rule. Toyota has petitioned that detailed seat positions be specified. For the reasons discussed in the section of this document addressing the passenger low risk deployment tests, we are adopting specific seat track, head rest, seat cushion angles, and seat back positions. Beyond Toyota's general request, all other petitions related to the driver air bag low risk deployment test procedure addressed concerns with the chin-on-rim procedure.

The purpose of the chin-on-rim test is to determine the risk of injury when a person's chest is directly in the path of the deploying air bag. The test is conducted with a 5th percentile adult female test dummy. The test procedure requires the dummy be moved up off the seat and positioned with spacer blocks.

Toyota stated in its petition that the procedure for the chin-on-rim test specified in the final rule did not adequately ensure that the dummy's chin would not catch on the rim of the steering wheel, leading to artificially high neck extension bending moments. Honda raised similar concerns. Toyota noted that the regulatory text specifies that the chin not be hooked over the rim, but noted that it believed a more detailed test procedure was needed to prevent the potential problem. It suggested that a point on the chin 40 mm below the mouth be placed at the uppermost edge of the rim. Toyota also stated that using the seat to move the dummy forward results in pre-loading the dummy, which it maintains moves the torso roughly 20 mm closer to the steering wheel than if only the dummy is moved forward. Toyota presented no data analyzing the effect of such pre-loading. Mitsubishi queried whether forward head movement was to cease if the dummy chest or torso impacted the steering wheel before the head contacted the windshield. TRW wanted to know if the dummy is further moved, and in what direction, if the head hits the windshield. It also asked whether the dummy's thorax instrument cavity rear face angle needs to be maintained during the positioning procedures. Honda noted at the technical workshop that the dummy could contact the windshield or the header long before the dummy's chin contacted the steering wheel. Honda questioned whether the dummy should be moved down so that contact with the steering wheel is made, even though this would lower the chest.

Toyota is correct that the agency intended to provide a procedure that prevents the chin from hooking over the steering wheel when it published the final rule. We also agree that Toyota's suggestion to define a point on the chin that contacts the steering wheel is a more objective means of ensuring that the chin does not hook over the rim. Accordingly, we have adopted that change in test procedure.

As to its concern with potential pre-loading, we note that Toyota failed to provide any data addressing the effect of potential pre-loading in its petition. We would agree that, in general, pre-loading is not desirable. However, we believe it is very important that the chin actually makes contact with the steering wheel. Additionally, we believe that placing the center of the chin directly on the steering wheel will reduce the likelihood of any pre-loading. Accordingly, we are not changing the procedure to address the possibility of pre-loading.

The thorax instrument cavity rear face angle is an initial position. We expect in many instances that this angle will need to be changed to address specific vehicle designs. This is because we believe it is very important to position the dummy parallel to the steering wheel before deploying the air bag. Keeping the dummy parallel serves multiple purposes. First, it should largely resolve Honda's concern that the dummy head will impact the windshield or header before the dummy's chin contacts the steering rim, as well as Mitsubishi's question on whether to stop moving the dummy if steering wheel contact is made before the head strikes the windshield. Second, it tests for a worst case scenario; i.e., a direct impact by the deploying air bag. Finally, we believe it provides the most repeatable test procedure.

VI. Issues Related to Injury Criteria

A. Head Injury Criteria (HIC)

In the final rule, we adopted a new Head Injury Criteria applicable to vehicles meeting the new, advanced air bag requirements. For the 50th percentile adult male dummy, Standard No. 208 has required manufacturers to certify that the dummy HIC measurement does not exceed 1000 when calculated over a period of 36 ms. Under the new criteria, that measurement is now limited to 700, but is calculated over a much shorter 15 ms period. The HIC for the new 5th percentile adult female dummy is also 700 when calculated over 15 ms, as is the HIC for the 6-year-old child dummy. Lower maximum HIC were established for the 3-year-old and 12-month-old dummies.

The Alliance and DaimlerChrysler petitioned the agency to scale the HIC measurements for the 5th percentile adult female dummy and the 6-year-old child dummy at a maximum HIC of 779 and 723, respectively. The Alliance argued that these proposed limits were derived from the new maximum HIC for the 50th percentile adult male dummy using a scaling relationship that considered the size differences of the heads of the three dummies. It further argued that we did not consistently apply these scaling relationships when establishing a maximum HIC of 700 for all three dummies.

Petitioners have not provided biomechanical data to support their contention that a higher maximum HIC for the 5th percentile adult female dummy or the 6-year-old child dummy is appropriate. Rather, petitioners appear to base their scaling technique on the premise that the experimental population was the representative size of the 50th percentile adult male head or that the analysis that produces HIC somehow explicitly accounted for head size and the HIC relationship now represents only the 50th percentile male. While it is true that the mean head size of the experimental population is approximately equal to that of the 50th percentile adult male, the head size of the experimental population also spans that of the entire adult population. In particular, the experimental population correlates with the size of a 5th percentile adult female in about 30% of the cases, with a 50th percentile adult male in about 33% of the cases and with a 95th percentile adult male in about 37% of the cases. Furthermore, there is insufficient data to develop a statistically significant relationship of how head size modifies HIC threshold levels, i.e., that the smaller size of the 5th percentile adult female head results in a higher HIC threshold than a 50th percentile adult male head. Consequently, we believe that there is no need or justification to provide different maximum HIC levels for any sub-group of the adult population, and we continue to support a maximum HIC value of 700 for both adult dummy sizes.

As previously discussed in the biomechanical technical report released with the final rule, we have no biomechanics data on the skull fracture and brain injury tolerances for children. Thus, we scaled the HIC for the 6-year-old child dummy, the 3-year-old child dummy, and the 12-month-old child dummy based on geometric size and material strength. Since exact scaling is inappropriate for the reasons given above, judgement was used to determine whether the scaled limits were reasonable. The scaled measurement for the 6-year-old child dummy was 723, a limit slightly higher than that for the

adult population. However, since the scaling is an inexact science and much of this rule is designed to reduce the risk of death or serious injury to small children, we believe that raising the maximum HIC for the 6-year-old child would be inappropriate.

Agency low risk deployment tests of seven 1999 model year vehicles indicates that a maximum HIC of 700 for the 6-year-old child test dummy is practicable. One hundred percent of the vehicles tested in position 1 (chest-on-instrument panel) and in position 2 (head-on-instrument panel) measured a maximum HIC of less than 700. These injury levels were obtained in vehicles that have not been designed to the low risk deployment requirements of the final rule. We see no reason to raise the maximum HIC for this dummy.

B. Chest Injury Measurements

In the SNPRM, the agency had proposed a maximum chest acceleration for the 5th percentile adult female dummy of 60 g. The Alliance recommended a maximum allowable chest acceleration rate of 73 g. Instead of adopting the Alliance's proposal, we decided to adopt the 60 g limit. This is the same acceleration limit that has been in place for the 50th percentile adult male dummy for some time. The Alliance's recommended chest acceleration limit was obtained using scaling procedures that only considered the effects of the geometric differences between 50th percentile adult males and 5th percentile adult females. We determined that considering these factors alone insufficiently accounted for the risk to out-of-position occupants and to elderly women, who have been disproportionately injured by deploying air bags. Accordingly, we adopted a maximum chest g of 60 for the 5th percentile adult female test dummy.

The Alliance, Toyota [7] and DaimlerChrysler petitioned the agency to adopt the Alliance's scaled chest acceleration measurement of 73 g. They expressed particular concern over the effect the 60 g limit would have in the belted barrier test for the 50th percentile adult male dummy. According to the petitioners, the agency's measurement is far too conservative. They argued that the more conservative limit could cause difficulties in meeting the belted 48 km/h (30 mph) test and thus could lead manufacturers to lower the output of the seat belt load limiters, which would then require air bags to be repowered in order to achieve acceptable injury measurements in the 50th percentile adult male test dummy in the 56 km/h (35 mph) belted crash tests. DaimlerChrysler also argued that while existing seat belt designs can meet the 60 g limit, the levels so closely approach that level that manufacturers cannot certify compliance to the belted tests with a reasonable margin of compliance.

As noted above, the Alliance's recommended chest acceleration limit of 73 g for the 5th percentile adult female dummy was obtained using scaling procedures that consider only the geometric differences between the 50th percentile adult male and the 5th percentile adult female. This scaling method discounts any possible decrease in bone strength experienced by an older driver. Yet we know that older drivers are at increased risk from a deploying air bag. When one allows for the decreased bone mass, the scaled measurement is 61.6 g, only nominally more than the level specified in the final rule. Additionally, as noted above, any scaling method will be inexact, and some degree of judgement is required to determine how injury criteria should be scaled for different populations. The tests with the 5th percentile adult female dummies are intended to minimize to the greatest extent possible the likelihood that an individual would be severely injured or killed by a deploying air bag. Discounting the effect of decreased bone density would lead to the anomalous event where the most at-risk population would not receive the full benefits of the advanced air bag systems.

Petitioners have presented no data to substantiate their claim that a higher chest acceleration limit for the 5th percentile adult female dummy is necessary to avoid repowering air bags. However, NHTSA and Transport Canada have co-sponsored vehicle crash tests conducted at Transport Canada to determine whether the petitioners' claim has merit. Transport Canada conducted belted barrier tests at 48 km/h (30 mph) with both the 5th percentile adult female test dummy and with the 50th percentile adult male test dummy. We also looked at NCAP test results for vehicles of the same make, model, and production year to determine whether either the 50th percentile adult male dummy were measuring chest g's in excess of 60 g in 56 km/h (35 mph) belted tests.[8]

Twenty-six vehicles were tested at Transport Canada with the 5th percentile adult female dummy in both the driver and passenger position. The seats were positioned full forward. All dummies in the driver position and 25 dummies in the passenger position passed the 60 g chest acceleration limit, establishing 60 g as a practicable injury measurement. Only five of the dummies on the driver side recorded acceleration rates greater than 50 g. Three of these dummies contacted the steering rim, and we have determined that the higher chest g measurement was probably a result of that interaction. In the two cases where there was no steering wheel contact, we believe the higher injury measurements were likely the result of very stiff shoulder belts.

These observations were borne out by the results of the NCAP tests with the 50th percentile adult male dummy. In cases where the higher chest acceleration was probably the result of contact with the steering wheel, the male dummy experienced low chest accelerations at a comparable speed because it did not strike the steering wheel. In the two cases where NHTSA attributed the higher measurements to a stiff shoulder belt, the male dummy also measured high chest acceleration measurements in the 56 km/h (35 mph) NCAP tests. There were a number of vehicles tested in which the chest acceleration for the 5th percentile adult female was well below 60 g, and where the injury measurements of the 50th percentile adult male in the NCAP tests earned the vehicle a four- or five-star rating. Accordingly, we cannot accept Toyota's argument that a 60 g chest acceleration will require repowered air bags to provide protection to the 50th percentile male in a 56 km/h (35 mph) belted crash test.

We have reviewed three vehicle crash tests in which the lower thorax/abdomen of the 5th percentile adult female dummy contacted the steering rim, producing high chest g measurements and low chest deflection measurements. In these cases, the close proximity of the dummy's lower thorax/

[7] Toyota also recommended the agency adopt sternal deflection rate (SDR) as the appropriate chest measurement rather than acceleration. The agency had initially proposed adopting SDR, but dropped its proposal in the SNPRM because the biomechanics community argued persuasively that SDR was insufficiently developed to be used in compliance testing. We refer the reader to our discussion of SDR in the SNPRM.

[8] Although Toyota limited its argument that repowered air bags would be needed because of the 56 km/h (35 mph) belted barrier test using a 50th percentile adult male dummy, we reviewed the NCAP test results of vehicles tested with a 5th percentile adult female dummy to see if the chest acceleration indicate an overly stiff seat belt that was not designed for smaller occupants. The 5th percentile adult female dummy registered chest g readings that were slightly higher than those registered by the 50th percentile adult male dummy, but the readings were still significantly lower than 60 g.

abdomen to the steering wheel rim prevented the lower portion of the air bag from fully inflating. As a result, the lower thorax/abdomen was not offered protection and impacted the steering wheel rim. We believe that the injury criteria selected for the advanced air bag rule should be sensitive to the injurious loading mode of steering wheel rim contact. Chest deflection, measured only at the central upper thorax, and chest acceleration with a performance limit of 73 g would not identify these cases of steering wheel rim contact as injurious, whereas a performance limit of 60 g for chest acceleration would correctly identify this as injurious occupant interaction with the vehicles. Consequently, we continue to support a performance limit of 60 g for the 5th percentile adult female.

C. Neck Injury Criteria

As part of the final rule, we adopted a new neck injury criterion (Nij). Nij measures both neck axial force (tension and compression) and neck bending moments (flexion and extension). Prior to the issuance of the rule, neck injuries were not directly accounted for in barrier tests, although the 36 ms HIC duration did indirectly address concerns with neck injuries in real world crashes. We rejected DaimlerChrysler and Toyota's arguments in favor of not adopting Nij as part of the final rule. Our rationale was largely based on concerns the two manufacturers had regarding the suitability of the Hybrid III dummy neck for measuring extension.

In their petitions for reconsideration, both Toyota and DaimlerChrysler have reiterated their concerns with the Hybrid III neck design and with the adoption of Nij as an injury criterion. As in its response on the SNPRM, Toyota states that it believes the 5th percentile adult female Hybrid III neck is reading artificially high neck moments in crash tests that are not found in tests using the 50th percentile adult male test dummy. It also believes that the location of the load cell at the top of the neck does not address the likelihood of injury in the low- to mid-portion of the neck, the location where it believes most neck injuries actually occur. Finally, Toyota noted that a relaxed human neck can accommodate 15 degrees of rotation between the neck and the head, which the Hybrid III neck cannot. Due to the combination of these concerns, Toyota petitioned that the introduction of Nij be delayed until the bending moment issues are resolved. DaimlerChrysler petitioned the agency to measure only axial force rather than using Nij due to problems it believes the current Hybrid III neck has in measuring bending moments. It also averred that using Nij with the Hybrid III neck would require manufacturers to place rapidly deploying air bags in vehicles.

We have decided against either altering or eliminating Nij as an injury measurement. A full discussion of petitioners' arguments and our response to those arguments is provided in the technical paper ''Supplement: Development of Improved Injury Criteria for the Assessment of Advanced Automotive Restraint Systems'' (Docket No. NHTSA–00–7013–3).

We believe that the dummies do not generate artificially high neck moments in crash tests. Toyota indicated that a review of crash films did not point to likely neck injury, even though high injury measurements were recorded. We do not believe a review of crash films is a useful means of determining strain on the neck. This is because when there is a high loading rate and the cervical musculature is partially activated, the human neck can experience large extension moments even though the rotation of the head is small.[9] Testing at VRTC indicated that the moments experienced by human volunteers prior to noticeable head rotation were similar to the moments registered by the Hybrid III test dummy. The moments experienced by humans in a crash would be higher because the informal tests were static tests and because the neck was not pushed to the point of pain. Thus, we believe that the moments produced by the dummy neck when there is little head-to-torso rotation are a reasonable representation of what the human neck would experience in a similar crash environment.

Likewise, we do not believe that the neck on the 5th percentile adult female dummy produces neck injury measurements that are not representative of injury risk in real world crashes. Toyota stated that the risk of neck injury was roughly the same among all adult occupants, but that the 5th percentile adult dummy could not meet the required injury criteria, while the 50th percentile adult male dummy could. The neck of the 5th percentile adult female dummy was based on a scaled down version of the 50th percentile adult male dummy. Thus, there should be no test artifact that manifests in one dummy but not the other.

We agree with Toyota that most flexion injuries in the real world that are the result of inertial loading (i.e., loading of the neck due to restraints of the torso by seat belts) occur in the middle or lower cervical spine. However, research indicates that flexion and extension bending moments calculated at the occipital condyle are a good predictor of overall neck injury even though the site of injury was located below the occipital condyles in the middle cervical spine (C3–C4).[10] Additionally, for air bag loading, the upper cervical spine has been the predominant injury site for both children and adults. While real world data seems to indicate that tension and/or extension are the predominant injury mechanism in air-bag induced upper cervical spine injuries, research has shown that flexion can also produce similar upper cervical spine injuries.[11] Consequently, we believe it is appropriate to monitor the loads at occipital condyles using the upper load cell instrumentation, including tension, compression, flexion, and extension, to improve safety in both inertial and air bag loading situations.

Likewise, we disagree with DaimlerChrysler's contention that only axial forces should be measured because the axial force best determines real world risk of injury and a Nij requirement would require smaller or more aggressive air bags to counteract problems with the Hybrid III neck. We believe there is a good kinematic and dynamic correlation between the Hybrid III neck and the human neck. The Hybrid III neck is effective at measuring the risk of neck injury in the real world. High moment readings are consistent with injuries resulting from exposure to aggressive air bags. DaimlerChrysler suggested that the Thor dummy neck may be more biofidelic, but we note that Thor is still under development. If we determine that it is an adequate instrument for compliance testing and is a better predictor of occupant injury, we may incorporate it into Standard No. 208. Nevertheless, the possibility that an enhanced dummy neck will be available in the future is not a persuasive reason

[9] See ''Human Tolerance to Impact Conditions as Related to Motor Vehicle Design'' SAE document J885, July 1986, which states ''* * * the neck can be injured without exceeding its static angular range of motion * * * Measures of the neck may be a better indicator of injury potential [than angular rotation].

[10] Mertz H J and Patrick L M, Strength and Response of the Human Neck, Proceedings of the Fifteenth Stapp Car Crash Conference, SAE Paper No. 710855, (1971). Mertz H J and Partick L M, Investigation of the Kinematics and Kinetics of Whiplash during Vehicle Rear-end Collisions, Proceedings of the Eleventh Stapp Car Crash Conference, SAE Paper No. 670919, (1967).

[11] Nightingale R W, Winkelstein B A, Van Ee C A, Myers B S, Injury Mechanisms in the Pediatric Cervical Spine During Out-of-position Airbag Deployments, 42nd Annual Proceedings of the Association for the Advancement of Automotive Medicine, (1998).

to delay action until that neck is available. While axial force may be an accurate indicator of injury in a single loading mode, the neck is subject to many loading modes in a crash, including flexion, extension, fore/aft shear, lateral bending, and torsion. These other loading modes also cause neck injury in the real world. This is why the agency adopted the Nij formula, which incorporates the relevant measurements for evaluating neck injury during frontal impact. We note much of the automotive industry has accepted Nij as a valid injury measurement.[12]

VII. Issues Related to Labels, Telltales, and Owner's Manual Information

A. Warning Labels

In the final rule we added a new warning label that must be used in vehicles with advanced air bags. We also discussed in the preamble that we would not prohibit additional labels on the sun visor that provided design-specific information on how to use a vehicle's advanced air bag technology. The regulatory text, however, did not remove the prohibition against adding additional information on the sun visor.

We received petitions for reconsideration for and comments on both the changed label and on the issue of whether to allow additional information other than that required by the warning label. Toyota urged us to keep the existing warning label, except for the addition of the statement ''even with advanced air bags'', arguing that the advanced air bag technology is not yet developed enough to justify a weaker label. DaimlerChrysler, GM, the Alliance and Ford have all requested that we limit any information beyond that in the required label to the owner's manual and that no additional information be allowed in the vehicle interior. Parents for Safer Air Bags asked for clarification of the agency's position.

As noted above, S4.5.1(b)(3) prohibits any information other than an air bag maintenance label or a SUV rollover warning label from appearing on the same side of the sun visor as the air bag warning label, and prohibits any additional information about air bags or the need to wear seat belts on either side of the sun visor. However, this was not our intent. Rather, as stated in the preamble to the final rule, we intended to allow additional, design-specific information on the sun visor and near the new air bag warning label. We did not believe such information should be automatically relegated to the owner's manual because we believed that people are more likely to read a highly visible warning label than an owner's manual.

In response to the NPRM, DaimlerChrysler, GM, and the Alliance had all supported the position expressed in the preamble to the final rule. Indeed, the agency's decision to allow additional information was based on comments from these entities, as well as comments from the NTSB and the Center for Automotive Safety. GM, DaimlerChrysler, and the Alliance have now all changed their original position and now urge the agency not only to prohibit any additional information on the sun visor, but to limit such information to the owner's manual. The basis of the various petitions is that sun visor labels that carry different information may be confusing and may result in information overload. The petitioners also stated that allowing additional information would be inconsistent with our previous position that warning labels should be uniform to maximize the effectiveness of the message.

We have decided to allow additional labels on the sun visor that provide design-specific information about a particular advanced air bag system. We note that advanced air bag systems are different from traditional air bag systems in that those systems may have unique design characteristics. Thus, a manufacturer could determine that additional labels may provide crucial information that the vehicle owner should be aware of.

Some systems, particularly those that rely on automatic suppression technology, may allow the vehicle occupant to change the status of the air bag. For example, in the case of a vehicle certified to the automatic suppression requirement, the required telltale will not be illuminated in most instances. Under the regulation, the telltale must remain off if an occupant as large as the 5th percentile adult female is seated in the passenger seat. Additionally, the regulation allows manufacturers to have the telltale turned off if the passenger seat is empty, even though the air bag may be suppressed. Thus, an adult may not even be aware of the presence or purpose of the telltale until a child is placed in the passenger seat and the telltale illuminates. We are confident that our automatic suppression procedures are broad enough to ensure that the telltale will illuminate in most instances. However, those procedures are not representative of all possible seating positions or all child restraints. Thus, it is possible that a particular restraint would not be detected by an automatic suppression system, or that an unrestrained child could be in a position that was not detected by the automatic suppression system.

If the driver of the vehicle or another occupant was aware that the telltale should be illuminated whenever the air bag is suppressed, then they could move the child to the back seat. If for some reason that were not possible, the driver would be aware of the need to either resecure the child restraint, replace the restraint if necessary, or place the child in the seat such that the air bag system is suppressed.

While a detailed description of how the air bag system works would be contained in the owner's manual, we are concerned that people may not consult their owner's manual sufficiently to recognize that the absence of an illuminated telltale means the air bag is not suppressed. However, a vehicle manufacturer could place specific information about the air bag system next to the air bag label, where it may be more likely to be read. Alternatively, the manufacturer could determine that an additional label placed elsewhere in the vehicle, either permanently or as a temporary label, best informs vehicle occupants about the vehicle's air bag system. A manufacturer could also determine that no additional labels are needed.

Accordingly, we have amended the regulatory text to clarify that such a label could be placed, at the manufacturer's option, on the sun visor alongside the air bag warning label. No change has been made to the regulatory text regarding the permissibility of labels elsewhere in the vehicle because we have never prohibited labels that convey specific, accurate information about air bags or seat belts in locations other than the sun visor. However, any additional labels, regardless of where they are placed in the vehicle, cannot be confusing or misleading when read in conjunction with other labels required by this or other standards. The regulatory text has accordingly been amended at S 4.5.1 (g).

As discussed in the final rule, we have decided against allowing the existing labels in vehicles certified to the advanced air bag requirements. The new label uses a different pictogram and removed two of the warnings that are required on labels not certified to the advanced air bag requirements. The new label does not say that children should never be placed in front of an air bag, because the advanced air bag requirements are intended to specifically address that risk. We also removed the statement that one should

[12] See ''Recommended Procedures for Evaluating Occupant Injury Risk from Deploying Side Air Bags'' (August 8, 2000). (NHTSA–99–5098–31)

sit as far away from the air bag as possible because while this information is helpful, we did not believe it addressed a serious enough safety risk to merit overcrowding the label. We added an instruction to read the vehicle owner's manual to familiarize oneself with the advanced air bag system in the vehicle. Thus, we do not believe the new label is any weaker than the existing label, particularly since the vehicle manufacturer may provide more vehicle-specific information in the form of a label on the sun visor or elsewhere in the vehicle.

Additionally, the agency has discovered that when S4.5.1(b) was amended to remove the requirements for warning labels in vehicles manufactured before February 25, 1997, the cross-reference in S4.5.1(c)(2) was not changed. Previously S4.5.1(b) set forth the requirements for air bag warning labels in vehicles manufactured before February 25, 1997. S4.5.1(c)(1) set forth the requirements for the air bag alert label in those same vehicles and cross-referenced S4.5.1(b)(1). S4.5.1(b)(2) set forth the requirements for air bag warning labels in vehicles manufactured on or after February 25, 1997. S4.5.1(c)(2) set forth the requirements for the air bag alert label in those vehicles, and cross-referenced S4.5.1(b)(2). In the final rule S4.5.1(b) was amended to drop the requirements for a label in the older vehicles because there was no longer any need to retain the requirement. S4.5.1(b)(2) was redesignated S4.5.1(b)(1) and the new label required for vehicles certified to the advanced air bag requirements was designated as S4.5.1(b)(2). Because there were no changes to the air bag alert requirements, S4.5.1(c) was not amended.

Under the current regulatory text, S4.5.2(c)(2) could be interpreted as being limited to vehicles certified to the advanced air bag requirements, even though the title to that section refers to all vehicles manufactured on or after February 25, 1997. S4.5.1(c)(1) should have been removed since the original cross-reference was removed. We are amending S4.5.1(c) to remove the reference to vehicles manufactured before February 25, 1997 and to clarify that an air bag alert is needed in any vehicle manufactured on or after that date whenever the required air bag label is not visible when the sun visor is in the stowed position.

B. Telltales

The final rule requires a telltale for vehicles with automatic suppression systems. The telltale has a specified text and must be positioned in a location forward of and above the H-point of the driver's and passenger's seat in their forwardmost position. The final rule allowed for multiple levels of illumination as long as the telltale remains visible at all times to front-seat occupants of all ages. The telltale need not illuminate when the passenger seat is empty.

The Alliance, DaimlerChrysler, and Mitsubishi petitioned the agency to revise the current requirement that the telltale be visible to occupants of all ages, and urged us instead to adopt the requirements of Standard No. 101, *Controls and Displays.* DaimlerChrysler also requested the regulatory text be clarified to assure that the telltale would be visible to all occupants seated in a forward-facing position, and that it not be obstructed by a rear-facing child restraint. The Alliance requested that they be allowed to use the abbreviation ''pass'' in lieu of ''passenger'' in the message text, and DaimlerChrysler requested that manufacturers be allowed to use a universal symbol representing the status of the air bag rather than a specified text. Additionally, DaimlerChrysler requested the regulatory text be changed to clarify that a telltale is only required in vehicles with automatic suppression systems.

We have removed the requirement that the telltale be visible to occupants of all ages, since such a requirement is nonobjective. We have, however, kept the requirement that it be visible to occupants whose eyes have adjusted to ambient light conditions. Otherwise, the regulatory text has been changed to be more consistent with Standard No. 101.

While we do not believe it would be reasonable to expect an occupant who was not sitting in a forward-facing position to see a telltale that is forward of the H-point with the seat in its full-forward position, we see no reason to adopt DaimlerChrysler's suggestion that the telltale only be visible to forward-facing occupants. We believe that implicit in the requirement is the recognition that a rear-facing individual would not be able to see the telltale. Since the vast majority of occupants who are not in the forward facing position are infants, who would not be able to interpret the message, we see no need to further specify that the telltale only be visible to forward facing occupants. We do agree, however, that there is a benefit to affirmatively stating that the telltale cannot be obscured by a rear facing child restraint. Accordingly, the regulatory text has been amended to prohibit the placement of a telltale in a location where such a restraint could prevent a properly-seated driver from seeing the telltale.

We note that the portions of the regulatory text dealing with automatic suppression systems already specify that a telltale be installed in the vehicle. Neither the low risk deployment option nor the dynamic suppression option have such a requirement. Nevertheless, we believe it is worthwhile to clarify in the portion of the regulatory text dealing with telltale requirements that a telltale is only required in vehicles with automatic suppression systems.

We have decided to allow manufacturers to abbreviate ''passenger'' to ''pass,'' since we do not believe the abbreviation will be confusing when combined with the rest of the required text. Allowing ''pass'' will also allow manufacturers to meet both the U.S. and Canadian requirements. However, we have decided against allowing manufacturers to use a universal symbol indicating that the passenger air bag is off in lieu of the written warning, because we believe such an action would be premature. We note that the agency has been working on harmonizing Standard No. 101, and that a universal ''air bag off'' symbol is being considered as part of this harmonization activity. It is possible that when Standard No. 101 is amended, the agency may decide to allow manufacturers to use a symbol rather than written text.

C. Owner's Manual Information

The final rule requires certain information be placed in the owner's manual of vehicles with advanced air bag systems. DaimlerChrysler requested the regulatory text specify that some of the required information need only be included in the owner's manual of vehicles with automatic suppression systems. We believe DaimlerChrysler has raised a valid point and have amended the regulatory text accordingly.

VIII. Issues Related to Phase-in Requirements for Small Volume Manufacturers

The final rule gave small volume manufacturers, as well as manufacturers of vehicles built in two or more stages, the maximum time allowable to certify to the new advanced air bag requirements. TEA 21 requires us to specify that all vehicles manufactured after August 31, 2006 must meet the new, advanced air bag requirements promulgated by the final rule. The rule defined a small vehicle manufacturer for purposes of this exclusion from the phase-in requirements as manufacturers that produce no more than 5,000 vehicles per year worldwide.

The Coalition of Small Volume Automobile Manufacturers (COSVAM) petitioned us to expand that definition to manufacturers of no more than 10,000 vehicles per year. Alternatively, it petitioned that the 5,000 vehicle cap be limited to vehicles sold in the United States per year or that the 5,000 vehicle cap be averaged over the phase-in period. Under the averaged proposal, if a manufacturer produced more than 5,000 vehicles in a single year, it could still take advantage of the exclusion as long as the average of production during the phase-in was not more than 5,000 vehicles per year.

We previously rejected COSVAM's position that the appropriate vehicle cap for small manufacturers be 10,000. COSVAM has offered no new arguments that would lead us to change our position on this. However, we recognize that currently only the United States requires advanced air bag technology under any timeframe. It is highly unlikely that the advanced air bag requirements will be required in another country sooner than in the U.S. Thus, we believe it is reasonable to limit the vehicle cap to not more than 5,000 vehicles produced or assembled by the original vehicle manufacturer for the U.S. market per year. This provision does not apply to registered importers because they are not original vehicle manufacturers. Likewise it would not apply to vehicles produced or assembled by the original vehicle manufacturer in one production year and then imported to the U.S. in the following production year.

We are rejecting the alternative that manufacturers be allowed to average vehicle production because we believe this alternative is more unwieldy than the one we have adopted, and because a dramatic increase in production over a short period of time could average out to 5,000 vehicles and still constitute a production volume for a single year of substantially more than 5,000 vehicles. We note, however, that the new criteria would be easier to meet than this option for any small volume manufacturer that sold vehicles anywhere other than in the United States.

IX. Other Issues

A. Dummy Containment

In the final rule, the agency defined the parameters for the dummy containment requirement that has long been part of Standard No. 208. Until the May 2000 final rule, the requirement read, ''all portions of the test dummy shall be contained within the outer surfaces of the vehicle passenger compartment throughout the test.'' The regulation did not define what was meant by ''throughout the test.'' In order to clarify the agency's longstanding position on this requirement, we amended this language in the final rule. The regulatory text now requires that the dummy be contained within the outer surfaces of the vehicle passenger compartment until both the dummies and the vehicle have stopped moving.

DaimlerChrysler argued in its petition that this clarification constitutes a new test requirement that was not subject to notice and comment. It also stated that the change has no demonstrable benefit or safety need and could have unforeseen consequences.

We disagree that the agency's characterization of when the test is over for the purpose of dummy containment was not subject to notice and comment. In the SNPRM, we noted that the requirement for dummy containment would remain in effect until the technician physically removed the dummy from the vehicle. We received no comments on this proposal. The requirement in the final rule that the dummy remain contained within the vehicle until both the dummies and the vehicle have stopped moving is actually less restrictive than the criteria presented in the SNPRM, although we believe the practical effect is the same. Additionally, we do not believe that specifying what ''throughout the test'' means imposes any additional burden on vehicle manufacturers. Rather, it merely clarifies the agency's longstanding position that the dummy remain fully contained within the vehicle until the test is definitively over. Since this is not a new requirement, there are neither any additional benefits nor any chance of unforseen consequences. However, we do believe that providing a specific frame of reference as to when the test is over helps manufacturers since there cannot be any doubt about what the agency means by requiring the dummy to remain inside the vehicle A''throughout the test.''

B. Partial Compliance

In its petition, Toyota asked the agency to confirm its understanding that it could certify vehicles without advanced air bag technologies to the 32–40 km/h (20–25 mph) unbelted barrier test in lieu of the sled test. Toyota's understanding of the partial compliance option is correct.

The final rule allows manufacturers to certify compliance with the unbelted performance requirements for the 50th percentile adult male dummy using the barrier at test speeds between 32 and 40 km/h (20–25 mph) as long as the dummies satisfy the new injury criteria as maximum injury values even if the vehicles are not certified to the other advanced air bag requirements. Alternatively, manufacturers may continue to certify compliance using the sled test, with its existing injury criteria, or the up-to-48 km/h (30 mph) unbelted barrier test, using its existing injury criteria. For vehicles certified to the new, advanced air bag requirements, only the first test option will be allowed. We note that, as with all the other compliance options, the vehicle manufacturer must advise us of which option it has used to certify compliance, and that election will be irrevocable.

C. Cross Reference for Test Duration

DaimlerChrysler noted that the regulatory text incorrectly references S4.10 as a cross reference for test duration for measuring injury criteria. DaimlerChrysler is correct that the proper cross-reference is S4.11. The regulatory text has accordingly been changed.

D. Combination of Standard No. 208's Oblique Barrier Test and Standard No. 301's Oblique Barrier TestFerrari requested the test speed for the oblique barrier test in Standard No. 301 be reduced to 40 km/h (25 mph). It stated that prior to the final rule, these two test requirements could be combined because the test configuration and test speed were the same. Ferrari believes that the adoption of a 40 km/h (25 mph) test speed for one, but not both tests, now requires additional tests. If it does not conduct separate tests, Ferrari claims it will be forced to design its vehicles to meet the Standard No. 208 test at 48 km/h (30 mph).

We recognize that vehicle manufacturers often ''piggyback'' dynamic compliance tests. They may run a single dynamic test that can be used to certify compliance to more than one safety standard. Nevertheless, we do not agree with Ferrari's contention that manufacturers will need to run additional tests or certify to the 48 km/h (30 mph) unbelted barrier test. The 48 km/h (30 mph) belted barrier test will remain in Standard No. 208 for all vehicles until September 1, 2007, when a higher belted barrier test speed of 56 km/h will be phased in for the 50th percentile adult male.[13] Since the Standard No. 301 barrier test does not measure injury criteria, there is no reason that a manufacturer could not continue to combine its Standard No.

[13] We hope to propose using the higher test speed for the 5th percentile adult female as well, beginning September 1, 2007.

301 test and Standard No. 208 belted barrier test until that time.

E. Effective Date for New Data Filtering Technique

The final rule specified that injury criteria be calculated using a phaseless digital filter. In its comments to the SNPRM, DaimlerChrysler had argued for using phaseless filters to measure Nij and had suggested the regulatory text specify the filters conform with SAE recommended practice J211. The final rule expanded on this request and, for the sake of consistency, specified the use of phaseless filters for measuring all injury criteria. Since no time frame was placed on the use of phaseless filters, the requirement became effective on June 12, 2000, the effective date of the final rule.

In its petition for reconsideration DaimlerChrysler urged that the effective date be changed to September 1, 2001. It argued that the June 12, 2000 effective date could negatively affect a manufacturer's ability to certify compliance with vehicles that were under production as of that date. It also requested we change the formulation of V in the existing sled test (S13.1).

The purpose of establishing an early effective date was two-fold. First, the early effective date allows manufacturers to earn credits for vehicles that meet the requirements of the advanced air bag final rule before the beginning of the phase-in. Second, the early effective date ensures that the final rule is published in the Code of Federal Regulations in a timely manner. However, the early effective date also imposed a new filtering requirement on all vehicles subject to Standard No. 208 on or after June 12, 2000.

We decided to specify the use of phaseless filters in response to DaimlerChrysler's comment to the SNPRM that phaseless filters should be used for measuring neck injury. We believe it is worthwhile to be consistent in requiring phaseless filters for all injury measurements. Accordingly, the final rule did not distinguish between neck injury measurements and other injury measurements in specifying phaseless filters. We believe that there is only a negligible difference in calculated injury criteria between data collected with phaseless filters and data collected without phaseless filters (less than 1.0 percent). Thus, we do not believe there should be any problem certifying compliance with the standard, even if the data was not collected using phaseless filters.

While we do not believe the new requirement will have any effect on a manufacturer's ability to certify compliance with the standard, we accept that the data collection for 2001 model year vehicles may have been done without such filters. Accordingly, we are changing the effective date for that portion of the final rule to September 1, 2001.

6. Use of human child to detect the presence of an infant

In the SNPRM to the May 2000 final rule, we proposed to allow manufacturers to certify compliance with the automatic suppression requirements using children and small adults because the existing test dummies are insufficiently biofidelic for all pattern recognition systems to recognize. We did not propose to allow manufacturers to use infants instead of the newborn or 12-month-old child dummies because all tests involving these dummies have the dummy placed in a child restraint. We received no comments on whether to use infants rather than test dummies, and we adopted the final rule without including infants in S29. Subsequent to the issuance of the final rule, we have become aware of occupant recognition technology that relies on the existence of a human to work. We believe this type of technology may be, in some respects, as good as or superior to technologies that rely solely on weight or the pattern of an object on the seat to determine whether to suppress the air bag. Since the absence of a provision allowing the use of a human infant would preclude this technology, and since our only reason for not including such a provision was because we were unaware of any emerging technology that required the use of a human infant, we have decided to amend S29 to allow the automatic suppression tests using a car bed and tests using a RFCRS or convertible child restraint be conducted with a child between 8.2 and 9.1 kg (18–20 lb) and between 61 and 66 cm (24–26 in).

10. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document has been reviewed by the Office of Management and Budget under E.O. 12866, ''Regulatory Planning and Review.'' The rulemaking action has also been determined to be significant under the Department's regulatory policies and procedures. The agency concludes that the impacts of today's amendments are so minimal that a regulatory evaluation is not required. Rather, readers who are interested in the costs and benefits of advanced air bags are referred to the agency's Final Economic Assessment for the May 2000 final rule. NHTSA has determined that the costs and benefits analysis provided in that document remain unchanged in response to today's rule.

B. Regulatory Flexibility Act

We have considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) This action will not have a significant economic impact on a substantial number of small businesses because it does not significantly change the requirements of the May 2000 final rule. Small organizations and small governmental units will not be significantly affected since the potential cost impacts associated with this rule should only slightly affect the price of new motor vehicles.

C. National Environmental Policy Act

NHTSA has analyzed this proposed amendment for the purposes of the National Environmental Policy Act and determined that it will not have any significant impact on the quality of the human environment.

D. Executive Order 13132 (Federalism)

The agency has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 and has determined that it does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The final rule has no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

The final rule is not intended to preempt state tort civil actions, except that the required labels must contain the required text, and no additional text, and any additional labels cannot misleading or confusing, as specified in the regulatory text.

E. Unfunded Mandate Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually

(adjusted for inflation with base year of 1995). While the May 2000 final rule is likely to result in over $100 million of annual expenditures by the private sector, today's final rule makes only small adjustments to the May 2000 rule. Accordingly, there will not be a significant increase in cost to the private sector.

F. Executive Order 12778 (Civil Justice Reform)

This final rule does not have any retroactive effect. Under section 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This rule does not propose any new information collection requirements.

H. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

I. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Standard No. 208 is extremely difficult to read as it contains multiple cross-references and has retained all of the requirements applicable to vehicle of different classes at different times. Because portions of today's rule amend existing text, much of that complexity remains. Additionally, the availability of multiple compliance options, differing injury criteria and a dual phase-in have added to the complexity of the regulation, particularly as the various requirements and options are accommodated throughout the initial phase-in. Once the initial phase-in is complete, much of the complexity will disappear. At that time, it would be appropriate to completely revise Standard No. 208 to remove any options, requirements, and differentiations as to vehicle class that are no longer applicable.

J. Executive Order 13045

Executive Order 13045 applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rulemaking directly involves decisions based on health risks that disproportionately affect children, namely, the risk of deploying air bags to children. However, this rulemaking serves to reduce, rather than increase, that risk.

K. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards [14] in its regulatory activities unless doing so would be inconsistent with applicable law (e.g., the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical. In meeting that requirement, we are required to consult with voluntary, private sector, consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the Society of Automotive Engineers (SAE), and the American National Standards Institute (ANSI). If NHTSA does not use available and potentially applicable voluntary consensus standards, we are required by the Act to provide Congress, through OMB, an explanation of the reasons for not using such standards.

The agency is not aware of any new voluntary consensus standards addressing the changes made to the May 2000 final rule as a result of this final rule.

List of Subjects in 49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, NHTSA amends 49 CFR Chapter V as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.208 is amended as follows:

A. By amending S4.5.1 by revising the heading, pearagraphs (b)(1), (b)(2) and (b)(3), (c), (f) and by adding paragraph (g).

B. By revising S4.11(a), S4.13, S6.6, S14.1(d), S14.3, S15.3.6 through S16.3.5.4, S18 and S18.1, S19 through S26.4, and S29 through S29.3.

C. By revising Appendix A.

The revisions and addition to § 571.208 read as follows:

§ 571.208 Standard No. 208; Occupant crash protection.

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S4.5.1 *Labeling and owner's manual information.*

* * * * *

(b) * * *

(1) Except as provided in S4.5.1(b)(2), each vehicle shall have a label permanently affixed to either side of the sun visor, at the manufacturer's option, at each front outboard seating position that is equipped with an inflatable restraint. The label shall conform in content to the label shown in either Figure 6a or 6b of this standard, as appropriate, and shall comply with the requirements of S4.5.1(b)(1)(i) through S4.5.1(b)(1)(iv).

(i) The heading area shall be yellow with the word ''WARNING'' and the alert symbol in black.

(ii) The message area shall be white with black text. The message area shall be no less than 30 cm^2 (4.7 in^2).

(iii) The pictogram shall be black with a red circle and slash on a white background. The pictogram shall be no less than 30 mm (1.2 in) in diameter.

(iv) If the vehicle does not have a back seat, the label shown in Figure 6a or 6b

[14] Voluntary consensus standards are technical standards developed or adopted by voluntary consensus standards bodies. Technical standards are defined by the NTTAA as ''performance-based or design-specific technical specifications and related management systems practices.'' They pertain to ''products and processes, such as size, strength, or technical performance of a product, process or material.''

may be modified by omitting the statement: ''The BACK SEAT is the SAFEST place for children.''

(2) Vehicles certified to meet the requirements specified in S19, S21, or S23, by means of an automatic suppression system, shall have a label permanently affixed to either side of the sun visor, at the manufacturer's option, at each front outboard seating position that is equipped with an inflatable restraint. The label shall conform in content to the label shown in Figure 8 of this standard and shall comply with the requirements of S4.5.1(b)(2)(i) through S4.5.1(b)(2)(iv).

(i) The heading area shall be yellow with the word ''WARNING'' and the alert symbol in black.

(ii) The message area shall be white with black text. The message area shall be no less than 30 cm^2 (4.7 in^2).

(iii) The pictogram shall be black on a white background. The pictogram shall be no less than 30 mm (1.2 in) in length.

(iv) If the vehicle does not have a back seat, the label shown in the figure may be modified by omitting the statement: ''The BACK SEAT is the SAFEST place for CHILDREN.''

(3) The vehicle manufacturer may, at its option, affix an additional label adjacent to the label shown in Figure 8 that provides specific information about the vehicle's advanced air bag system as long as the information is not confusing or misleading when read in conjunction with Figure 8.

(c) *Air bag alert label.* If the label required by S4.5.1(b) is not visible when the sun visor is in the stowed position, an air bag alert label shall be permanently affixed to that visor so that the label is visible when the visor is in that position. The label shall conform in content to the sun visor label shown in figure 6(c) of this standard, and shall comply with the requirements of S4.5.1(c)(1) through S4.5.1(c)(3).

(1) The message area shall be black with yellow text. The message area shall be no less than 20 square cm.

(2) The pictogram shall be black with a red circle and slash on a white background. The pictogram shall be no less than 20 mm in diameter.

(3) If a vehicle does not have an inflatable restraint at any front seating position other than that for the driver, the pictogram may be omitted from the label shown in figure 6c.

* * * * *

(f) *Information to appear in owner's manual.*

(1) The owner's manual for any vehicle equipped with an inflatable restraint system shall include an accurate description of the vehicle's air bag system in an easily understandable format. The owner's manual shall include a statement to the effect that the vehicle is equipped with an air bag and lap/shoulder belt at both front outboard seating positions, and that the air bag is a supplemental restraint at those seating positions. The information shall emphasize that all occupants, including the driver, should always wear their seat belts whether or not an air bag is also provided at their seating position to minimize the risk of severe injury or death in the event of a crash. The owner's manual shall also provide any necessary precautions regarding the proper positioning of occupants, including children, at seating positions equipped with air bags to ensure maximum safety protection for those occupants. The owner's manual shall also explain that no objects should be placed over or near the air bag on the instrument panel, because any such objects could cause harm if the vehicle is in a crash severe enough to cause the air bag to inflate.

(2) For any vehicle certified to meet the requirements specified in S14.5, S15, S17, S19, S21, S23, and S25, the manufacturer shall also include in the vehicle owner's manual a discussion of the advanced passenger air bag system installed in the vehicle. The discussion shall explain the proper functioning of the advanced air bag system and shall provide a summary of the actions that may affect the proper functioning of the system. The discussion shall include, at a minimum, accurate information on the following topics:

(i) A presentation and explanation of the main components of the advanced passenger air bag system.

(ii) An explanation of how the components function together as part of the advanced passenger air bag system.

(iii) The basic requirements for proper operation, including an explanation of the actions that may affect the proper functioning of the system.

(iv) For vehicles certified to meet the requirements of S19.2, S21.2 or S23.2, a complete description of the passenger air bag suppression system installed in the vehicle, including a discussion of any suppression zone.

(v) An explanation of the interaction of the advanced passenger air bag system with other vehicle components, such as seat belts, seats or other components.

(vi) A summary of the expected outcomes when child restraint systems, children and small teenagers or adults are both properly and improperly positioned in the passenger seat, including cautionary advice against improper placement of child restraint systems.

(vii) For vehicles certified to meet the requirements of S19.2, S21.2 or S23.2, a discussion of the telltale light, specifying its location in the vehicle and explaining when the light is illuminated.

(viii) Information on how to contact the vehicle manufacturer concerning modifications for persons with disabilities that may affect the advanced air bag system.

(g) *Additional labels placed elsewhere in the vehicle interior.* The language on additional air bag warning labels placed elsewhere in the vehicle interior shall not cause confusion or contradiction of any of the statements required in the air bag sun visor label, and shall be expressed in symbols, words and abbreviations required by this standard.

* * * * *

S4.11 *Test duration for purpose of measuring injury criteria.*

(a) For all barrier crashes, the injury criteria specified in this standard shall be met when calculated based on data recorded for 300 milliseconds after the vehicle strikes the barrier. For low risk deployment tests, the injury criteria shall be met when calculated based on data recorded for 125 milliseconds after the initiation of the final stage of air bag deployment designed to deploy in a barrier crash up to 26 km/h (16 mph).

* * * * *

S4.13 *Data channels.* For vehicles manufactured on or after September 1, 2001, all data channels used in injury criteria calculations shall be filtered using a phaseless digital filter, such as the Butterworth four-pole phaseless digital filter specified in Appendix C of SAE J211/1, rev. Mar 95, incorporated by reference in S4.7.

* * * * *

S6.6 *Neck injury.* When measuring neck injury, each of the following injury criteria shall be met.

(a) *Nij.*

(1) The shear force (Fx), axial force (Fz), and bending moment (My) shall be measured by the dummy upper neck load cell for the duration of the crash event as specified in S4.11. Shear force, axial force, and bending moment shall be filtered for Nij purposes at SAE J211/1 rev. Mar 95 Channel Frequency Class 600 (see S4.7).

(2) During the event, the axial force (Fz) can be either in tension or compression while the occipital condyle bending moment (Mocy) can be in either flexion or extension. This results in four possible loading conditions for Nij: tension-extension (Nte), tension-flexion (Ntf), compression-extension (Nce), or compression-flexion (Ncf).

(3) When calculating Nij using equation S6.6(a)(4), the critical values, Fzc and Myc, are:

(i) Fzc = 6806 N (1530 lbf) when Fz is in tension

(ii) Fzc = 6160 N (1385 lbf) when Fz is in compression

(iii) Myc = 310 Nm (229 lbf-ft) when a flexion moment exists at the occipital condyle

(iv) Myc = 135 Nm (100 lbf-ft) when an extension moment exists at the occipital condyle.

(4) At each point in time, only one of the four loading conditions occurs and the Nij value corresponding to that loading condition is computed and the three remaining loading modes shall be considered a value of zero. The expression for calculating each Nij loading condition is given by:

Nij = (Fz/Fzc) + (Mocy/Myc)

(5) None of the four Nij values shall exceed 1.0 at any time during the event.

(b) *Peak tension.* Tension force (Fz), measured at the upper neck load cell, shall not exceed 4170 N (937 lbf) at any time.

(c) *Peak compression.* Compression force (Fz), measured at the upper neck load cell, shall not exceed 4000 N (899 lbf) at any time.

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S14.1 *Vehicles manufactured on or after September 1, 2003, and before September 1, 2006.*

* * * * *

(d) Vehicles that are manufactured by an original vehicle manufacturer that produces or assembles fewer than 5,000 vehicles annually for sale in the United States are not subject to the requirements of S14.1.

* * * * *

S14.3 *Vehicles manufactured on or after September 1, 2007, and before September 1, 2010.*

(a) For vehicles manufactured for sale in the United States on or before September 1, 2007, and before September 1, 2010, a percentage of the manufacturer's production, as specified in S14.3.1, shall meet the requirements specified in S14.5.1(b) (in addition to the other requirements of this standard).

(b) Manufacturers that sell two or fewer carlines, as that term is defined at 49 CFR 583.4, in the United States may, at the option of the manufacturer, meet the requirements of this paragraph instead of paragraph (a) of this section. Each vehicle manufactured on or after September 1, 2008, and before September 1, 2010, shall meet the requirements specified in S14.5.1(b) (in addition to the other requirements specified in this standard).

(c) Vehicles that are manufactured in two or more stages or that are altered (within the meaning of 49 CFR 567.7) after having been previously certified in accordance with Part 567 of this chapter are not subject to the requirements of S14.3.

(d) Vehicles that are manufactured by an original vehicle manufacturer that produces or assembles fewer than 5,000 vehicles annually for sale in the United States are not subject to the requirements of S14.3.

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S15.3.6 *Neck injury.* When measuring neck injury, each of the following injury criteria shall be met.

(a) *Nij.*

(1) The shear force (Fx), axial force (Fz), and bending moment (My) shall be measured by the dummy upper neck load cell for the duration of the crash event as specified in S4.11. Shear force, axial force, and bending moment shall be filtered for Nij purposes at SAE J211/1 rev. Mar 95 Channel Frequency Class 600 (see S4.7).

(2) During the event, the axial force (Fz) can be either in tension or compression while the occipital condyle bending moment (Mocy) can be in either flexion or extension. This results in four possible loading conditions for Nij: Tension-extension (Nte), tension-flexion (Ntf), compression-extension (Nce), or compression-flexion (Ncf).

(3) When calculating Nij using equation S15.3.6(a)(4), the critical values, Fzc and Myc, are:

(i) Fzc = 4287 N (964 lbf) when Fz is in tension

(ii) Fzc = 3880 N (872 lbf) when Fz is in compression

(iii) Myc = 155 Nm (114 lbf-ft) when a flexion moment exists at the occipital condyle

(iv) Myc = 67 Nm (49 lbf-ft) when an extension moment exists at the occipital condyle.

(4) At each point in time, only one of the four loading conditions occurs and the Nij value corresponding to that loading condition is computed and the three remaining loading modes shall be considered a value of zero. The expression for calculating each Nij loading condition is given by:

Nij = (Fz/Fzc) + (Mocy/Myc)

(5) None of the four Nij values shall exceed 1.0 at any time during the event.

(b) *Peak tension.* Tension force (Fz), measured at the upper neck load cell, shall not exceed 2620 N (589 lbf) at any time.

(c) *Peak compression.* Compression force (Fz), measured at the upper neck load cell, shall not exceed 2520 N (566 lbf) at any time.

S15.3.7 Unless otherwise indicated, instrumentation for data acquisition, data channel frequency class, and moment calculations are the same as given for the 49 CFR Part 572, Subpart O Hybrid III 5th percentile female test dummy.

S16. *Test procedures for rigid barrier test requirements using 5th percentile adult female dummies.*

S16.1 *General provisions.* Crash testing to determine compliance with the requirements of S15 of this standard is conducted as specified in the following paragraphs (a) and (b).

(a) *Belted test.* Place a 49 CFR Part 572 Subpart O 5th percentile adult female test dummy at each front outboard seating position of a vehicle, in accordance with the procedures specified in S16.3 of this standard. Impact the vehicle traveling longitudinally forward at any speed, up to and including 48 km/h (30 mph), into a fixed rigid barrier that is perpendicular within a tolerance of ± 5 degrees to the line of travel of the vehicle under the applicable conditions of S16.2 of this standard.

(b) *Unbelted test.* Place a 49 CFR Part 572 Subpart O 5th percentile adult female test dummy at each front outboard seating position of a vehicle, in accordance with the procedures specified in S16.3 of this standard, except S16.3.5. Impact the vehicle traveling longitudinally forward at any speed, from 32 km/h (20 mph) to 40 km/h (25 mph), inclusive, into a fixed rigid barrier that is perpendicular within a tolerance of ± 5 degrees to the line of travel of the vehicle under the applicable conditions of S16.2 of this standard.

S16.2 *Test conditions.*

S16.2.1 The vehicle, including test devices and instrumentation, is loaded as in S8.1.1.

S16.2.2 Movable vehicle windows and vents are placed in the fully closed position, unless the vehicle manufacturer chooses to specify a different adjustment position prior to the time the vehicle is certified.

S16.2.3 Convertibles and open-body type vehicles have the top, if any, in place in the closed passenger compartment configuration.

S16.2.4 Doors are fully closed and latched but not locked.

S16.2.5 The dummy is clothed in form fitting cotton stretch garments with short sleeves and above the knee length pants. A size 7 1/2W shoe which meets the configuration and size specifications of MIL–S–21711E (see S4.7) or its equivalent is placed on each foot of the test dummy.

S16.2.6 Limb joints are set at one g, barely restraining the weight of the limb when extended horizontally. Leg joints are adjusted with the torso in the supine position.

S16.2.7 Instrumentation shall not affect the motion of dummies during impact.

S16.2.8 The stabilized temperature of the dummy is at any level between 20.6° C and 22.2° C (69° F to 72° F).

S16.2.9 *Steering wheel adjustment.*

S16.2.9.1 Adjust a tiltable steering wheel, if possible, so that the steering wheel hub is at the geometric center of its full range of driving positions.

S16.2.9.2 If there is no setting detent at the mid-position, lower the steering wheel to the detent just below the mid-position.

S16.2.9.3 If the steering column is telescoping, place the steering column in the mid-position. If there is no mid-position, move the steering wheel rearward one position from the mid-position.

S16.2.10 *Driver and passenger seat set-up.*

S16.2.10.1 *Lumbar support adjustment.* Position adjustable lumbar supports so that the lumbar support is in its lowest, retracted or deflated adjustment position.

S16.2.10.2 *Other seat adjustments.* Position any adjustable parts of the seat that provide additional support so that they are in the lowest or most open adjustment position.

S16.2.10.3 *Seat position adjustment.* If the passenger seat does not adjust independently of the driver seat, the driver seat shall control the final position of the passenger seat.

S16.2.10.3.1 If the seat is adjustable in the fore and aft and/or vertical directions, move the seat to the rearmost position at the full down height adjustment. If the seat cushion adjusts fore and aft, independent of the seat back, set this adjustment to the full rearward position. If the seat cushion contains a height adjustment, independent of the seat back, set this adjustment to the full down position. Record a seat cushion reference angle.

S16.2.10.3.2 Using only controls which move the seat fore and aft, move the seat to the full forward position. If seat adjustments other than fore-aft are present and the seat cushion reference angle changes from that measured in S16.2.10.3.1, use those adjustments to maintain as closely as possible the angle recorded in S16.2.10.3.1.

S16.2.10.3.3 If the seat height is adjustable, determine the maximum and minimum heights at this position, while maintaining, as closely as possible, the angle recorded in S16.2.10.3.1. Set the seat at the midpoint height with the seat cushion reference angle set as closely as possible to the angle recorded in S16.2.10.3.1. Mark location of the seat for future reference.

S16.3 *Dummy seating positioning procedures.* The 49 CFR Part 572 Subpart O 5th percentile adult female test dummy is positioned as follows:

S16.3.1 *General provisions and definitions.*

S16.3.1.1 All angles are measured with respect to the horizontal plane unless otherwise stated.

S16.3.1.2 The dummy's neck bracket is adjusted to align the zero degree index marks.

S16.3.1.3 The term ''midsagittal plane'' refers to the vertical plane that separates the dummy into equal left and right halves.

S16.3.1.4 The term ''vertical longitudinal plane'' refers to a vertical plane parallel to the vehicle's longitudinal centerline.

S16.3.1.5 The term ''vertical plane'' refers to a vertical plane, not necessarily parallel to the vehicle's longitudinal centerline.

S16.3.1.6 The term ''transverse instrumentation platform'' refers to the transverse instrumentation surface inside the dummy's skull casting to which the neck load cell mounts. This surface is perpendicular to the skull cap's machined inferior-superior mounting surface.

S16.3.1.7 The term ''thigh'' refers to the femur between, but not including, the knee and the pelvis.

S16.3.1.8 The term ''leg'' refers to the lower part of the entire leg including the knee.

S16.3.1.9 The term ''foot'' refers to the foot including the ankle.

S16.3.1.10 The longitudinal centerline of a bucket seat cushion is determined at the widest part of the seat cushion. Measure perpendicular to the longitudinal centerline of the vehicle.

S16.3.1.11 For leg and thigh angles use the following references:

S16.3.1.11.1 *Thigh*—a straight line on the thigh skin between the center of the ½–13 UNC–2B tapped hole in the upper leg femur clamp (see drawings 880105–504 (left thigh) and 880105–505 (right thigh), upper leg femur clamp) and the knee pivot shoulder bolt (part 880105–527 in drawing 880105–528R & 528L, sliding knee assy. w/o pot).

S16.3.1.11.2 *Leg*—a straight line on the leg skin between the center of the ankle shell (parts 880105–609 & 633 in drawing 880105–660, ankle assembly) and the knee pivot shoulder bolt (part 880105–527 in drawing 880105–528R & 528L, sliding knee assy. w/o pot).

S16.3.2 *Driver dummy positioning.*

S16.3.2.1 *Driver torso/head/seat back angle positioning.*

S16.3.2.1.1 With the seat in the position determined in S16.2.10, use only the controls which move the seat fore and aft to place the seat in the rearmost position, without adjusting independent height controls. If the seat cushion reference angle automatically changes as the seat is moved from the full forward position, maintain, as closely as possible, the seat cushion reference angle in S16.2.10.3.1, for the final forward position when measuring the pelvic angle as specified in S16.3.2.1.11.

S16.3.2.1.2. Fully recline the seat back, if adjustable. Install the dummy into the driver's seat, such that when the legs are positioned 120 degrees to the thighs, the calves of the legs are not touching the seat cushion.

S16.3.2.1.3 *Bucket seats.* Center the dummy on the seat cushion so that its midsagittal plane is vertical and coincides with the vertical longitudinal plane through the center of the seat cushion.

S16.3.2.1.4 *Bench seats.* Position the midsagittal plane of the dummy vertical and parallel to the vehicle's longitudinal centerline and aligned with the center of the steering wheel rim.

S16.3.2.1.5 Hold the dummy's thighs down and push rearward on the upper torso to maximize the dummy's pelvic angle.

S16.3.2.1.6 Place the legs at 120 degrees to the thighs. Set the initial transverse distance between the longitudinal centerlines at the front of the dummy's knees at 160 to 170 mm (6.3 to 6.7 in), with the thighs and legs of the dummy in vertical planes. Push rearward on the dummy's knees to force the pelvis into the seat so there is no gap between the pelvis and the seat back or until contact occurs between the back of the dummy's calves and the front of the seat cushion.

S16.3.2.1.7 Gently rock the upper torso relative to the lower torso laterally in a side to side motion three times through a ±5 degree arc (approximately 51 mm (2 in) side to side) to reduce friction between the dummy and the seat.

S16.3.2.1.8 If needed, extend the legs slightly so that the feet are not in contact with the floor pan. Let the thighs rest on the seat cushion to the extent permitted by the foot movement. Keeping the leg and the thigh in a vertical plane, place the foot in the vertical longitudinal plane that passes through the centerline of the accelerator pedal. Rotate the left thigh outboard about the hip until the center of the knee is the same distance from the

midsagittal plane of the dummy as the right knee ±5 mm (±0.2 in). Using only controls which move the seat fore and aft, attempt to return the seat to the full forward position. If either of the dummy's legs first contacts the steering wheel, then adjust the steering wheel, if adjustable, upward until contact with the steering wheel is avoided. If the steering wheel is not adjustable, separate the knees enough to avoid steering wheel contact. Proceed with moving the seat forward until either the leg contacts the vehicle interior or the seat reaches the full forward position. (The right foot may contact and depress the accelerator and/or change the angle of the foot with respect to the leg during seat movement.) If necessary to avoid contact with the vehicles brake or clutch pedal, rotate the test dummy's left foot about the leg. If there is still interference, rotate the left thigh outboard about the hip the minimum distance necessary to avoid pedal interference. If a dummy leg contacts the vehicle interior before the full forward position is attained, position the seat at the next detent where there is no contact. If the seat is a power seat, move the seat fore and aft to avoid contact while assuring that there is a maximum of 5 mm (0.2 in) distance between the vehicle interior and the point on the dummy that would first contact the vehicle interior. If the steering wheel was moved, return it to the position described in S16.2.9. If the steering wheel contacts the dummy's leg(s) prior to attaining this position, adjust it to the next higher detent, or if infinitely adjustable, until there is 5 mm (0.2 in) clearance between the wheel and the dummy's leg(s).

S16.3.2.1.9 For vehicles without adjustable seat backs, adjust the lower neck bracket to level the head as much as possible. For vehicles with adjustable seat backs, while holding the thighs in place, rotate the seat back forward until the transverse instrumentation platform of the head is level to within ±0.5 degree, making sure that the pelvis does not interfere with the seat bight. Inspect the abdomen to ensure that it is properly installed. If the torso contacts the steering wheel, adjust the steering wheel in the following order until there is no contact: telescoping adjustment, lowering adjustment, raising adjustment. If the vehicle has no adjustments or contact with the steering wheel cannot be eliminated by adjustment, position the seat at the next detent where there is no contact with the steering wheel as adjusted in S16.2.9. If the seat is a power seat, position the seat to avoid contact while assuring that there is a maximum of 5 mm (0.2 in) distance between the steering wheel as adjusted in S16.2.9 and the point of contact on the dummy.

S16.3.2.1.10 If it is not possible to achieve the head level within ±0.5 degrees, minimize the angle.

S16.3.2.1.11 Measure and set the dummy's pelvic angle using the pelvic angle gage (drawing TE–2504, incorporated by reference in 49 CFR Part 572, Subpart O, of this chapter). The angle shall be set to 20.0 degrees ±2.5 degrees. If this is not possible, adjust the pelvic angle as close to 20.0 degrees as possible while keeping the transverse instrumentation platform of the head as level as possible by adjustments specified in S16.3.2.1.9 and S16.3.2.1.10.

S16.3.2.1.12 If the dummy is contacting the vehicle interior after these adjustments, move the seat rearward until there is a maximum of 5 mm (0.2 in) between the contact point of the dummy and the interior of the vehicle or if it has a manual seat adjustment, to the next rearward detent position. If after these adjustments, the dummy contact point is more than 5 mm (0.2 in) from the vehicle interior and the seat is still not in its forwardmost position, move the seat forward until the contact point is 5 mm (0.2 in) or less from the vehicle interior, or if it has a manual seat adjustment, move the seat to the closest detent position without making contact, or until the seat reaches its forwardmost position, whichever occurs first.

S16.3.2.2 *Driver foot positioning.*

S16.3.2.2.1 If the vehicle has an adjustable accelerator pedal, adjust it to the full forward position. Rest the right foot of the test dummy on the undepressed accelerator pedal with the rearmost point of the heel on the floor pan in the plane of the pedal. If the foot cannot be placed on the accelerator pedal, set it initially perpendicular to the leg and then place it as far forward as possible in the direction of the pedal centerline with the rearmost point of the heel resting on the floor pan. If the vehicle has an adjustable accelerator pedal and the right foot is not touching the accelerator pedal when positioned as above, move the pedal rearward until it touches the right foot. If the accelerator pedal in the full rearward position still does not touch the foot, leave the pedal in that position.

S16.3.2.2.2 If the ball of the foot does not contact the pedal, change the angle of the foot relative to the leg such that the toe of the foot contacts the undepressed accelerator pedal.

S16.3.2.2.3 Place the left foot on the toe-board with the rearmost point of the heel resting on the floor pan as close as possible to the point of intersection of the planes described by the toe-board and floor pan, and not on the wheel-well projection or foot rest.

S16.3.2.2.4 If the left foot cannot be positioned on the toe board, place the foot perpendicular to the lower leg centerline as far forward as possible with the heel resting on the floor pan.

S16.3.2.2.5 If necessary to avoid contact with the vehicle's brake or clutch pedal, rotate the test dummy's left foot about the lower leg. If there is still pedal interference, rotate the left leg outboard about the hip the minimum distance necessary to avoid the pedal interference. If the left foot does not contact the floor pan, place the foot parallel to the floor and place the leg as perpendicular to the thigh as possible.

S16.3.2.3 *Driver arm/hand positioning.*

S16.3.2.3.1 Place the dummy's upper arms adjacent to the torso with the arm centerlines as close to a vertical longitudinal plane as possible.

S16.3.2.3.2 Place the palms of the dummy in contact with the outer part of the steering wheel rim at its horizontal centerline with the thumbs over the steering wheel rim.

S16.3.2.3.3 If it is not possible to position the thumbs inside the steering wheel rim at its horizontal centerline, then position them above and as close to the horizontal centerline of the steering wheel rim as possible.

S16.3.2.3.4 Lightly tape the hands to the steering wheel rim so that if the hand of the test dummy is pushed upward by a force of not less than 9 N (2 lb) and not more than 22 N (5 lb), the tape releases the hand from the steering wheel rim.

S16.3.3 *Passenger dummy positioning.*

S16.3.3.1 *Passenger torso/head/seat back angle positioning.*

S16.3.3.1.1 With the seat in the position determined in S16.2.10, use only the controls which move the seat fore and aft to place the seat in the rearmost position, without adjusting independent height controls. If the seat cushion reference angle automatically changes as the seat is moved from the full forward position, maintain as closely as possible the seat cushion reference angle in S16.2.10.3.1, for the final forward position when measuring the pelvic angle as specified in S16.3.3.1.11.

S16.3.3.1.2 Fully recline the seat back, if adjustable. Install the dummy into the passenger's seat, such that when the legs are 120 degrees to the thighs, the calves of the legs are not touching the seat cushion.

S16.3.3.1.3 *Bucket seats.* Center the dummy on the seat cushion so that its midsagittal plane is vertical and coincides with the vertical longitudinal plane through the center of the seat cushion.

S16.3.3.1.4 *Bench seats.* Position the midsagittal plane of the dummy vertical and parallel to the vehicle's longitudinal centerline and the same distance from the vehicle's longitudinal centerline as the midsagittal plane of the driver dummy.

S16.3.3.1.5 Hold the dummy's thighs down and push rearward on the upper torso to maximize the dummy's pelvic angle.

S16.3.3.1.6 Place the legs at 120 degrees to the thighs. Set the initial transverse distance between the longitudinal centerlines at the front of the dummy's knees at 160 to 170 mm (6.3 to 6.7 in), with the thighs and legs of the dummy in vertical planes. Push rearward on the dummy's knees to force the pelvis into the seat so there is no gap between the pelvis and the seat back or until contact occurs between the back of the dummy's calves and the front of the seat cushion.

S16.3.3.1.7 Gently rock the upper torso relative to the lower torso laterally side to side three times through a ±5 degree arc (approximately 51 mm (2 in) side to side).

S16.3.3.1.8 If needed, extend the legs slightly so that the feet are not in contact with the floor pan. Let the thighs rest on the seat cushion to the extent permitted by the foot movement. With the feet perpendicular to the legs, place the heels on the floor pan. If a heel will not contact the floor pan, place it as close to the floor pan as possible. Using only controls which move the seat fore and aft, attempt to return the seat to the full forward position. If a dummy leg contacts the vehicle interior before the full forward position is attained, position the seat at the next detent where there is no contact. If the seats are power seats, position the seat to avoid contact while assuring that there is a maximum of 5 mm (0.2 in) distance between the vehicle interior and the point on the dummy that would first contact the vehicle interior.

S16.3.3.1.9 For vehicles without adjustable seat backs, adjust the lower neck bracket to level the head as much as possible. For vehicles with adjustable seat backs, while holding the thighs in place, rotate the seat back forward until the transverse instrumentation platform of the head is level to within ±0.5 degrees, making sure that the pelvis does not interfere with the seat bight. Inspect the abdomen to insure that it is properly installed.

S16.3.3.1.10 If it is not possible to orient the head level within ±0.5 degrees, minimize the angle.

S16.3.3.1.11 Measure and set the dummy's pelvic angle using the pelvic angle gage (drawing TE–2504, incorporated by reference in 49 CFR Part 572, Subpart O, of this chapter). The angle shall be set to 20.0 degrees ±2.5 degrees. If this is not possible, adjust the pelvic angle as close to 20.0 degrees as possible while keeping the transverse instrumentation platform of the head as level as possible as specified in S16.3.3.1.9 and S16.3.3.1.10.

S16.3.3.1.12 If the dummy is contacting the vehicle interior after these adjustments, move the seat rearward until there is a maximum of 5 mm (0.2 in) between the contact point of the dummy and the interior of the vehicle or if it has a manual seat adjustment, to the next rearward detent position. If after these adjustments the dummy contact point is more than 5 mm (0.2 in) from the vehicle interior and the seat is still not in its forward most position, move the seat forward until the contact point is 5 mm (0.2 in) or less from the vehicle interior, or if it has a manual seat adjustment, move the seat to the closest detent position without making contact, or until the seat reaches its forward most position, whichever occurs first.

S16.3.3.2 *Passenger foot positioning.*

S16.3.3.2.1 Place the passenger's feet flat on the toe board.

S16.3.3.2.2 If the feet cannot be placed flat on the toe board, set them perpendicular to the leg center lines and place them as far forward as possible with the heels resting on the floor pan.

S16.3.3.3 *Passenger arm/hand positioning.*

S16.3.3.3.1 Place the dummy's upper arms in contact with the seat back and the torso.

S16.3.3.3.2 Place the palms of the dummy in contact with the outside of the thighs.

S16.3.3.3.3 Place the little fingers in contact with the seat cushion.

S16.3.4 *Driver and passenger adjustable head restraints.*

S16.3.4.1. If the head restraint has an automatic adjustment, leave it where the system positions the restraint after the dummy is placed in the seat.

S16.3.4.2 Adjust each head restraint to its lowest position.

S16.3.4.3 Measure the vertical distance from the top most point of the head restraint to the bottom most point. Locate a horizontal plane through the midpoint of this distance. Adjust each head restraint vertically so that this horizontal plane is aligned with the center of gravity (CG) of the dummy head.

S16.3.4.3 If the above position is not attainable, move the vertical center of the head restraint to the closest detent below the center of the head CG.

S16.3.4.4 If the head restraint has a fore and aft adjustment, place the restraint in the forwardmost position or until contact with the head is made, whichever occurs first.

S16.3.5 *Driver and passenger manual belt adjustment (for tests conducted with a belted dummy)*

S16.3.5.1 If an adjustable seat belt D-ring anchorage exists, place it in the manufacturer's design position for a 5th percentile adult female with the seat in the position specified in S16.2.10.3.

S16.3.5.2 Place the Type 2 manual belt around the test dummy and fasten the latch.

S16.3.5.3 Ensure that the dummy's head remains as level as possible, as specified in S16.3.2.1.9 and S16.3.2.1.10 and S16.3.3.1.9 and S16.3.3.1.10.

S16.3.5.4 Remove all slack from the lap belt. Pull the upper torso webbing out of the retractor and allow it to retract; repeat this operation four times. Apply a 9 N (2 lbf) to 18 N (4 lbf) tension load to the lap belt. If the belt system is equipped with a tension-relieving device, introduce the maximum amount of slack into the upper torso belt that is recommended by the manufacturer. If the belt system is not equipped with a tension-relieving device, allow the excess webbing in the shoulder belt to be retracted by the retractive force of the retractor.

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S18 *Test procedure for offset frontal deformable barrier requirements using 5th percentile adult female dummies.*

S18.1 *General provisions.* Place a 49 CFR Part 572 Subpart O 5th percentile adult female test dummy at each front outboard seating position of a vehicle, in accordance with the procedures specified in S16.3 of this standard. Impact the vehicle traveling longitudinally forward at any speed, up to and including 40 km/h (25 mph), into a fixed offset deformable barrier under the conditions and procedures specified in S18.2 of this standard, impacting only the left side of the vehicle.

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S19 *Requirements to provide protection for infants in rear facing and convertible child restraints and car beds.*

S19.1 Each vehicle certified as complying with S14 shall, at the option of the manufacturer, meet the requirements specified in S19.2 or S19.3, under the test procedures specified in S20.

S19.2 *Option 1—Automatic suppression feature.* Each vehicle shall meet the requirements specified in S19.2.1 through S19.2.3.

S19.2.1 The vehicle shall be equipped with an automatic suppression feature for the passenger air bag which results in deactivation of the air bag during each of the static tests specified in S20.2 (using the 49 CFR Part 572 Subpart R 12-month-old CRABI child dummy in any of the child restraints identified in sections B and C of appendix A of this standard and the 49 CFR part 572 subpart K Newborn Infant dummy in any of the car beds identified in section A of appendix A, as appropriate), and activation of the air bag system during each of the static tests specified in S20.3 (using the 49 CFR Part 572 Subpart O 5th percentile adult female dummy).

S19.2.2 The vehicle shall be equipped with at least one telltale which emits light whenever the passenger air bag system is deactivated and does not emit light whenever the passenger air bag system is activated, except that the telltale(s) need not illuminate when the passenger seat is unoccupied. Each telltale:

(a) Shall emit yellow light;

(b) Shall have the identifying words ''PASSENGER AIR BAG OFF'' or ''PASS AIR BAG OFF'' on the telltale or within 25 mm (1.0 in) of the telltale; and

(c) Shall not be combined with the readiness indicator required by S4.5.2 of this standard.

(d) Shall be located within the interior of the vehicle and forward of and above the design H-point of both the driver's and the right front passenger's seat in their forwardmost seating positions and shall not be located on or adjacent to a surface that can be used for temporary or permanent storage where use of the storage space could obscure the telltale from either the driver's or right front passenger's view, or where the telltale would be obscured from the driver's view if a rear facing child restraint is installed in the right front passenger's seat.

(e) Shall be visible and recognizable to a driver and right front passenger during night and day when the occupants have adapted to the ambient light roadway conditions.

(f) Telltales need not be visible or recognizable when not activated.

(g) Means shall be provided for making telltales and their identification visible and recognizable to the driver and right front passenger under all driving conditions. The means for providing the required visibility may be adjustable manually or automatically, except that the telltales and their identifications may not be adjustable under any driving conditions to a level that they become invisible or not recognizable to the driver and right front passenger.

(h) The telltale must not emit light except when the passenger air bag is urned off or during a bulb check upon vehicle starting.

S19.2.3 The vehicle shall be equipped with a mechanism that indicates whether the air bag system is suppressed, regardless of whether the passenger seat is occupied. The mechanism need not be located in the occupant compartment unless it is the telltale described in S19.2.2.

S19.3 *Option 2—Low risk deployment.* Each vehicle shall meet the injury criteria specified in S19.4 of this standard when the passenger air bag is deployed in accordance with the procedures specified in S20.4.

S19.4 *Injury criteria for the 49 CFR Part 572, Subpart R 12-month-old CRABI test dummy.*

S19.4.1 All portions of the test dummy and child restraint shall be contained within the outer surfaces of the vehicle passenger compartment.

S19.4.2 Head injury criteria.

(a) For any two points in time, t_1 and t_2, during the event which are separated by not more than a 15 millisecond time interval and where t_1 is less than t_2, the head injury criterion (HIC_{15}) shall be determined using the resultant head acceleration at the center of gravity of the dummy head, a_r, expressed as a multiple of g (the acceleration of gravity) and shall be calculated using the expression:

$$\left[\frac{1}{(t_2 t_1)}\int_{t_1}^{t_2} a_r dt\right]^{2.5} (t_2 t_1)$$

(b) The maximum calculated HIC_{15} value shall not exceed 390.

S19.4.3 The resultant acceleration calculated from the output of the thoracic instrumentation shall not exceed 50 g's, except for intervals whose cumulative duration is not more than 3 milliseconds.

S19.4.4 *Neck injury.* When measuring neck injury, each of the following injury criteria shall be met.

(a) *Nij.*

(1) The shear force (Fx), axial force (Fz), and bending moment (My) shall be measured by the dummy upper neck load cell for the duration of the crash event as specified in S4.11. Shear force, axial force, and bending moment shall be filtered for Nij purposes at SAE J211/1 rev. Mar95 Channel Frequency Class 600 (see S4.7).

(2) During the event, the axial force (Fz) can be either in tension or compression while the occipital condyle bending moment (Mocy) can be in either flexion or extension. This results in four possible loading conditions for Nij: tension-extension (Nte), tension-flexion (Ntf), compression-extension (Nce), or compression-flexion (Ncf).

(3) When calculating Nij using equation S19.4.4(a)(4), the critical values, Fzc and Myc, are:

(i) Fzc = 1460 N (328 lbf) when Fz is in tension

(ii) Fzc = 1460 N (328 lbf) when Fz is in compression

(iii) Myc = 43 Nm (32 lbf-ft) when a flexion moment exists at the occipital condyle

(iv) Myc = 17 Nm (13 lbf-ft) when an extension moment exists at the occipital condyle.

(4) At each point in time, only one of the four loading conditions occurs and the Nij value corresponding to that loading condition is computed and the three remaining loading modes shall be considered a value of zero. The expression for calculating each Nij loading condition is given by:

Nij ' (Fz / Fzc) + (Mocy / Myc)

(5) None of the four Nij values shall exceed 1.0 at any time during the event.

(b) *Peak tension.* Tension force (Fz), measured at the upper neck load cell, shall not exceed 780 N (175 lbf) at any time.

(c) *Peak compression.* Compression force (Fz), measured at the upper neck load cell, shall not exceed 960 N (216 lbf) at any time.

S19.4.5 Unless otherwise indicated, instrumentation for data acquisition, data channel frequency class, and moment calculations are the same as given for the 49 CFR Part 572 Subpart R 12-month-old CRABI test dummy.

S20 *Test procedure for S19.*

S20.1 *General provisions.*

S20.1.1 Tests specifying the use of a car bed, a rear facing child restraint, or a convertible child restraint may be conducted using any such restraint listed in sections A, B, and C of Appendix A of this standard respectively. The car bed, rear facing child restraint, or convertible child restraint may be unused or have been previously used only for automatic suppression tests. If it has been used, there shall not be any visible damage prior to the test.

S20.1.2 Each vehicle certified to this option shall comply in tests conducted with the right front outboard seating position, if adjustable fore and aft, at full rearward, middle, and full forward positions. If the child restraint or dummy contacts the vehicle interior,

move the seat rearward to the next detent that provides clearance. If the seat is a power seat, move the seat rearward while assuring that there is a maximum of 5 mm (0.2 in) clearance.

S20.1.3 If the car bed, rear facing child restraint, or convertible child restraint is equipped with a handle, the vehicle shall comply in tests conducted with the handle at both the child restraint manufacturer's recommended position for use in vehicles and in the upright position.

S20.1.4 If the car bed, rear facing child restraint, or convertible child restraint is equipped with a sunshield, the vehicle shall comply in tests conducted with the sunshield both fully open and fully closed.

S20.1.5 The vehicle shall comply in tests with the car bed, rear facing child restraint, or convertible child restraint uncovered and in tests with a towel or blanket weighing up to 1.0 kg (2.2 lb) placed on or over the restraint in any of the following positions:

(a) with the blanket covering the top and sides of the restraint, and

(b) with the blanket placed from the top of the vehicle's seat back to the forwardmost edge of the restraint.

S20.1.6 Except as otherwise specified, if the car bed, rear facing child restraint, or convertible child restraint has an anchorage system as specified in S5.9 of FMVSS No. 213 and is tested in a vehicle with a right front outboard vehicle seat that has an anchorage system as specified in FMVSS No. 225, the vehicle shall comply with the belted test conditions with the restraint anchorage system attached to the vehicle seat anchorage system and the vehicle seat belt unattached. It shall also comply with the belted test conditions with the restraint anchorage system unattached to the vehicle seat anchorage system and the vehicle seat belt attached. The vehicle shall comply with the unbelted test conditions with the restraint anchorage system unattached to the vehicle seat anchorage system.

S20.1.7 If the car bed, rear facing child restraint, or convertible child restraint comes equipped with a detachable base, the vehicle shall comply in tests conducted with the detachable base attached to the child restraint and with the detachable base unattached to the child restraint.

S20.1.8 Do not attach any tethers.

S20.1.9 *Seat set-up.* Unless otherwise stated,

S20.1.9.1 *Lumbar support adjustment.* Position adjustable lumbar supports so that the lumbar support is in its lowest, retracted or deflated adjustment position.

S20.1.9.2 *Other seat adjustments.* Position any adjustable parts of the seat that provide additional support so that they are in the lowest or most open adjustment position.

S20.1.9.3 If the seat cushion adjusts fore and aft, independent of the seat back, set this adjustment to the full rearward position.

S20.1.9.4 If the seat height is adjustable, determine the maximum and minimum heights at the full rearward, middle, and full forward positions. Set the seat at the mid-point height for each of the three fore-aft test positions.

S20.1.9.5 The seat back angle, if adjustable, is set at the manufacturer's nominal design seat back angle for a 50th percentile adult male as specified in S8.1.3.

S20.1.9.6 If adjustable, set the head restraint at the full down and full forward position.

S20.1.10 The longitudinal centerline of a bucket seat cushion is determined at the widest part of the seat cushion. Measure perpendicular to the longitudinal centerline of the vehicle.

S20.2 *Static tests of automatic suppression feature which shall result in deactivation of the passenger air bag.* Each vehicle that is certified as complying with S19.2 shall meet the following test requirements.

S20.2.1 *Belted rear facing and convertible child restraints.*

S20.2.1.1 The vehicle shall comply in tests using any child restraint specified in section B and section C of Appendix A of this standard.

S20.2.1.2 Locate a vertical plane through the longitudinal centerline of the child restraint. This will be referred to as ''Plane''.

S20.2.1.3 For bucket seats, ''Plane B'' refers to a vertical plane parallel to the vehicle longitudinal centerline through the longitudinal centerline of the right front outboard vehicle seat cushion. For bench seats, ''Plane B'' refers to a vertical plane through the right front outboard vehicle seat parallel to the vehicle longitudinal centerline the same distance from the longitudinal centerline of the vehicle as the center of the steering wheel.

S20.2.1.4 *Facing rear.*

(a) The vehicle shall comply in both of the following positions, if applicable:

(1) Without attaching the child restraint anchorage system as specified in S5.9 of FMVSS No. 213 to a vehicle seat anchorage system specified in FMVSS No. 225, align the child restraint system facing rearward such that Plane A is aligned with Plane B.

(2) If the child restraint is certified to S5.9 of FMVSS No. 213, and the vehicle seat has an anchorage system as specified in FMVSS No. 225, attach the child restraint to the vehicle seat anchorage instead of aligning the planes. Do not attach the vehicle safety belt.

(b) While maintaining the child restraint positions achieved in S20.2.1.4(a), secure the child restraint by following, to the extent possible, the child restraint manufacturer's directions regarding proper installation of the restraint in the rear facing mode.

(c) Place any adjustable seat belt anchorages at the vehicle manufacturer's nominal design position for a 50th percentile adult male occupant. Cinch the vehicle belts to any tension from zero up to 134 N (30 lb) to secure the child restraint. Measure belt tension in a flat, straight section of the lap belt between the child restraint belt path and the contact point with the belt anchor or vehicle seat, on the side away from the buckle (to avoid interference from the shoulder portion of the belt).

(d) Position the 49 CFR Part 572 Subpart R 12-month-old CRABI dummy in the child restraint by following, to the extent possible, the manufacturer's instructions provided with the child restraint for seating infants.

(e) Start the vehicle engine or place the ignition in the ''on'' position, whichever will turn on the suppression system, and close all vehicle doors. Wait 10 seconds, then check whether the air bag is deactivated.

S20.2.1.5 *Facing forward (convertible restraints only).*

(a) The vehicle shall comply in both of the following positions, if applicable:

(1) Without attaching the child restraint anchorage system as specified in S5.9 of FMVSS No. 213 to a vehicle seat anchorage system specified in FMVSS No. 225, align the child restraint system facing forward such that Plane A is aligned with Plane B.

(2) If the child restraint is certified to S5.9 of FMVSS No. 213, and the vehicle seat has an anchorage system as specified in FMVSS No. 225, attach the child restraint to the vehicle seat anchorage instead of aligning the planes. Do not attach the vehicle safety belt.

(b) While maintaining the child restraint positions achieved in S20.2.1.5(a), secure the child restraint by following, to the extent possible, the child restraint manufacturer's directions regarding proper installation of the restraint in the forward facing mode.

(c) Place any adjustable seat belt anchorages at the vehicle manufacturer's nominal design position for a 50th percentile adult male occupant. Cinch the vehicle belts to any tension from zero up to 134 N (30 lb) to

secure the child restraint. Measure belt tension in a flat, straight section of the lap belt between the child restraint belt path and the contact point with the belt anchor or vehicle seat, on the side away from the buckle (to avoid interference from the shoulder portion of the belt).

(d) Position the 49 CFR Part 572 Subpart R 12-month-old CRABI dummy in the child restraint by following, to the extent possible, the manufacturer's instructions provided with the child restraint for seating infants.

(e) Start the vehicle engine or place the ignition in the ''on'' position, whichever will turn on the suppression system, and close all vehicle doors. Wait 10 seconds, then check whether the air bag is deactivated.

S20.2.2 *Unbelted rear facing and convertible child restraints.*

S20.2.2.1 The vehicle shall comply in tests using any child restraint specified in section B and section C of appendix A of this standard.

S20.2.2.2 Locate a vertical plane through the longitudinal centerline of the child restraint. This will be referred to as ''Plane A''.

S20.2.2.3 For bucket seats, ''Plane B'' refers to a vertical plane parallel to the vehicle longitudinal centerline through the longitudinal centerline of the right front outboard vehicle seat cushion. For bench seats, ''Plane B'' refers to a vertical plane through the right front outboard seat parallel to the vehicle longitudinal centerline the same distance from the longitudinal centerline of the vehicle as the center of the steering wheel.

S20.2.2.4 *Facing rear.*

(a) Align the child restraint system facing rearward such that Plane A is aligned with Plane B and the child restraint is in contact with the seat back.

(b) Position the 49 CFR Part 572 Subpart R 12-month-old CRABI dummy in the child restraint by following, to the extent possible, the manufacturer's instructions provided with the child restraint for seating infants.

(c) Start the vehicle engine or place the ignition in the ''on'' position, whichever will turn on the suppression system, and close all vehicle doors. Wait 10 seconds, then check whether the air bag is deactivated.

S20.2.2.5 *Facing forward.*

(a) Align the child restraint system facing forward such that Plane A is aligned with Plane B and the child restraint is in contact with the seat back.

(b) Position the 49 CFR Part 572 Subpart R 12-month-old CRABI dummy in the child restraint by following, to the extent possible, the manufacturer's instructions provided with the child restraint for seating infants.

(c) Start the vehicle engine or place the ignition in the ''on'' position, whichever will turn on the suppression system, and close all vehicle doors. Wait 10 seconds, then check whether the air bag is deactivated.

S20.2.3 *Tests with a belted car bed.*

S20.2.3.1 The vehicle shall comply in tests using any car bed specified in section A of Appendix A of this standard.

S20.2.3.2 (a) Install the car bed by following, to the extent possible, the car bed manufacturer's directions regarding proper installation of the car bed.

(b) Place any adjustable seat belt anchorages at the vehicle manufacturer's nominal design position for a 50th percentile adult male occupant. Cinch the vehicle belts to secure the car bed.

(c) Position the 49 CFR Part 572 Subpart K Newborn Infant dummy in the car bed by following, to the extent possible, the car bed manufacturer's instructions provided with the car bed for positioning infants.

(d) Start the vehicle engine or place the ignition in the ''on'' position, whichever will turn on the suppression system, and close all vehicle doors. Wait 10 seconds, then check whether the air bag is deactivated.

S20.3 *Static tests of automatic suppression feature which shall result in activation of the passenger air bag system.*

S20.3.1 Each vehicle certified to this option shall comply in tests conducted with the right front outboard seating position, if adjustable fore and aft, at the full rearward, middle, and, subject to S16.3.3.1.8, full forward positions. All tests are conducted with the seat height, if adjustable, in the mid-height position.

S20.3.2 Place a 49 CFR Part 572 Subpart O 5th percentile adult female test dummy at the right front outboard seating position of the vehicle, in accordance with procedures specified in S16.3.3 of this standard, except as specified in S20.3.1, subject to the fore-aft seat positions in S20.3.1. Do not fasten the seat belt.

S20.3.3 Start the vehicle engine or place the ignition in the ''on'' position, whichever will turn on the suppression system, and then close all vehicle doors.

S20.3.4 Wait 10 seconds, then check whether the air bag system is activated.

S20.4 *Low risk deployment test.* Each vehicle that is certified as complying with S19.3 shall meet the following test requirements.

S20.4.1 Position the right front outboard vehicle seat in the full forward seat track position, adjust the seat height (if adjustable) to the mid-height position, and adjust the seat back (if adjustable) to the nominal design position for a 50th percentile adult male as specified in S8.1.3. Position adjustable lumbar supports so that the lumbar support is in its lowest, retracted or deflated adjustment position. Position any adjustable parts of the seat that provide additional support so that they are in the lowest or most open adjustment position. If the seat cushion adjusts fore and aft, independent of the seat back, set this adjustment to the full rearward position. If adjustable, set the head restraint at the full down position. If the child restraint or dummy contacts the vehicle interior, move the seat rearward to the next detent that provides clearance. If the seat is a power seat, move the seat rearward while assuring that there is a maximum of 5 mm (0.2 in) clearance.

S20.4.2 The vehicle shall comply in tests using any child restraint specified in section B and section C of appendix A to this standard.

S20.4.3 Locate a vertical plane through the longitudinal centerline of the child restraint. This will be referred to as ''Plane A''.

S20.4.4 For bucket seats, ''Plane B'' refers to a vertical plane parallel to the vehicle longitudinal centerline through the geometric center of the right front outboard seat cushion. For bench seats, ''Plane B'' refers to a vertical plane through the right front outboard seat parallel to the vehicle longitudinal centerline that is the same distance from the longitudinal centerline of the vehicle as the center of the steering wheel.

S20.4.5 Align the child restraint system facing rearward such that Plane A is aligned with Plane B.

S20.4.6 If the child restraint is certified to S5.9 of FMVSS No. 213, and the vehicle seat has an anchorage system as specified in FMVSS No. 225, attach the child restraint to the vehicle seat anchorage instead of aligning the planes. Do not attach the vehicle safety belt.

S20.4.7 While maintaining the child restraint position achieved in S20.4.5, secure the child restraint by following, to the extent possible, the child restraint manufacturer's directions regarding proper installation of the restraint in the rear facing mode. Place any adjustable seat belt anchorages at the manufacturer's nominal design position for a 50th percentile adult male occupant. Cinch the vehicle belts to any tension from zero up to 134 N (30 lb) to secure the child restraint. Measure belt tension in a flat, straight section of the lap belt between the child restraint belt path and the contact point with the belt anchor or vehicle seat, on the side away

from the buckle (to avoid interference from the shoulder portion of the belt).

S20.4.8 Position the 49 CFR Part 572 Subpart R 12-month-old CRABI dummy in the child restraint by following, to the extent possible, the manufacturer's instructions provided with the child restraint for seating infants.

S20.4.9 Deploy the right front outboard frontal air bag system. If the air bag system contains a multistage inflator, the vehicle shall be able to comply at any stage or combination of stages or time delay between successive stages that could occur in the presence of an infant in a rear facing child restraint and a 49 CFR Part 572, Subpart R 12-month-old CRABI dummy positioned according to S20.4 in a rigid barrier crash test at speeds up to 64 km/h (40 mph).

S21 *Requirements using 3-year-old child dummies.*

S21.1 Each vehicle that is certified as complying with S14 shall, at the option of the manufacturer, meet the requirements specified in S21.2, S21.3, S21.4 or S21.5, under the test procedures specified in S22 or S28, as applicable.

S21.2 *Option 1—Automatic suppression feature.* Each vehicle shall meet the requirements specified in S21.2.1 through S21.2.3.

S21.2.1 The vehicle shall be equipped with an automatic suppression feature for the passenger air bag which results in deactivation of the air bag during each of the static tests specified in S22.2 (using a 49 CFR Part 572 Subpart P 3-year-old child dummy and, as applicable, any child restraint specified in section C and section D of appendix A to this standard), and activation of the air bag system during each of the static tests specified in S22.3 (using a 49 CFR Part 572 Subpart O 5th percentile adult female dummy).

S21.2.2 The vehicle shall be equipped with a telltale light meeting the requirements specified in S19.2.2.

S21.2.3 The vehicle shall be equipped with a mechanism that indicates whether the air bag is suppressed, regardless of whether the passenger seat is occupied. The mechanism need not be located in the occupant compartment unless it is the telltale described in S21.2.2.

S21.3 *Option 2—Dynamic automatic suppression system that suppresses the air bag when an occupant is out of position.* (This option is available under the conditions set forth in S27.1.) The vehicle shall be equipped with a dynamic automatic suppression system for the passenger air bag system which meets the requirements specified in S27.

S21.4 *Option 3—Low risk deployment.* Each vehicle shall meet the injury criteria specified in S21.5 of this standard when the passenger air bag is deployed in accordance with both of the low risk deployment test procedures specified in S22.4.

S21.5 *Injury criteria for the 49 CFR Part 572, Subpart P 3-year-old child test dummy.*

S21.5.1 All portions of the test dummy shall be contained within the outer surfaces of the vehicle passenger compartment.

S21.5.2 *Head injury criteria.*

(a) For any two points in time, t_1 and t_2, during the event which are separated by not more than a 15 millisecond time interval and where t_1 is less than t_2, the head injury criterion (HIC_{15}) shall be determined using the resultant head acceleration at the center of gravity of the dummy head, a_r, expressed as a multiple of g (the acceleration of gravity) and shall be calculated using the expression:

$$\left[\frac{1}{(t_2 t_1)}\int_{t_1}^{t_2} a_r dt\right]^{2.5} (t_2 t_1)$$

(b) The maximum calculated HIC_{15} value shall not exceed 570.

S21.5.3 The resultant acceleration calculated from the output of the thoracic instrumentation shall not exceed 55 g's, except for intervals whose cumulative duration is not more than 3 milliseconds.

S21.5.4 Compression deflection of the sternum relative to the spine, as determined by instrumentation, shall not exceed 34 millimeters (1.3 in).

S21.5.5 *Neck injury.* When measuring neck injury, each of the following injury criteria shall be met.

(a) *Nij.*

(1) The shear force (Fx), axial force (Fz), and bending moment (My) shall be measured by the dummy upper neck load cell for the duration of the crash event as specified in S4.11. Shear force, axial force, and bending moment shall be filtered for Nij purposes at SAE J211/1 rev. Mar95 Channel Frequency Class 600 (see S4.7).

(2) During the event, the axial force (Fz) can be either in tension or compression while the occipital condyle bending moment (Mocy) can be in either flexion or extension. This results in four possible loading conditions for Nij: Tension-extension (Nte), tension-flexion (Ntf), compression-extension (Nce), or compression-flexion (Ncf).

(3) When calculating Nij using equation S21.5.5(a)(4), the critical values, Fzc and Myc, are:

(i) Fzc = 2120 N (477 lbf) when Fz is in tension

(ii) Fzc = 2120 N (477 lbf) when Fz is in compression

(iii) Myc = 68 Nm (50 lbf-ft) when a flexion moment exists at the occipital condyle

(iv) Myc = 27 Nm (20 lbf-ft) when an extension moment exists at the occipital condyle.

(4) At each point in time, only one of the four loading conditions occurs and the Nij value corresponding to that loading condition is computed and the three remaining loading modes shall be considered a value of zero. The expression for calculating each Nij loading condition is given by:

Nij = (Fz / Fzc) + (Mocy / Myc)

(5) None of the four Nij values shall exceed 1.0 at any time during the event.

(b) *Peak tension.* Tension force (Fz), measured at the upper neck load cell, shall not exceed 1130 N (254 lbf) at any time.

(c) *Peak compression.* Compression force (Fz), measured at the upper neck load cell, shall not exceed 1380 N (310 lbf) at any time.

S21.5.6 Unless otherwise indicated, instrumentation for data acquisition, data channel frequency class, and moment calculations are the same as given in 49 CFR Part 572 Subpart P 3-year-old child test dummy.

S22 *Test procedure for S21.*

S22.1 *General provisions and definitions.*

S22.1.1 Tests specifying the use of a forward facing child restraint, including a booster seat where applicable, may be conducted using any such restraint listed in section C and section D of Appendix A of this standard, respectively. The child restraint may be unused or have been previously used only for automatic suppression tests. If it has been used, there shall not be any visible damage prior to the test. Booster seats are to be used in the manner appropriate for a 3-year-old child of the same height and weight as the 3-year-old child dummy.

S22.1.2 Unless otherwise specified, each vehicle certified to this option shall comply in tests conducted with the right front outboard seating position at the full rearward, middle, and the full forward positions. If the dummy contacts the vehicle interior, move the seat rearward to the next detent that provides clearance. If the seat is a power seat, move the seat rearward while assuring that there is a maximum of 5 mm (0.2 in) clearance.

S22.1.3 Except as otherwise specified, if the child restraint has an anchorage system as specified in S5.9 of FMVSS No. 213 and is tested in a vehicle with a right front outboard

vehicle seat that has an anchorage system as specified in FMVSS No. 225, the vehicle shall comply with the belted test conditions with the restraint anchorage system attached to the vehicle seat anchorage system and the vehicle seat belt unattached. It shall also comply with the belted test conditions with the restraint anchorage system unattached to the vehicle seat anchorage system and the vehicle seat belt attached.

S22.1.4 Do not attach any tethers.

S22.1.5 The definitions provided in S16.3.1 through S16.3.10 apply to the tests specified in S22.

S22.1.6 For leg and thigh angles use the following references:

(a) *Thigh*—a straight line on the thigh skin between the center of the 5/16 × 1/2 in. screw (part 9001024, item 10 in drawing 210–0000 sheet 2 of 7, complete assembly (HYB III 3 YR OLD)) and the knee bolt (part 210–5301 in drawing 210–5000–1 & –1, leg assembly).

(b) *Leg*—a straight line on the leg skin between the center of the ankle bolt (part 210–5701 in drawing 210–5000–1 & –2, leg assembly) and the knee bolt (part 210–5301 in drawing 210–5000–1 & –2, leg assembly).

S22.1.7 *Seat set-up.* Unless otherwise stated,

S22.1.7.1 *Lumbar support adjustment.* Position adjustable lumbar supports so that the lumbar support is in its lowest, retracted or deflated adjustment position.

S22.1.7.2 *Other seat adjustments.* Position any adjustable parts of the seat that provide additional support so that they are in the lowest or most open adjustment position.

S22.1.7.3 If the seat cushion adjusts fore and aft, independent of the seat back, set this adjustment to the full rearward position.

S22.1.7.4 If the seat height is adjustable, determine the maximum and minimum heights at the full rearward seat track position, the middle seat track position, and the full forward seat track position. Set the seat at the mid-point height for each of the three fore-aft test positions.

S22.1.7.5 The seat back angle, if adjustable, is set at the manufacturer's nominal design seat back angle for a 50th percentile adult male as specified in S8.1.3.

S22.1.7.6 If adjustable, set the head restraint at the full down and full forward position.

S22.2 *Static tests of automatic suppression feature which shall result in deactivation of the passenger air bag.* Each vehicle that is certified as complying with S21.2 shall meet the following test requirements:

S22.2.1 *Belted test with forward facing child restraints or booster seats.*

S22.2.1.1 Install the restraint in the right front outboard seat in accordance, to the extent possible, with the child restraint manufacturer's instructions provided with the seat for use by children with the same height and weight as the 3-year-old child dummy.

S22.2.1.2 Locate a vertical plane through the longitudinal centerline of the child restraint. This will be referred to as ''Plane A''.

S22.2.1.3 For bucket seats, ''Plane B'' refers to a vertical longitudinal plane through the longitudinal centerline of the seat cushion of the right front outboard vehicle seat. For bench seats, ''Plane B'' refers to a vertical plane through the right front outboard vehicle seat parallel to the vehicle longitudinal centerline the same distance from the longitudinal centerline of the vehicle as the center of the steering wheel.

22.2.1.4 The vehicle shall comply in both of the following positions, if applicable:

(a) Without attaching the child restraint anchorage system as specified in S5.9 of FMVSS No. 213 to a vehicle seat anchorage system specified in FMVSS No. 225 and without attaching any tethers, align the child restraint system facing forward such that Plane A is aligned with Plane B.

(b) If the child restraint is certified to S5.9 of FMVSS No. 213, and the vehicle seat has an anchorage system as specified in FMVSS No. 225, attach the child restraint to the vehicle seat anchorage instead of aligning the planes. Do not attach the vehicle safety belt.

S22.2.1.5 *Forward facing child restraint*

S22.2.1.5.1 Place any adjustable seat belt anchorages at the vehicle manufacturer's nominal design position for a 50th percentile adult male occupant. Cinch the vehicle belts to any tension from zero up to 134 N (30 lb) to secure the child restraint. Measure belt tension in a flat, straight section of the lap belt between the child restraint belt path and the contact point with the belt anchor or vehicle seat, on the side away from the buckle (to avoid interference from the shoulder portion of the belt).

S22.2.1.5.2 Position the 49 CFR Part 572 Subpart P 3-year-old child dummy in the child restraint such that the dummy's lower torso is centered on the child restraint and the dummy's spine is against the seat back of the child restraint. Place the arms at the dummy's sides.

S22.2.1.5.3 Attach all belts that come with the child restraint that are appropriate for a child of the same height and weight as the 3-year-old child dummy, if any, by following, to the extent possible, the manufacturer's instructions provided with the child restraint for seating children.

S22.2.1.6 *Booster seat*

S22.2.1.6.1 Place any adjustable seat belt anchorages at the vehicle manufacturer's nominal design position for a 50th percentile adult male occupant. For booster seats designed to be secured to the vehicle seat even when empty, cinch the vehicle belts to any tension from zero up to 134 N (30 lb) to secure the booster seat. Measure belt tension in a flat, straight section of the lap belt between the child restraint belt path and the contact point with the belt anchor or vehicle seat, on the side away from the buckle (to avoid interference from the shoulder portion of the belt).

S22.2.1.6.2 Position the 49 CFR Part 572 Subpart P 3-year-old child dummy in the booster seat such that the dummy's lower torso is centered on the booster seat cushion and the dummy's back is parallel to and in contact with the booster seat back or, if there is no booster seat back, the vehicle seat back. Place the arms at the dummy's sides.

S22.2.1.6.3 If applicable, attach all belts that come with the child restraint that are appropriate for a child of the same height and weight as the 3-year-old child dummy, if any, by following, to the extent possible, the manufacturer's instructions provided with the child restraint for seating children.

S22.2.1.6.4 If applicable, place the Type 2 manual belt around the test dummy and fasten the latch. Remove all slack from the lap belt portion. Pull the upper torso webbing out of the retractor and allow it to retract; repeat this four times. Apply a 9 to 18 N (2 to 4 lb) tension load to the lap belt. Allow the excess webbing in the upper torso belt to be retracted by the retractive force of the retractor.

S22.2.1.7 Start the vehicle engine or place the ignition in the ''on'' position, whichever will turn on the suppression system, and then close all vehicle doors.

S22.2.1.8 Wait 10 seconds, then check whether the air bag is deactivated.

S22.2.2 *Unbelted tests with dummies.* Place the 49 CFR Part 572 Subpart P 3-year-old child dummy on the right front outboard seat in any of the following positions (without using a child restraint or booster seat or the vehicle's seat belts):

S22.2.2.1 *Sitting on seat with back against seat back*

(a) Position the dummy in the seated position and place it on the right front outboard seat.

(b) In the case of vehicles equipped with bench seats, position the midsagittal plane of the dummy vertically and parallel to the vehicle's longitudinal centerline and the same distance from the vehicle's longitudinal centerline as the center of the steering wheel. In the case of vehicles equipped with bucket seats, position the midsagittal plane of the dummy vertically such that it coincides with the longitudinal centerline of the seat cushion. Position the torso of the dummy against the seat back. Position the dummy's thighs against the seat cushion.

(c) Allow the legs of the dummy to extend off the surface of the seat.

(d) Rotate the dummy's upper arms down until they contact the seat back.

(e) Rotate the dummy's lower arms until the dummy's hands contact the seat cushion.

(f) Start the vehicle engine or place the ignition in the ''on'' position, whichever will turn on the suppression system, and then close all vehicle doors.

(g) Wait 10 seconds, then check whether the air bag is deactivated.

S22.2.2.2 *Sitting on seat with back against reclined seat back.* Repeat the test sequence in S22.2.2.1 with the seat back angle 25 degrees rearward of the manufacturer's nominal design position for the 50th percentile adult male. If the seat will not recline 25 degrees rearward of the nominal design position, use the closest position that does not exceed 25 degrees.

S22.2.2.3 *Sitting on seat with back not against seat back.*

(a) Position the dummy in the seated position and place it on the right front outboard seat.

(b) In the case of vehicles equipped with bench seats, position the midsagittal plane of the dummy vertically and parallel to the vehicle's longitudinal centerline and the same distance from the vehicle's longitudinal centerline as the center of the steering wheel. In the case of vehicles equipped with bucket seats, position the midsagittal plane of the dummy vertically such that it coincides with the longitudinal centerline of the seat cushion. Position the dummy with the spine vertical so that the horizontal distance from the dummy's back to the seat back is no less than 25 mm (1.0 in) and no more than 150 mm (6.0 in), as measured along the dummy's midsagittal plane at the mid-sternum level. To keep the dummy in position, a material with a maximum breaking strength of 311 N (70 lb) may be used to hold the dummy.

(c) Position the dummy's thighs against the seat cushion.

(d) Allow the legs of the dummy to extend off the surface of the seat.

(e) Position the upper arms parallel to the spine and rotate the dummy's lower arms until the dummy's hands contact the seat cushion.

(f) Start the vehicle engine or place the ignition in the ''on'' position, whichever will turn on the suppression system, and then close all vehicle doors.

(g) Wait 10 seconds, then check whether the air bag is deactivated.

S22.2.2.4 *Sitting on seat edge, spine vertical, hands by the dummy's sides.*

(a) In the case of vehicles equipped with bench seats, position the midsagittal plane of the dummy vertically and parallel to the vehicle's longitudinal centerline and the same distance from the vehicle's longitudinal centerline as the center of the steering wheel. In the case of vehicles equipped with bucket seats, position the midsagittal plane of the dummy vertically such that it coincides with the longitudinal centerline of the seat cushion.

(b) Position the dummy in the seated position forward in the seat such that the legs are vertical and the back of the legs rest against the front of the seat with the spine vertical. If the dummy's feet contact the floor pan, rotate the legs forward until the dummy is resting on the seat with the feet positioned flat on the floor pan and the dummy spine vertical. To keep the dummy in position, a material with a maximum breaking strength of 311 N (70 lb) may be used to hold the dummy.

(c) Place the upper arms parallel to the spine.

(d) Lower the dummy's lower arms such that they contact the seat cushion.

(e) Start the vehicle engine or place the ignition in the ''on'' position, whichever will turn on the suppression system, and then close all vehicle doors.

(f) Wait 10 seconds, then check whether the air bag is deactivated.

S22.2.2.5 *Standing on seat, facing forward.*

(a) In the case of vehicles equipped with bench seats, position the midsagittal plane of the dummy vertically and parallel to the vehicle's longitudinal centerline and the same distance from the vehicle's longitudinal centerline as the center of the steering wheel rim. In the case of vehicles equipped with bucket seats, position the midsagittal plane of the dummy vertically such that it coincides with the longitudinal centerline of the seat cushion. Position the dummy in a standing position on the right front outboard seat cushion facing the front of the vehicle while placing the heels of the dummy's feet in contact with the seat back.

(b) Rest the dummy against the seat back, with the arms parallel to the spine.

(c) If the head contacts the vehicle roof, recline the seat so that the head is no longer in contact with the vehicle roof, but allow no more than 5 mm (0.2 in) distance between the head and the roof. If the seat does not sufficiently recline to allow clearance, omit the test.

(d) If necessary use a material with a maximum breaking strength of 311 N (70 lb) or spacer blocks to keep the dummy in position.

(e) Start the vehicle engine or place the ignition in the ''on'' position, whichever will turn on the suppression system, and then close all vehicle doors.

(f) Wait 10 seconds, then check whether the air bag is deactivated.

S22.2.2.6 *Kneeling on seat, facing forward.*

(a) In the case of vehicles equipped with bench seats, position the midsagittal plane of the dummy vertically and parallel to the vehicle's longitudinal centerline and the same distance from the vehicle's longitudinal centerline as the center of the steering wheel. In the case of vehicles equipped with bucket seats, position the midsagittal plane of the dummy vertically such that it coincides with the longitudinal centerline of the seat cushion.

(b) Position the dummy in a kneeling position in the right front outboard seat with the dummy facing the front of the vehicle with its toes at the intersection of the seat back and seat cushion. Position the dummy so that the spine is vertical. Push down on the legs so that they contact the seat as much as possible and then release. Place the arms parallel to the spine.

(c) If necessary use a material with a maximum breaking strength of 311 N (70 lb) or spacer blocks to keep the dummy in position.

(d) Start the vehicle engine or place the ignition in the ''on'' position, whichever will turn on the suppression system, and then close all vehicle doors.

(e) Wait 10 seconds, then check whether the air bag is deactivated.

S22.2.2.7 *Kneeling on seat, facing rearward.*

(a) In the case of vehicles equipped with bench seats, position the midsagittal plane of the dummy vertically and parallel to the vehicle's longitudinal centerline and the same distance from the vehicle's longitudinal centerline as the center of the steering

wheel. In the case of vehicles equipped with bucket seats, position the midsagittal plane of the dummy vertically such that it coincides with the longitudinal centerline of the seat cushion.

(b) Position the dummy in a kneeling position in the right front outboard seat with the dummy facing the rear of the vehicle. Position the dummy such that the dummy's head and torso are in contact with the seat back. Push down on the legs so that they contact the seat as much as possible and then release. Place the arms parallel to the spine.

(c) Start the vehicle engine or place the ignition in the ''on'' position, whichever will turn on the suppression system, and then close all vehicle doors.

(d) Wait 10 seconds, then check whether the air bag is deactivated.

S22.2.2.8 *Lying on seat.* This test is performed only in vehicles with 3 designated front seating positions.

(a) Lay the dummy on the right front outboard seat such that the following criteria are met:

(1) The midsagittal plane of the dummy is horizontal,

(2) The dummy's spine is perpendicular to the vehicle's longitudinal axis,

(3) The dummy's arms are parallel to its spine,

(4) A plane passing through the two shoulder joints of the dummy is vertical,

(5) The anterior of the dummy is facing the vehicle front,

(6) The head of the dummy is positioned towards the passenger door, and

(7) The horizontal distance from the topmost point of the dummy's head to the vehicle door is 50 to 100 mm (2–4 in).

(8) The dummy is as far back in the seat as possible.

(b) Rotate the thighs as much as possible toward the chest of the dummy and rotate the legs as much as possible against the thighs.

(c) Move the dummy's upper left arm parallel to the vehicle's transverse plane and the lower left arm 90 degrees to the upper arm. Rotate the lower left arm about the elbow joint and toward the dummy's head until movement is obstructed.

(d) Start the vehicle engine or place the ignition in the ''on'' position, whichever will turn on the suppression system, and then close all vehicle doors.

(e) Wait 10 seconds, then check whether the air bag is deactivated.

S22.3 *Static tests of automatic suppression feature which shall result in activation of the passenger air bag system.*

S22.3.1 Each vehicle certified to this option shall comply in tests conducted with the right front outboard seating position at the full rearward, middle, and, subject to S16.3.3.1.8, full forward positions. All tests are conducted with the seat height, if adjustable, in the mid-height position.

S22.3.2 Place a 49 CFR Part 572 Subpart O 5th percentile adult female test dummy at the right front outboard seating position of the vehicle, in accordance with procedures specified in S16.3.3 of this standard, except as specified in S22.3.1. Do not fasten the seat belt.

S22.3.3 Start the vehicle engine or place the ignition in the ''on'' position, whichever will turn on the suppression system, and then close all vehicle doors.

S22.3.4 Wait 10 seconds, then check whether the air bag system is activated.

S22.4 *Low risk deployment tests.*

S22.4.1 Each vehicle that is certified as complying with S21.4 shall meet the following test requirements with the 49 CFR Part 572, Subpart P 3-year-old child dummy in both of the following positions: Position 1 (S22.4.2) and Position 2 (S22.4.3).

S22.4.1.1 Locate and mark a point on the front of the dummy's chest jacket on the midsaggital plane which is 114 mm (4.5 in) ± 3 mm (± 0.1 in) along the surface of the skin from the top of the skin at the neck line. This is referred to as ''Point 1.''

S22.4.1.2 Locate the vertical plane parallel to the vehicle longitudinal centerline through the geometric center of the opening through which the right front air bag deploys into the occupant compartment. This is referred to as ''Plane D.''

S22.4.1.3 Locate the horizontal plane through the geometric center of the opening through which the right front air bag deploys into the occupant compartment. This is referred to as ''Plane C.''

S22.4.2 *Position 1 (chest on instrument panel).*

S22.4.2.1 If a seat is adjustable in the fore and aft and/or vertical directions, move the seat to the rear-most seating position and full-down height adjustment. If the seat cushion adjusts fore and aft, independent of the entire seat, adjust the seat cushion to the full-rearward position. If the seat back is adjustable, place the seat back at the manufacturer's nominal design seat back angle for a 50th percentile adult male as specified in S8.1.3. Position any adjustable parts of the seat that provide additional support so that they are in the lowest or most open adjustment position. If adjustable, set the head restraint in the lowest position.

S22.4.2.2 Place the dummy in the front passenger seat such that:

S22.4.2.2.1 The midsagittal plane is coincident with Plane D.

S22.4.2.2.2 The legs are initially vertical to the floor pan. The legs and thighs shall be adjusted to the extent necessary for the head/torso to contact the instrument panel as specified in S22.4.2.3.

S22.4.2.2.3 The upper arms are parallel to the torso and the hands are in contact with the thighs.

S22.4.2.3 Without changing the seat position and with the dummy's thorax instrument cavity rear face vertical, move the dummy forward until the dummy head/torso contacts the instrument panel. If the dummy loses contact with the seat cushion because of the forward movement, maintain the height of the dummy and the angle of the thigh with respect to the torso. Once contact is made, raise the dummy vertically until Point 1 lies in Plane C. If the dummy's head contacts the windshield and keeps Point 1 from reaching Plane C, lower the dummy until there is no more than 5 mm (0.2 in) clearance between the head and the windshield. (The dummy shall remain in contact with the instrument panel while being raised or lowered, which may change the dummy's fore-aft position.)

S22.4.2. If possible, position the legs of the dummy so that the legs are vertical and the feet rest flat on the floor pan of the vehicle. If the positioning against the instrument panel does not allow the feet to be on the floor pan, the feet shall be parallel to the floor pan.

S22.4.2.5 If necessary, material with a maximum breaking strength of 311 N (70 lb) and spacer blocks may be used to support the dummy in position. The material should support the torso rather than the head. Support the dummy so that there is minimum interference with the full rotational and translational freedom for the upper torso of the dummy and the material does not interfere with the air bag.

S22.4.3 *Position 2 (head on instrument panel).*

S22.4.3.1 Place the passenger seat in the full rearward seating position. Place the seat back at the manufacturer's nominal design seat back angle for a 50th percentile adult male as specified in S8.1.3. If adjustable in the vertical direction, place the seat in the mid-height position. If the seat cushion adjusts fore and aft, independent of the entire seat, adjust the seat cushion to the full rearward position. Position any adjustable parts of the seat that provide additional support so that they are in the lowest or most open adjustment position. If adjustable, set the head restraint in the lowest position.

S22.4.3.2 Place the dummy in the front passenger seat such that:

S22.4.3.2.1 The midsagittal plane is coincident with Plane D.

S22.4.3.2.2 The legs are vertical to the floor pan, the back of the legs are in contact with the seat cushion, and the dummy's thorax instrument cavity rear face is vertical. If it is not possible to position the dummy with the legs in the prescribed position, rotate the legs forward until the dummy is resting on the seat with the feet positioned flat on the floor pan, and the back of the legs are in contact with the front of the seat cushion. Set the transverse distance between the longitudinal centerlines at the front of the dummy's knees at 86 to 91 mm (3.4 to 3.6 in), with the thighs and the legs of the dummy in vertical planes.

S22.4.3.2.3 The upper arms are parallel to the torso and the hands are in contact with the thighs.

S22.4.3.3 Move the seat forward, while maintaining the thorax instrument cavity rear face orientation until any part of the dummy contacts the vehicle's instrument panel.

S22.4.3.4 If dummy contact has not been made with the vehicle's instrument panel at the full forward seating position of the seat, slide the dummy forward until contact is made. Maintain the thorax instrument cavity rear face vertical orientation, the height of the dummy, and the angle of the thigh with respect to the horizontal.

S22.4.3.5 If head/torso contact with the instrument panel has not been made, maintain the angle of the thighs with respect to the horizontal while applying a force towards the front of the vehicle on the spine of the dummy between the shoulder joints until the head or torso comes into contact with the vehicle's instrument panel.

S22.4.3.6 If necessary, material with a maximum breaking strength of 311 N (70 lb) and spacer blocks may be used to support the dummy in position. The material should support the torso rather than the head. Support the dummy so that there is minimum interference with the full rotational and translational freedom for the upper torso of the dummy and the material does not interfere with the air bag.

S22.4.4 Deploy the right front outboard frontal air bag system. If the frontal air bag system contains a multistage inflator, the vehicle shall be able to comply with the injury criteria at any stage or combination of stages or time delay between successive stages that could occur in a rigid barrier crash test at or below 26 km/h (16 mph), under the test procedure specified in S22.5.

S22.5 *Test procedure for determining stages of air bag systems subject to low risk deployment (low speed crashes) test requirement.*

S22.5.1 The test described in S22.5.2 shall be conducted with an unbelted 50th percentile adult male test dummy in the driver seating position according to S8 as it applies to that seating position and an unbelted 5th percentile adult female test dummy either in the right front seating position according to S16 as it applies to that seating position or at any fore-aft seat position on the passenger side.

S22.5.2 Impact the vehicle traveling longitudinally forward at any speed, up to and including 26 km/h (16 mph) into a fixed rigid barrier that is perpendicular ± 5 degrees to the line of travel of the vehicle under the applicable conditions of S8, S10, and S16 excluding S10.7, S10.8, S10.9, and S16.3.5.

S22.5.3 Determine which inflation stage or combination of stages are fired and determine the time delay between successive stages. That stage or combination of stages, with time delay between successive stages, shall be used in deploying the air bag when conducting the low risk deployment tests described in S22.4, S24.4, and S26.

S22.5.4 If the air bag does not deploy in the impact described in S22.5.2, the low risk deployment tests described in S22.4, S24.4, and S26 shall be conducted with all stages using the maximum time delay between stages.

S23 *Requirements using 6-year-old child dummies.*

S23.1 Each vehicle that is certified as complying with S14 shall, at the option of the manufacturer, meet the requirements specified in S23.2, S23.3, or S23.4, under the test procedures specified in S24 or S28, as applicable.

S23.2 *Option 1—Automatic suppression feature.* Each vehicle shall meet the requirements specified in S23.2.1 through S23.2.3.

S23.2.1 The vehicle shall be equipped with an automatic suppression feature for the passenger frontal air bag system which results in deactivation of the air bag during each of the static tests specified in S24.2 (using a 49 CFR Part 572 Subpart N 6-year-old child dummy in any of the child restraints specified in section D of Appendix A of this standard), and activation of the air bag system during each of the static tests specified in S24.3 (using a 49 CFR Part 572 Subpart O 5th percentile adult female dummy).

S23.2.2 The vehicle shall be equipped with a telltale light meeting the requirements specified in S19.2.2.

S23.2.3 The vehicle shall be equipped with a mechanism that indicates whether the air bag is suppressed, regardless of whether the passenger seat is occupied. The mechanism need not be located in the occupant compartment unless it is the telltale described in S23.2.2.

S23.3 *Option 2—Dynamic automatic suppression system that suppresses the air bag when an occupant is out of position.* (This option is available under the conditions set forth in S27.1.) The vehicle shall be equipped with a dynamic automatic suppression system for the passenger frontal air bag system which meets the requirements specified in S27.

S23.4 *Option 3—Low risk deployment.* Each vehicle shall meet the injury criteria specified in S23.5 of this standard when the passenger air bag is statically deployed in accordance with both of the low risk deployment test procedures specified in S24.4.

S23.5 *Injury criteria for the 49 CFR Part 572 Subpart N 6-year-old child dummy.*

S23.5.1 All portions of the test dummy shall be contained within the outer surfaces of the vehicle passenger compartment.

S23.5.2 *Head injury criteria.*

(a) For any two points in time, t_1 and t_2, during the event which are separated by not more than a 15 millisecond time interval and where t_1 is less than t_2, the head injury criterion (HIC_{15}) shall be determined using the resultant head acceleration at the center of gravity of the dummy head, a_r, expressed as a multiple of g (the acceleration of gravity) and shall be calculated using the expression:

$$\left[\frac{1}{(t_2 t_1)}\int_{t_1}^{t_2} a_r dt\right]^{2.5} (t_2 t_1)$$

(b) The maximum calculated HIC_{15} value shall not exceed 700.

S23.5.3 The resultant acceleration calculated from the output of the thoracic instrumentation shall not exceed 60 g's, except for intervals whose cumulative duration is not more than 3 milliseconds.

S23.5.4 Compression deflection of the sternum relative to the spine, as determined by instrumentation, shall not exceed 40 mm (l.6 in).

S23.5.5 *Neck injury.* When measuring neck injury, each of the following injury criteria shall be met.

(a) *Nij.*

(1) The shear force (Fx), axial force (Fz), and bending moment (My) shall be measured by the dummy upper neck load cell for the duration of the crash

event as specified in S4.11. Shear force, axial force, and bending moment shall be filtered for Nij purposes at SAE J211/1 rev. Mar95 Channel Frequency Class 600 (see S4.7).

(2) During the event, the axial force (Fz) can be either in tension or compression while the occipital condyle bending moment (Mocy) can be in either flexion or extension. This results in four possible loading conditions for Nij: tension-extension (Nte), tension-flexion (Ntf), compression-extension (Nce), or compression-flexion (Ncf).

(3) When calculating Nij using equation S23.5.5(a)(4), the critical values, Fzc and Myc, are:

(i) Fzc = 2800 N (629 lbf) when Fz is in tension
(ii) Fzc = 2800 N (629 lbf) when Fz is in compression
(iii) Myc = 93 Nm (69 lbf-ft) when a flexion moment exists at the occipital condyle
(iv) Myc = 37 Nm (27 lbf-ft) when an extension moment exists at the occipital condyle.

(4) At each point in time, only one of the four loading conditions occurs and the Nij value corresponding to that loading condition is computed and the three remaining loading modes shall be considered a value of zero. The expression for calculating each Nij loading condition is given by:

Nij = (Fz / Fzc) + (Mocy / Myc)

(5) None of the four Nij values shall exceed 1.0 at any time during the event.

(b) *Peak tension.* Tension force (Fz), measured at the upper neck load cell, shall not exceed 1490 N (335 lbf) at any time.

(c) *Peak compression.* Compression force (Fz), measured at the upper neck load cell, shall not exceed 1820 N (409 lbf) at any time.

S23.5.6 Unless otherwise indicated, instrumentation for data acquisition, data channel frequency class, and moment calculations are the same as given for the 49 CFR Part 572 Subpart N 6-year-old child test dummy.

S24 *Test procedure for S23.*

S24.1 *General provisions and definitions.*

S24.1.1 Tests specifying the use of a booster seat may be conducted using any such restraint listed in section D of Appendix A of this standard. The booster seat may be unused or have been previously used only for automatic suppression. If it has been used, there shall not be any visible damage prior to the test. Booster seats are to be used in the manner appropriate for a 6-year-old child of the same height and weight as the 6-year-old child dummy.

S24.1.2 Unless otherwise specified, each vehicle certified to this option shall comply in tests conducted with the right front outboard seating position at the full rearward seat track position, the middle seat track position, and the full forward seat track position. If the dummy contacts the vehicle interior, move the seat rearward to the next detent that provides clearance. If the seat is a power seat, move the seat rearward while assuring that there is a maximum of 5 mm (0.2 in) distance between the vehicle interior and the point on the dummy that would first contact the vehicle interior. All tests are conducted with the seat height, if adjustable, in the mid-height position, and with the seat back angle, if adjustable, at the manufacturer=s nominal design seat back angle for a 50th percentile adult male as specified in S8.1.3.

S24.1.3 Except as otherwise specified, if the booster seat has an anchorage system as specified in S5.9 of FMVSS No. 213 and is tested in a vehicle with a right front outboard vehicle seat that has an anchorage system as specified in FMVSS No. 225, the vehicle shall comply with the belted test conditions with the restraint anchorage system attached to the vehicle seat anchorage system and the vehicle seat belt unattached. It shall also comply with the belted test conditions with the restraint anchorage system unattached to the vehicle seat anchorage system and the vehicle seat belt attached. The vehicle shall comply with the unbelted test conditions with the restraint anchorage system unattached to the vehicle seat anchorage system.

S24.1.4 Do not attach any tethers.

S24.1.5 The definitions provided in S16.3.1 through S16.3.10 apply to the tests specified in S24.

S24.1.6 For leg and thigh angles, use the following references:

S24.1.6.1 *Thigh*—a straight line on the thigh skin between the center of the 5/16–18 UNC–2B threaded access hole in the upper leg clamp (drawing 127–4004, 6 YR H3—upper leg clamp) and the knee screw (part 9000248 in drawing 127–4000–1 & –2, leg assembly).

S24.1.6.2 *Leg*—a straight line on the leg skin between the center of the lower leg screw (part 9001170 in drawing 127–4000–1 & –2, leg assembly) and the knee screw (part 9000248 in drawing 127–4000–1 & –2, leg assembly).

S24.2 *Static tests of automatic suppression feature which shall result in deactivation of the passenger air bag.* Each vehicle that is certified as complying with S23.2 shall meet the following test requirements.

S24.2.1 Except as provided in S24.2.2, conduct all tests as specified in S22.2, except that the 49 CFR Part 572 Subpart N 6-year-old child dummy shall be used.

S24.2.2 *Exceptions.* The tests specified in the following paragraphs of S22.2 need not be conducted: S22.2.1.5, S22.2.2.3, S22.2.2.5, S22.2.2.6, S22.2.2.7, and S22.2.2.8.

S24.2.3 *Sitting back in the seat and leaning on the right front passenger door*

(a) Position the dummy in the seated position and place the dummy in the right front outboard seat. For bucket seats, position the midsagittal plane of the dummy vertically such that it coincides with the longitudinal center line of the seat cushion. For bench seats, position the midsagittal plane of the dummy vertically and parallel to the vehicle=s longitudinal centerline and the same distance from the longitudinal centerline of the vehicle as the center of the steering wheel.

(b) Place the dummy's back against the seat back and rest the dummy's thighs on the seat cushion.

(c) Allow the legs and feet of the dummy to extend off the surface of the seat. If this positioning of the dummy's legs is prevented by contact with the instrument panel, move the seat rearward to the next detent that provides clearance. If the seat is a power seat, move the seat rearward, while assuring that there is a maximum of 5 mm (0.2 in) distance between the vehicle interior and the part of the dummy that was in contact with the vehicle interior.

(d) Rotate the dummy's upper arms toward the seat back until they make contact.

(e) Rotate the dummy's lower arms down until they contact the seat.

(f) Close the vehicle's passenger-side door and then start the vehicle engine or place the ignition in the ''on'' position, whichever will turn on the suppression system.

(g) Push against the dummy's left shoulder to lean the dummy against the door; close all remaining doors.

(h) Wait 10 seconds, then check whether the air bag is deactivated.

S24.3 *Static tests of automatic suppression feature which shall result in activation of the passenger air bag system.*

S24.3.1 Each vehicle certified to this option shall comply in tests conducted with the right front outboard seating position at the full rearward seat track position, the middle seat track position, and, subject to S16.3.3.1.8, the full forward seat track position. All tests are conducted with the seat height, if adjustable, in the mid-height position.

S24.3.2 Place a 49 CFR Part 572 Subpart O 5th percentile adult female test dummy at the right front outboard seating position of the vehicle, in accordance with procedures specified in S16.3.3 of this standard, except as specified in S24.3.1. Do not fasten the seat belt.

S24.3.3 Start the vehicle engine or place the ignition in the ''on'' position, whichever will turn on the suppression system, and then close all vehicle doors.

S24.3.4 Wait 10 seconds, then check whether the air bag system is activated.

S24.4 *Low risk deployment tests.*

S24.4.1 Each vehicle that is certified as complying with S23.4 shall meet the following test requirements with the 49 CFR Part 572 Subpart N 6-year-old child dummy in both of the following positions: Position 1 (S24.4.2) or Position 2 (S24.4.3).

S24.4.1.1 Locate and mark a point on the front of the dummy's chest jacket on the midsagittal plane which is 139 mm (5.5 in) ± 3 mm (± 0.1 in) along the surface of the skin from the top of the skin at the neckline. This is referred to as ''Point 1.''

S24.4.1.2 Locate the vertical plane parallel to the vehicle longitudinal centerline through the geometric center of the opening through which the right front air bag deploys into the occupant compartment. This is referred to as ''Plane D.''

S24.4.1.3 Locate the horizontal plane through the geometric center of the opening through which the right front air bag deploys into the occupant compartment. This is referred to as ''Plane C.''

S24.4.2 *Position 1 (chest on instrument panel).*

S24.4.2.1 If a seat is adjustable in the fore and aft and/or vertical directions, move the seat to the rearmost seating position and full down height adjustment. If the seat cushion adjusts fore and aft, independent of the entire seat, adjust the seat cushion to the full rearward position. If the seat back is adjustable, place the seat back at the manufacturer's nominal design seat back angle for a 50th percentile adult male as specified in S8.1.3. Position any adjustable parts of the seat that provide additional support so that they are in the lowest or most open adjustment position. Position an adjustable head restraint in the lowest position.

S24.4.2.2 Remove the legs of the dummy at the pelvic interface.

S24.4.2.3 Place the dummy in the front passenger seat such that:

(a) The midsagittal plane is coincident with Plane D.

(b) The upper arms are parallel to the torso and the hands are next to where the thighs would be.

(c) Without changing the seat position and with the dummy's thorax instrument cavity rear face 6 degrees forward of the vertical, move the dummy forward until the dummy head/torso contacts the instrument panel. If the dummy loses contact with the seat cushion because of the forward movement, maintain the height of the dummy while moving the dummy forward. If the head contacts the windshield before head/torso contact with the instrument panel, maintain the thorax instrument cavity angle and move the dummy forward such that the head is following the angle of the windshield until there is head/torso contact with the instrument panel. Once contact is made, raise or lower the dummy vertically until Point 1 lies in Plane C. If the dummy's head contacts the windshield and keeps Point 1 from reaching Plane C, lower the dummy until there is no more than 5 mm (0.2 in) clearance between the head and the windshield. (The dummy shall remain in contact with the instrument panel while being raised or lowered which may change the dummy's fore-aft position.)

S24.4.2.4 If necessary, material with a maximum breaking strength of 311 N (70 lb) and spacer blocks may be used to support the dummy in position. The material should support the torso rather than the head. Support the dummy so that there is minimum interference with the full rotational and translational freedom for the upper torso of the dummy and the material does not interfere with the air bag.

S24.4.3 *Position 2 (head on instrument panel).*

S24.4.3.1 Place the passenger seat in the full rearward seating position. Place the seat back at the manufacturer's nominal design seat back angle for a 50th percentile adult male as specified in S8.1.3. If adjustable in the vertical direction, place the seat in the mid-height position. If the seat cushion adjusts fore and aft, independent of the entire seat, adjust the seat cushion to the full rearward position. Position any adjustable parts of the seat that provide additional support so that they are in the lowest or most open adjustment position. Position an adjustable head restraint in the lowest position.

S24.4.3.2 Place the dummy in the front passenger seat such that:

(a) The midsagittal plane is coincident with Plane D.

(b) The legs are perpendicular to the floor pan, the back of the legs are in contact with the seat cushion, and the dummy's thorax instrument cavity rear face is 6 degrees forward of vertical. If it is not possible to position the dummy with the legs in the prescribed position, rotate the legs forward until the dummy is resting on the seat with the feet positioned flat on the floor pan and the back of the legs are in contact with the front of the seat cushion. Set the transverse distance between the longitudinal centerlines at the front of the dummy's knees at 112 to 117 mm (4.4. to 4.6 in), with the thighs and the legs of the dummy in vertical planes.

(c) The upper arms are parallel to the torso and the hands are in contact with the thighs.

S24.4.3.3 Move the seat forward, while maintaining the thorax instrument cavity rear face orientation until any part of the dummy contacts the vehicle's instrument panel.

S24.4.3.4 If dummy contact has not been made with the vehicle's instrument panel at the full forward seating position of the seat, slide the dummy forward on the seat until contact is made. Maintain the thorax instrument cavity rear face orientation, the height of the dummy, and the angle of the thigh with respect to the horizontal.

S24.4.3.5 If head/torso contact has not been made with the instrument panel, maintain the angle of the thighs with respect to the horizontal while applying a force towards the front of the vehicle on the spine of the dummy between the shoulder joints until the head/torso comes into contact with the vehicle's instrument panel.

S24.4.3.6 If necessary, material with a maximum breaking strength of 311 N (70 lb) and spacer blocks may be used to support the dummy in position. Material should support the torso rather than the head. Support the dummy so that there is minimum interference with the full rotational and translational freedom for the upper torso of the dummy and the material does not interfere with the air bag.

S24.4.4 Deploy the right front outboard frontal air bag system. If the frontal air bag system contains a multistage inflator, the vehicle shall be able to comply with the injury criteria at any stage or combination of stages and at any time delay between successive stages that could occur in a rigid barrier crash at speeds up to 26 km/h (16 mph) under the test procedure specified in S22.5.

S25 *Requirements using an out-of-position 5th percentile adult female dummy at the driver position.*

S25.1 Each vehicle certified as complying with S14 shall, at the option of the manufacturer, meet the

requirements specified in S25.2 or S25.3 under the test procedures specified in S26 or S28, as appropriate.

S25.2 *Option 1—Dynamic automatic suppression system that suppresses the air bag when the driver is out of position.* (This option is available under the conditions set forth in S27.1.) The vehicle shall be equipped with a dynamic automatic suppression system for the driver air bag which meets the requirements specified in S27.

S25.3 *Option 2—Low risk deployment.* Each vehicle shall meet the injury criteria specified by S15.3 of this standard, except as modified in S25.4, when the driver air bag is statically deployed in accordance with both of the low risk deployment test procedures specified in S26.

S25.4 *Neck injury criteria driver low risk deployment tests.* When measuring neck injury in low risk deployment tests for the driver position, each of the following neck injury criteria shall be met.

(a) *Nij.*

(1) The shear force (Fx), axial force (Fz), and bending moment (My) shall be measured by the dummy upper neck load cell for the duration of the crash event as specified in S4.11. Shear force, axial force, and bending moment shall be filtered for Nij purposes at SAE J211/1 rev. Mar 95 Channel Frequency Class 600 (see S4.7).

(2) During the event, the axial force (Fz) can be either in tension or compression while the occipital condyle bending moment (Mocy) can be in either flexion or extension. This results in four possible loading conditions for Nij: tension-extension (Nte), tension-flexion (Ntf), compression-extension (Nce), or compression-flexion (Ncf).

(3) When calculating Nij using equation S25.4(a)(4), the critical values, Fzc and Myc, are:

(i) Fzc = 3880 N (872 lbf) when Fz is in tension

(ii) Fzc = 3880 N (872 lbf) when Fz is in compression

(iii) Myc = 155 Nm (114 lbf-ft) when a flexion moment exists at the occipital condyle

(iv) Myc = 61 Nm (45 lbf-ft) when an extension moment exists at the occipital condyle.

(4) At each point in time, only one of the four loading conditions occurs and the Nij value corresponding to that loading condition is computed and the three remaining loading modes shall be considered a value of zero. The expression for calculating each Nij loading condition is given by:

$$Nij = (Fz / Fzc) + (Mocy / Myc)$$

(5) None of the four Nij values shall exceed 1.0 at any time during the event.

(b) *Peak tension.* Tension force (Fz), measured at the upper neck load cell, shall not exceed 2070 N (465 lbf) at any time.

(c) *Peak compression.* Compression force (Fz), measured at the upper neck load cell, shall not exceed 2520 N (566 lbf) at any time.

(d) Unless otherwise indicated, instrumentation for data acquisition, data channel frequency class, and moment calculations are the same as given in 49 CFR Part 572 Subpart O 5th percentile female test dummy.

S26 *Procedure for low risk deployment tests of driver air bag.*

S26.1 Each vehicle that is certified as complying with S25.3 shall meet the requirements of S25.3 and S25.4 with the 49 CFR Part 572 Subpart O 5th percentile adult female dummy in both of the following positions: Driver position 1 (S26.2) and Driver position 2 (S26.3).

S26.2 *Driver position 1 (chin on module).*

S26.2.1 Adjust the steering controls so that the steering wheel hub is at the geometric center of the locus it describes when it is moved through its full range of driving positions. If there is no setting at the geometric center, position it one setting lower than the geometric center. Set the rotation of the steering wheel so that the vehicle wheels are pointed straight ahead.

S26.2.2 Locate the vertical plane parallel to the vehicle longitudinal axis which passes through the geometric center of the opening through which the driver air bag deploys into the occupant compartment. This is referred to as ''Plane E.''

S26.2.3 Place the seat in the full rearward seating position. If adjustable in the vertical direction, place the seat in the mid-height position. If the seat cushion adjusts fore and aft, independent of the entire seat, adjust the seat cushion to the full rearward position. If the seat back is adjustable, place the seat back at the manufacturer's nominal design seat back angle for a 50th percentile adult male as specified in S8.1.3. If the seat cushion contains an independent seat cushion angle adjustment mechanism, adjust the seat cushion angle to the middle of the range of seat cushion angles. Position any adjustable parts of the seat that provide additional support so that they are in the lowest or most open adjustment position. Position an adjustable head restrain in the lowest position.

S26.2.4 Place the dummy in the driver's seat such that:

S26.2.4.1 The midsagittal plane is coincident with Plane E.

S26.2.4.2 The legs are perpendicular to the floor pan and the back of the legs are in contact with the seat cushion. The legs may be adjusted if necessary to achieve the final head position.

S26.2.4.3 The dummy's thorax instrument cavity rear face is 6 degrees forward (toward the front of the vehicle) of the steering wheel angle (i.e., if the steering wheel angle is 25 degrees from vertical, the thorax instrument cavity rear face angle is 31 degrees).

S26.2.4.4 The initial transverse distance between the longitudinal centerlines at the front of the dummy's knees is 160 to 170 mm (6.3 to 6.7 in), with the thighs and legs of the dummy in vertical planes.

S26.2.4.5 The upper arms are parallel to the torso and the hands are in contact with the thighs.

S26.2.5 Maintaining the spine angle, slide the dummy forward until the head/torso contacts the steering wheel.

S26.2.6 While maintaining the spine angle, adjust the height of the dummy so that a point on the chin 40 mm below the center of the mouth (chin point) is in the same horizontal plane as the geometric center of the opening through which the air bag deploys into the occupant compartment. If the seat prevents the chin point from being in the same horizontal plane, adjust the dummy height to as close to the prescribed position as possible.

S26.2.7 If necessary, material with a maximum breaking strength of 311 N (70 lb) and spacer blocks may be used to support the dummy in position. The material should support the torso rather than the head. Support the dummy so that there is minimum interference with the full rotational and translational freedom for the upper torso of the dummy and the material does not interfere with the air bag.

S26.3 *Driver position 2 (chin on rim).*

S26.3.1 Place the seat in the full rearward seating position. If adjustable in the vertical direction, place the seat in the mid-height position. If the seat cushion adjusts fore and aft, independent of the entire seat, adjust the seat cushion to the full rearward position. If the seatback is adjustable, place the seat back at the manufacturer's nominal design seat back angle for a 50th percentile adult male as specified in S8.1.3. If the seat cushion contains an independent seat cushion angle adjustment mechanism, adjust the seat cushion angle to the middle of the range of seat cushion angles. Position any adjustable parts of the seat that provide additional support so that they are in the lowest or most open adjustment

position. Position an adjustable head restraint in the lowest position.

S26.3.2 Adjust the steering controls so that the steering wheel hub is at the geometric center of the locus it describes when it is moved through its full range of driving positions. If there is no setting at the geometric center, position it one setting lower than the geometric center. Set the rotation of the steering wheel so that the vehicle wheels are pointed straight ahead.

S26.3.3 Locate the vertical plane parallel to the vehicle longitudinal axis which passes through the geometric center of the opening through which the driver air bag deploys into the occupant compartment. This is referred to as ''Plane E.''

S26.3.4 Place the dummy in the driver's seat position such that:

S26.3.4.1 The midsagittal plane is coincident with Plane E.

S26.3.4.2 The legs are perpendicular to the floor pan and the back of the legs are in contact with the seat cushion. The legs may be adjusted if necessary to achieve the final head position.

S26.3.4.3 The dummy's thorax instrument cavity rear face is 6 degrees forward (toward the front of the vehicle) of the steering wheel angle (i.e., if the steering wheel angle is 25 degrees from vertical, the thorax instrument cavity rear face angle is 31 degrees).

S26.3.4.4 The initial transverse distance between the longitudinal centerlines at the front of the dummy's knees is 160 to 170 mm (6.3 to 6.7 in), with the thighs and legs of the dummy in vertical planes.

S26.3.4.5 The upper arms are parallel to the torso and the hands are in contact with the thighs.

S26.3.5 Maintaining the spine angle, slide the dummy forward until the head/torso contacts the steering wheel.

S26.3.6 While maintaining the spine angle, position the dummy so that a point on the chin 40 mm below the center of the mouth (chin point) is in contact with the rim of the uppermost portion of the steering wheel. If the dummy's head contacts the vehicle windshield or upper interior before the prescribed position can be obtained, lower the dummy until there is no more than 5 mm (0.2 in) clearance between the vehicle's windshield or upper interior, as applicable.

S26.3.7 If the steering wheel can be adjusted so that the chin point can be in contact with the rim of the uppermost portion of the steering wheel, adjust the steering wheel to that position and readjust the spine angle to coincide with the steering wheel angle. Position the dummy so that the chin point is in contact with the rim of the uppermost portion of the steering wheel.

S26.3.8 If necessary, material with a maximum breaking strength of 311 N (70 lb) and spacer blocks may be used to support the dummy in position. The material should support the torso rather than the head. Support the dummy so that there is minimum interference with the full rotational and translational freedom for the upper torso of the dummy and the material does not interfere with the air bag.

S26.4 Deploy the left front outboard frontal air bag system. If the air bag system contains a multistage inflator, the vehicle shall be able to comply with the injury criteria at any stage or combination of stages or time delay between successive stages that could occur in a rigid barrier crash at speeds up to 26 km/h (16 mph) under the test procedure specified in S22.5.

* * * * *

S29 *Manufacturer option to certify vehicles to certain static suppression test requirements using human beings rather than test dummies.*

S29.1 At the option of the manufacturer, instead of using test dummies in conducting the tests for the following automatic suppression and occupant recognition parts of the low risk deployment test requirements, human beings may be used as specified. If human beings are used, they shall assume, to the extent possible, the final physical position specified for the corresponding dummies for each test.

(a) If a manufacturer decides to certify a vehicle using a human being for a test of the passenger automatic suppression, it shall use humans for the entire series of tests, e.g., 3-year-old children for each test of the system involving 3-year-old test dummies. If a manufacturer decides to certify a vehicle using a test dummy for a test of the system, it shall use test dummies for the entire series of tests, e.g., a Hybrid III 3-year-old child dummy for each test of the system involving 3-year-old child test dummies.

(b) For S19.2, instead of using the 49 CFR Part 572 Subpart R 12-month-old child dummy, a human child who weighs between 8.2 and 9.1 kg (18 and 20 lb), and who is between 61 and 66 cm (24 and 26 in) tall may be used.

(c) For S19.2, instead of using the 49 CFR Part 572 Subpart K newborn infant dummy, a human child who weighs between 8.2 and 9.1 kg (18 and 20 lb), and who is between 61 and 66 cm (24 and 26 in) tall may be used.

(d) For S21.2 and S21.5.1, instead of using the 49 CFR Part 572 Subpart P 3-year-old child dummy, a human child who weighs between 13.4 and 18 kg (29.5 and 39.5 lb), and who is between 89 and 99 cm (35 and 39 in) tall may be used.

(e) For S23.2 and S23.5.1, instead of using the 49 CFR Part 572 Subpart N 6-year-old child dummy, a human child who weighs between 21 and 25.6 kg (46.5 and 56.5 lb), and who is between 114 and 124.5 cm (45 and 49 in) tall may be used.

(f) For S19.2, S21.2, and S23.2, instead of using the 49 CFR Part 572 Subpart O 5th percentile adult female test dummy, a female who weighs between 46.7 and 51.25 kg (103 and 113 lb), and who is between 139.7 and 150 cm (55 and 59 in) tall may be used.

S29.2 Human beings shall be dressed in a cotton T-shirt, full length cotton trousers, and sneakers. Specified weights and heights include clothing.

S29.3 A manufacturer exercising this option shall upon request:

(a) Provide NHTSA with a method to deactivate the air bag during compliance testing under S20.2, S20.3, S22.2, S22.3, S24.2, and S24.3, and identify any parts or equipment necessary for deactivation; such assurance may be made by removing the air bag; and

(b) Provide NHTSA with a method to assure that the same test results would be obtained if the air bag were not deactivated.

* * * * *

Appendix A to § 571.208—Selection of Child Restraint Systems

A. The following car bed, manufactured on or after December 1, 1999, may be used by the National Highway Traffic Safety Administration to test the suppression system of a vehicle that has been certified as being in compliance with 49 CFR 571.208 S19:

Cosco Dream Ride 02–719

B. Any of the following rear facing child restraint systems, manufactured on or after December 1, 1999, may be used by the National Highway Traffic Safety Administration to test the suppression system of a vehicle that has been certified as being in compliance with 49 CFR 571.208 S19. When the restraint system comes equipped with a removable base, the test may be run either with the base attached or without the base.

Britax Handle with Care 191
Century Assura 4553
Century Avanta SE 41530
Century Smart Fit 4543
Cosco Arriva 02727
Cosco Opus 35 02603
Evenflo Discovery Adjust Right 212
Evenflo First Choice 204
Evenflo On My Way Position Right V 282
Graco Infant 8457

C. Any of the following forward-facing convertible child restraint systems, manufactured on or after December 1, 1999,

may be used by the National Highway Traffic Safety Administration to test the suppression system of a vehicle that has been certified as being in compliance with 49 CFR 571.208 S19, or S21:

Britax Roundabout 161
Century Encore 4612
Century STE 1000 4416
Cosco Olympian 02803
Cosco Touriva 02519
Evenflo Horizon V 425
Evenflo Medallion 254

D. Any of the following forward-facing toddler/belt positioning booster systems, manufactured on or after December 1, 1999, may be used by the National Highway Traffic Safety Administration as test devices to test the suppression system of a vehicle that has been certified as being in compliance with 49 CFR 571.208 S21 or S23:

Britax Roadster 9004
Century Next Step 4920
Cosco High Back Booster 02–442
Evenflo Right Fit 245

Issued on December 6, 2001.

Jeffery W. Runge,

Administrator.

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Federal Acquisition Regulation (FAR):

Contractor personnel; information technology services procurement; published 12-18-01

Iceland; newly designated country under Trade Agreements Act; published 12-18-01

North American Industry Classification System; published 12-18-01

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

Contractor personnel; information technology services procurement; published 12-18-01

Iceland; newly designated country under Trade Agreements Act; published 12-18-01

North American Industry Classification System; published 12-18-01

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):

Contractor personnel; information technology services procurement; published 12-18-01

Iceland, newly designated country under Trade Agreements Act; published 12-18-01

North American Industry Classification System; published 12-18-01

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Federal Aviation Administration

Airworthiness directives:

McDonnell Douglas; published 11-13-01

Rolls-Royce, plc; published 11-13-01

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Plant-related quarantine, domestic:

Citrus canker; comments due by 12-27-01; published 11-27-01 [FR 01-29473]

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Fishery conservation and management:

Northeastern United States fisheries—

Summer flounder, scup, and black sea bass; comments due by 12-28-01; published 12-13-01 [FR 01-30828]

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Air quality implementation plans; approval and promulgation; various States:

West Virginia; comments due by 12-27-01; published 11-27-01 [FR 01-29471]

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Hazardous waste program authorizations:

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National priorities list update; comments due by 12-28-01; published 11-28-01 [FR 01-29469]

ENVIRONMENTAL PROTECTION AGENCY

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Supplementary capital elements (tier 2 capital); deferred tax assets (Regulations H and Y); comments due by 12-27-01; published 11-27-01 [FR 01-29331]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 2291/P.L. 107–82
To extend the authorization of the Drug-Free Communities Support Program for an additional 5 years, to authorize a National Community Antidrug Coalition Institute, and for other purposes. (Dec. 14, 2001; 115 Stat. 814)

H.J. Res. 78/P.L. 107–83
Making further continuing appropriations for the fiscal year 2002, and for other purposes. (Dec. 15, 2001; 115 Stat. 822)

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